



Tab 8

Tribunal Committee

For information

April 22, 2021

Committee Members:

Julia Shin Doi (Chair)

Ryan Alford (Vice-Chair)

Marian Lippa (Vice-Chair)

Malcolm M. Mercer (*ex officio*)

Jared Brown

Paul Cooper

Jean-Jacques Desgranges

John Fagan

Michael LeSage

C. Scott Marshall

Isfahan Merali

Barbara Murchie

Geneviève Painchaud

Chi-Kun Shi

Tanya Walker

Authored By:

Lisa Mallia,
Tribunal counsel
lmallia@lso.ca

For information

Tab 8.1 Proposed amendments to the Rules of Practice and Procedure

Tab 8.2 Tribunal Statistics Q4 2020



Table of Contents

Rules of Practice and Procedure	1
A. Executive Summary.....	1
B. Committee Process	1
C. Background	1
D. Discussion	2
Electronic Documents	2
Electronic Appearances	2
Availability of technology and connectivity	3
E. Proposed Amendments to the Rules of Practice and Procedure.....	3
Tribunal Statistics – For Information.....	4
A. Executive Summary.....	4
B. Committee Process	4
C. Background	4
D. Q4 2020 quarterly report	4

Rules of Practice and Procedure

A. Executive Summary

Beginning in November 2020, the Tribunal Committee has worked with Tribunal Chair Malcolm M. Mercer to review the policy implications brought about by the government measures undertaken following the declaration of a COVID-19 pandemic and the Tribunal's mandate to continue operations. The focus has been on what has been learned and accomplished at the Tribunal during this time and how to best proceed in the future. Convocation is provided with a copy of the draft changes to the Law Society Tribunal *Rules of Practice and Procedure*. We invite comment from Law Society and public stakeholders by May 30, 2021.

B. Committee Process

The Committee discussed the Rules and proposed policy changes and later draft language at the November 2020, and January, February, and April 2021 Committee meetings. The Rules were also discussed at the March 2021 meeting of the Tribunal Chair's Practice Roundtable and meetings and e-mail exchanges with the Law Society Tribunal's post-pandemic working group.

The Tribunal Chair's Practice Roundtable is a forum for the Tribunal to consult with and obtain feedback from those who practice before the Tribunal and is made up of individuals who regularly appear before the Tribunal as counsel whether representing licensees / licence applicants, the Law Society or as duty counsel.

The Tribunal's post-pandemic working group is a group made up of Tribunal staff, adjudicators (Benchers) and counsel from the LSO and the duty counsel program who expressed an interest in considering how the Tribunal can best respond to the pandemic and moving forward.

C. Background

As a result of pandemic measures, all Law Society staff, including those at the Tribunal, began working at home during the last two weeks of March 2020. All in-person appearances were cancelled at that time and since then, appearances have taken place by videoconference, teleconference or in writing.

Most merits and motion hearings have taken place by videoconference; PMCs have taken place by teleconference, and PHCs have transitioned from primarily by teleconference to primarily by videoconference. While most of the hearings initially scheduled for videoconferences were summary hearings or uncontested matters, as the pandemic continues more continuation dates, and hearings for more complex matters, are being scheduled to take place by videoconference. As of February 17, 2021, all in-person hearings at the Tribunal have been cancelled to the end of September 2021.

The professions and the public have been kept up-to-date by notices posted on the Tribunal's website such as [this one](#). The notices are also published on the Tribunal's twitter feed.

While many of the steps taken to adapt the Tribunal's processes in response to pandemic measures were ad-hoc, the Tribunal Committee, together with the Tribunal Chair, is tasked with considering the policy implications on the Tribunal of pandemic measures.

D. Discussion

The proposed changes to the *Rules of Practice and Procedure* reflect the discussions that have taken place at the Committee and also comments received from the Roundtable and working group.

Electronic Documents

There was little, if any, negative response to the proposed move to electronic filing of documents and maintaining an electronic record of proceeding, supplemented by physical documents only where physical documents are, by their nature, required.

Concern was raised that some licensees / licence applicants will require assistance to ensure that their documents complied with any requirements set out in a practice direction. Standardization of formats, file naming conventions, pagination and ease of use were all issues discussed in regards to electronic documents. It is desirable to ensure that panels of three or five are not unnecessarily duplicating work to access filed materials.

Electronic Appearances

There has been much discussion about whether certain types of, or indeed all, appearances should be electronic by default or not. The responses to this question have been varied.

On the one hand, some have suggested that in addition to substantial savings for parties and for the Tribunal (on office space, transportation, hotel accommodations etc.), moving to a presumption of videoconference hearings will also increase access to the Tribunal for licensees / licence applicants residing outside of Toronto. Licensees / licence applicants and out of town adjudicators would not have to travel to Toronto, incurring transportation, accommodation and other costs which would be compounded if they are also represented at the Tribunal. Positive environmental impacts were also raised.

On the other hand, feedback received from representatives appearing at the Tribunal included concern about any presumption of virtual hearings. Some suggested that in-person hearings should remain the default and/or the licensee / licence applicant ought to retain the right to choose an in-person reason. Others did not agree that the licensee / licence applicant ought to have essentially a veto but agreed that videoconference hearings ought not to be the default.

There was broad agreement that videoconference appearances and hybrid hearings would be appropriate. The differences of opinion were with respect to the extent to which in-person hearings were appropriate.

Availability of technology and connectivity

Concerns about difficulties accessing reliable technology (both hardware and reliable/sufficient internet connection) by licensees / licence applicants and the need to address those difficulties were often mentioned. In addition, the ability of all licensees / licence applicants to actually use the technology was raised. The issue of access to justice also includes improving access to the Tribunal for licensees and licence applicants wherever located throughout the province. There is substantial interest in working to ensure access to technology and connectivity for effective remote access to the Tribunal and its proceedings.

E. Proposed Amendments to the Rules of Practice and Procedure

The proposed draft amendments to the Rules (**Tab 8.1**) reflect the Committee's intent to move forward with greater reliance on electronic / videoconference hearings and acceptance of electronic documents.

Rule 1 has been updated to include the importance of efficient processes and proceedings.

Rule 5 has been updated to reflect the move to electronic documents. Corresponding changes have also been made in Rule 3 regarding starting proceedings. Rule 13 – record of proceedings has been updated to reflect this move as well. Rule 18.2 was similarly updated.

Rule 9 addresses the manner of appearance and sets out that the Tribunal will direction the manner of the appearance. Rule 2.1(2) sets out a non-exhaustive list of considerations to be taken into account in making the determination. Rule 7.3 has been deleted as a consequence.

We are also using this time to make some updates to the language and certain rules to make them easier to understand and apply, based on experience gained over the last year.

Rule 6.4 is updated to reflect the language used in the Act. The same is true for Rules 9.9 and 9.10, though Rule 9.10 requires someone who wants to make an audio recording to notify the Tribunal.

Improvements have been proposed for Rule 17 to account for experience in applying the rule over the past year. Issues have arisen in multiple proceedings because of the requirement in the initial rule to base calculations on the date a notice of appeal was filed, regardless of any steps taken afterwards. The update proposed changes this to use a "deadline" as the basis for calculating time; either the deadline established in Rule 17.3 or as otherwise set by the Tribunal.

Tribunal Statistics – For Information

A. Executive Summary

Ongoing collection and reporting of Tribunal operational statistics assists the Tribunal to track issues, identify needs and monitor emerging trends in Tribunal proceedings. This enables the Tribunal Committee and Convocation to make policy decisions with a more fulsome understanding of the Tribunal's work.

B. Committee Process

The Committee met on April 8, 2020. Committee members Julia Shin Doi (Chair), Marian Lippa (Vice-Chair), Malcolm M. Mercer, (*ex officio*), Jared Brown, Jean-Jacques Desgranges, John Fagan, Michael Lesage, C. Scott Marshall, Barbara Murchie, Geneviève Painchaud, and Chi-Kun Shi attended. Bencher Cathy Banning and staff members Celia Lieu and Lisa Mallia also attended.

C. Background

The statistics that the Tribunal reports on were decided upon through an extensive process. In 2016, the Tribunal Committee considered what types of data would be useful in public and internal reports. This review was done while considering the goals of the Tribunal model as well as issues raised in the 2016 Tribunal Model Three-Year Review final report. That report highlighted the need for a revised approach to data collection that would focus on adjudicative purposes in order to measure the effectiveness of the Tribunal's processes.

In 2017, the Committee approved a list of statistics to be gathered and reported on quarterly and annually. The Tribunal then designed data collection and technology around this list. The goal of the statistics the Committee chose is to have focused reporting that:

- measures outcomes;
- measures efficiency;
- monitors trends; and
- monitors data around adjudicators, duty counsel/self-represented licensees, French language hearings, and licensee/licensee applicant data.

These goals must be pursued while bearing in mind the public interest nature of the information and the goal of transparency.

The Tribunal provides five statistical reports each year to Convocation: four quarterly reports and one year-end report. The Q4 2020 quarterly report is set out at **TAB 8.2**.

D. Q4 2020 quarterly report

The Fourth Quarter 2020 report provides operational statistics during a period where the Tribunal continued to operate remotely. In this quarter, the Tribunal rescheduled many of its cancelled hearings from earlier in the year and converted all in-person hearings to videoconference.

The volume of cases open at any point in time is generally between 165 and 175. In 2020, the case load was higher: from 185 files open at the end of Q1 to 219 at the end of Q4: Caseload on page 6 of the Q4 report.

The number of hearing files opened in Q4 of 2020 (47) was an increase from Q3 of 2020 (40) and also an increase from Q4 of 2019 (34): Figure 1 on page 2. Slightly fewer files were closed in Q4 of 2020 (33) than Q3 2020 (37) but more than in Q4 2019 (28): Figure 6 on page 5.

Following a significant decrease in full days used for hearings from Q1 to Q2, the number of full days used more than doubled from Q2 to Q3 and more than doubled again from Q3 to Q4: Figure 14 on page 7. Most longer, more complex hearings were cancelled during the first months of pandemic measures and have now begun to be heard by videoconference.

The Tribunal also measures the length of time taken to complete reasons: Figure 20 on page 13. The average number of days to deliver written reasons continues to decrease from 82 in Q1 to 69.5 in Q2 to 61 in Q3 and 57 days in Q4.

The report also shows that 25 applications by the Law Society were closed in Q4: Figure 25 on page 14. Most were granted in full (19), four were withdrawn, one was dismissed and one was granted in part. There were two motions for interlocutory suspension closed in Q4, both of which were granted in full. Five matters initiated by the licensee / licence applicant were closed in Q4, four were granted and one withdrawn – they were all licencing matters: Figure 32 on page 16.

One appeal brought by a licensee / licence applicant was closed in Q4: it was abandoned/withdrawn: Figure 36 on page 17. No appeals brought by the Law Society were closed in Q4.

LAW SOCIETY TRIBUNAL RULES OF PRACTICE AND PROCEDURE

Effective January 1, 2020, amended effective October 1, 2020

[DRAFT EDITS TO CONVOCATION APRIL 2021](#)

DRAFT

CONTENTS

RULE 1: PURPOSES AND INTERPRETATION	1
Purposes	1
Interpretive Principles	1
RULE 2: APPLICATION AND DEFINITIONS	2
Name	2
Application	2
Definitions	2
Same meaning as in the Act	4
Calculating time	4
RULE 3: STARTING AND WITHDRAWING PROCEEDINGS	4
Service	4
Amending an originating process	5
Withdrawing a proceeding or motion	5
RULE 4: ADDITIONAL PARTICIPANTS	6
Adding parties	6
Intervenors	6
Friend of the Tribunal	6
RULE 5: SERVICE, FILING, COMMUNICATING WITH THE TRIBUNAL AND FORM OF DOCUMENTS	6
How to serve	6
Effective date of service	7
Service using contact information in the Law Society's records	7
Confirmation of service	7
Communication with the Tribunal	7
Respectful communication	8
Acceptance of documents by the Tribunal	8
Filing requirements: electronic and hard copies	8
Filing physical documents	9
Layout	9
Facta	9
Books of authorities	10
RULE 6: SCHEDULING, ADJOURNMENTS AND ACCOMMODATION	10

First appearance	10
Who may schedule or adjourn.....	11
Adjournments	11
Accommodation.....	11
Accommodation for Witnesses.....	11
Failure to attend or participate.....	12
RULE 7: CASE MANAGEMENT	12
Principles.....	12
Case management directions.....	12
[.....	12
Endorsement	13
Proceeding management conference	13
Directions at proceeding management conference.....	13
Pre-hearing conference.....	13
Issues discussed at pre-hearing conference.....	13
When a pre-hearing conference is scheduled.....	14
Confidential and without prejudice	14
Directions at pre-hearing conference	14
Pre-hearing conference memoranda.....	14
Limitation on assignment of pre-hearing conference Tribunal member	14
Case conference	15
Directions at case conference	15
RULE 8: MOTIONS.....	15
Motions.....	15
Motion materials.....	15
Motions on consent or unopposed motions.....	16
RULE 9: APPEARANCES	16
Manner of appearance	16
Attending an in-person appearance electronically	17
Language	17
Location.....	18
Hearing proceedings together or consecutively	18
Consent to hearing before one member of the Tribunal.....	18

Transcripts.....	18
Images and recording.....	18
RULE 10: DISCLOSURE AND PRODUCTION	19
Law Society's obligation to disclose	19
Production from the Law Society.....	19
Interlocutory suspension or restriction motions	19
Production from third parties	19
Witness statements and document books.....	19
Expert reports.....	20
Consequences of failure to disclose.....	20
RULE 11: EVIDENCE	20
Agreed facts	20
Affidavit evidence	20
Deemed admissions.....	20
Filing materials before the hearing	22
Summons	22
Exclusion of witnesses	22
Admission of evidence	22
Previously Admitted Evidence.....	23
Limits on examination or cross-examination	23
Information obtained by the Discrimination and Harassment Counsel.....	23
RULE 12: INTERLOCUTORY SUSPENSION OR RESTRICTION MOTIONS.....	23
Authority	23
Motions rule applies	24
When authorization required	24
Service and materials.....	24
Interim interlocutory suspension or restriction.....	24
Duration of interlocutory suspension or restriction	24
Grounds to vary or cancel	24
Motion to vary or cancel	25
RULE 13: RECORD OF PROCEEDING AND TRANSPARENCY.....	25
Record of proceeding.....	25
Open tribunal.....	25

Departing from openness	25
Capacity proceedings	26
Children and sexual misconduct complainants	26
Privilege	26
Effect of not public order	26
Effect of non-disclosure order	27
Effect of publication ban	27
Effect of order	27
RULE 14: ORDERS AND REASONS	28
Orders	28
Power to make orders	28
Addressing capacity issues in conduct applications	28
Formal order	28
Reasons	28
Correction of errors	28
RULE 15: COSTS	29
Power to award costs	29
Tariff	29
Security for costs	29
RULE 16: REPRIMANDS	30
Administration of reprimands	30
Appeals and reprimands	30
RULE 17: APPEALS	30
Orders that may be appealed	30
Deadline for appeal	30
Perfecting the appeal	31
Dismissal for delay and deemed withdrawal	31
Deadline for respondent's materials if no cross-appeal filed	32
Deadline for respondent's materials if cross-appeal filed	32
Respondent to cross-appeal materials	32
Compendia	32
RULE 18: FRESH EVIDENCE ON APPEAL	32
Motion to introduce fresh evidence	32

Proposed fresh evidence.....	32
Hearing of fresh evidence motion.....	32
Hearing of appeal in any event.....	32
Where respondent consents	33
Timing of Fresh Evidence Motion.....	33
RULE 19: APPEAL MATERIALS	33
Appeal books.....	33
Appeal facta	34
RULE 20: ADMINISTRATIVE SUSPENSION ORDER APPEALS	34
Starting administrative suspension order appeal	34
Administrative suspension order appeals on consent	34
Filing of affidavits and hearing.....	34
Pre-hearing conference.....	35
APPENDIX A – Tariff of Fees for Services	36

RULE 1: PURPOSES AND INTERPRETATION

Purposes

1.1 The purposes of these rules are to:

- (a) establish fair processes that consider the interests of the public, the legal professions, individual licensees and licence applicants;
- ~~(b)~~ [promote timely determination of proceedings in accordance with the public interest;](#)
- ~~(b)~~~~(c)~~ [ensure efficient processes and proceedings;](#)
- ~~(e)~~~~(d)~~ ensure that the Tribunal's processes are clear and understandable;
- ~~(d)~~~~(e)~~ allow for flexibility to adapt processes to the needs of particular cases and types of cases, including those involving disadvantaged and vulnerable persons;
- ~~(e)~~~~(f)~~ promote early identification of issues in dispute and facilitate agreement and resolution;
- ~~(f)~~~~(g)~~ ensure that processes and proceedings are transparent to the public and to licensees and licence applicants; and
- ~~(g)~~~~(h)~~ allow licensees and licence applicants to participate effectively in the process, whether or not they have a representative.

Interpretive Principles

- 1.2 These rules shall be interpreted and applied in accordance with their purposes.
- 1.3 Orders and directions made under these rules shall be proportionate to the importance and complexity of the issues.
- 1.4 The Tribunal may exercise its powers at the request of a party or on its own initiative.
- [1.5](#) The Tribunal may decide not to ~~strictly~~ apply these rules [strictly](#) unless to do so would be inconsistent with legislation, regulations or a mandatory rule.
- [4-51.6](#) [The Tribunal operates electronically to the extent reasonably possible taking into account the purposes set out in Rule 1.1 and where doing so improves access to the Tribunal and is procedurally fair.](#)

RULE 2: APPLICATION AND DEFINITIONS

Name

- 2.1 These rules are referred to as the Law Society Tribunal *Rules of Practice and Procedure*.

Application

- 2.2 These rules apply to all proceedings before the Hearing and Appeal Divisions of the Law Society Tribunal, starting January 1, 2020.

Definitions

- 2.3 In these rules, unless the context requires otherwise:

“Act” means the *Law Society Act*, RSO 1990, c. L. 8 (“*Loi*”);

“administrative suspension order appeal” means an appeal from an order under section 46, 47, 47.1, 48, or 49 of the Act (“*appel d’une ordonnance de suspension administrative*”);

“appeal” includes, where appropriate, a cross-appeal (“*appel*”);

“appearance” means a hearing, motion, case conference, pre-hearing conference or proceeding management conference (“*comparution*”);

“appellant” means a person who starts an appeal, including, where appropriate, a person who starts a cross-appeal (“*appellant*”);

“assigned hearing panel” means the Tribunal member or members assigned to a merits hearing or motion by the Chair (“*formation d’audience*”);

“authenticity” includes: (a) the fact that a document that is said to be an original was printed, written or otherwise produced and signed or executed as it purports to have been; (b) a document that is said to be a copy is a true copy of the original; and (c) where the document is a copy of a letter or electronic communication, the original was sent as it purports to have been sent and received by the person to whom it is addressed (“*authenticité*”);

“Chair” means the Chair of the Law Society Tribunal, or a Vice-Chair of the Hearing or Appeal Division acting in the Chair’s absence (“*Président*”);

“document” includes electronic records (“*document*”);

“endorsement” means a record of an action taken by the Tribunal, made by a member of the Tribunal or Tribunal staff (“*inscription*”);

“file” means to provide a document to the Tribunal in accordance with Rules 5.4 to 5.11 (“*deposer*”);

“holiday” means any Saturday, Sunday, statutory holiday or other day on which the Tribunal is closed (“*jour férié*”);

“intervenor” means a person or organization granted leave to participate in a proceeding or a part of a proceeding under Rule 4 (“*intervenant*”);

“Law Society” means the Law Society of Ontario (“*Barreau*”);

“leave” means permission granted by a panel (“*autorisation*”);

“licensee” means a lawyer or paralegal who is a party to a proceeding (“*titulaire de permis*”);

“licence applicant” means the applicant for a licence in a licensing proceeding (“*demandeur de permis*”);

“non-disclosure order” means an order that the transcript or a part of the transcript of a public appearance be not public, and that anyone who was present may not disclose what occurred (“*ordonnance de non-divulgation*”);

“not public order” means an order that an appearance or document, or a part of the appearance or document, be not public (“*ordonnance de non-publicité*”);

“originating process” means a Notice of Application, Notice of Referral for Hearing, Notice of Appeal, Notice of Administrative Suspension Order Appeal, Notice of Cross-Appeal, Notice of Motion – Interlocutory Suspension or Restriction or Notice of Motion – Vary or Cancel Interlocutory Suspension or Restriction (“*acte introductif d’instance*”);

“panel” means the member or members of the Tribunal assigned to an appearance by the Chair (“*formation*”);

“panelist” means a member of a panel (“*membre de la formation*”);

“previously admitted evidence” means evidence that was admitted in a proceeding before a court or tribunal, whether in or outside Ontario, at a hearing that occurred before the hearing in which the evidence is now sought to be admitted (“*prevue déjà admise*”);

“publication ban” means an order that no one may publish information about what occurred at a public appearance or the contents of public documents (“*interdiction de publication*”);

“representative” means a person representing a party in the proceeding (“*représentant*”);

“serve” means to provide documents to the other party or parties in accordance with Rule 3.1 or Rule 5.1 (“*signifier*”);

“summary hearing” means a proceeding in which the Law Society requests that the matter be assigned to a single member panel under para. 1 of s. 2(1) of O. Reg. 167/07 (“*audience sommaire*”);

“Tribunal” means the Law Society Tribunal, and includes a panel (“*Tribunal*”);

[“Tribunal’s File Sharing Platform” means an electronic file sharing system established by or approved by the Tribunal for use by parties and others in Tribunal proceedings \(“*•*”\);](#)

“Tribunal member” means a member of the Hearing Division or Appeal Division (“*membre du Tribunal*”).

Same meaning as in the Act

2.4 If a word or phrase is defined in the Act, it has the same meaning in these rules unless the rules specify otherwise.

Calculating time

2.5 In calculating time under these rules, or under a direction or order made under these rules:

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens but including the day on which the second event happens;
- (b) where a period of less than seven days is prescribed, holidays shall not be counted;
- (c) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday; and
- (d) where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, the document shall be deemed to be received or service shall be deemed to be effective on the next day that is not a holiday.

RULE 3: STARTING AND WITHDRAWING PROCEEDINGS

Service

3.1 (1) A party starts a proceeding by serving and filing the appropriate originating process (Forms 1-17) and information sheet (Forms 18-25).

(2) A party must serve an originating process and information sheet by:

(a) hand delivery to the person being served;

(b) regular mail, registered mail or courier sent to the party's home and / or business addresses;

~~(b)~~(c) electronically by e-mail sent to the party's home and / or business e-mail addresses; or

~~(c)~~(d) any other method agreed to by the person being served or directed by the Tribunal.

(3) The Law Society must file originating processes and information sheets electronically.

(4) The addresses mentioned in Rule 3.1 (2) (b) and (c) are:

(a) in the case of licensees, the addresses provided to the Law Society under By-Law 8; and

(b) in the case of licence applicants, the addresses provided to the Law Society during the licensing process.

Commented [A1]: This addition makes it clearer that the LSO will rely on the information that the licensee has provided to the Law Society either pursuant to By-Law 8 or the licensing process.

Amending an originating process

3.2 (1) A party may amend an originating process by serving and filing an amended version that clearly indicates the nature of the changes:

(a) in a proceeding in the Hearing Division, no later than 10 days before the hearing on the merits; and

(b) in a proceeding in the Appeal Division, at any time before the appeal is perfected.

(2) A party may amend an originating process after the deadline with consent of the other party or with leave.

Withdrawing a proceeding or motion

3.3 (1) A party may, at any time, withdraw a proceeding or motion by serving and filing a Notice of Withdrawal (Form 26).

(2) A party that brought a proceeding or motion and does not attend an appearance or meet a deadline set by the Tribunal may be deemed to have withdrawn the proceeding or motion.

(3) A responding party may request costs after a proceeding or motion is withdrawn or deemed withdrawn.

RULE 4: ADDITIONAL PARTICIPANTS

Adding parties

4.1 The Tribunal may make an order adding a person as a party where the person is entitled under the Act or otherwise by law to be a party to the proceeding.

Intervenors

4.2 (1) The Tribunal may make an order permitting a person to participate in the proceeding or a part of the proceeding as an intervenor if this would be in the interests of justice.

(2) The Tribunal shall determine the extent of an intervenor's participation and may make other directions about that participation.

Friend of the Tribunal

4.3 The Tribunal may invite a person to participate in the proceeding or part of the proceeding to assist the Tribunal. A person who participates under this rule is not a party and no costs order may be made against that person.

RULE 5: SERVICE, FILING, COMMUNICATING WITH THE TRIBUNAL AND FORM OF DOCUMENTS

How to serve

5.1 A document other than an originating process may be served by:

(a) hand delivery;

(b) regular mail, registered mail or courier;

(c) e-mail, if less than 20 MB;

(d) [uploading an electronic document to the Tribunal's File Sharing Platform and serving notice on the other party that the electronic document has been uploaded](#); ~~fax, if the document is 20 pages or less~~; or

(e) any other method agreed to by the person being served or directed by the Tribunal.

Effective date of service

5.2 Service is deemed to be effective:

- (a) if the document is ~~faxed, e-mailed, uploaded to the file-sharing system, hand delivered or delivered by courier~~ served, other than by mail, before 5 p.m. on a business day, on that day;
- (b) if the document is ~~faxed, e-mailed, uploaded to the file-sharing system, hand delivered or delivered by courier~~ served, other than by mail, on a holiday or after 5 p.m. on a business day, on the next business day;
- (c) if the document is mailed, on the fifth business day after mailing.

Commented [A2]: This change makes the rule simpler to understand.

Service using contact information in the Law Society's records

- 5.3 Service on a licensee using contact information provided to the Law Society under By-Law 8, ss. 3 and 4 is considered effective unless otherwise ordered by the Tribunal.

Confirmation of service

5.4 When a document is filed with the Tribunal, service must be confirmed by:

- (a) a Confirmation of Service form (Form 27), which may be provided in the body of an e-mail;
- (b) an affidavit of the person who served it;
- (c) an e-mail showing that the document was sent to the other person's e-mail address including by
 - i. copying the Tribunal in the original e-mail to the other person; or
 - ii. forwarding the original e-mail to the Tribunal; or
- ~~(e)~~(d) written acceptance of service by the person served, which may be provided electronically by e-mail to the Tribunal.

Communication with the Tribunal

- 5.5 (1) All parties must be copied on correspondence sent to the Tribunal about the substance of the proceeding.
- (2) All communication with a panel other than during an appearance shall be sent in writing to the Tribunal Office, and may be sent electronically.

Respectful communication

5.6 (1) All documents filed, and all written and oral communications with the Tribunal must be relevant to the proceeding and respectful to all participants in the proceeding and to the Tribunal.

(2) Failure to comply with this rule is a relevant factor in making a costs award.

Acceptance of documents by the Tribunal

5.7 Acceptance of documents by the Tribunal does not mean that they are timely, properly served or otherwise comply with these rules or the order or direction under which they were filed. The Tribunal may reject documents after they are filed.

Filing requirements: electronic and hard copies

~~5.8~~

~~5.9~~ Other than physical documents filed at an in-person appearance, (1) The following Aall documents must be filed in electronic copy form and be in accordance with the Tribunal's practice direction on electronic filing:-

~~(a) pre-hearing conference memoranda;~~

~~5.105.8 (b) any document less than 10 pages, unless filed at an appearance.~~

~~(2) The following documents, if 10 pages or more, must be filed in both electronic and hard copy:~~

~~(a) agreed statements of facts (not including exhibits);~~

~~(b) affidavits (not including exhibits);~~

~~(c) requests to admit;~~

~~(d) draft orders;~~

~~(e) facta;~~

~~(f) written submissions; and~~

~~(g) notices of motion.~~

~~(3) All other documents must be filed in hard copy.~~

Filing electronic documents

Commented [A3]: This is a major change. All documents, unless provided in hard copy at an in-person appearance, must be filed in electronic form.

This also anticipates a practice direction on electronic filing. A practice direction is preferred as it is an easier process for amending in the future – although practice directions go to Convocation for approval currently, changes to practice directions are not as significant as changes to the Rules.

~~5.115.9~~ Where possible, ~~Electronic copies of documents may~~ must be filed in pdf format or, alternatively, in both pdf and other formats such as .doc, .ppt and .xlsx. ~~Word and/or pdf format. Electronic documents may be filed~~ by e-mail (if less than 20 MB), on a USB drive, ~~by the Tribunal's File Sharing Platform~~ or by such other method as the Tribunal may permit. The ~~document~~ file name ~~and the structure and format of the electronic document~~ must include the Tribunal file number, the name of the document and the party filing ~~comply with the Tribunal's practice direction on electronic documents filing~~.

Filing ~~physical documents~~ hard copy documents

5.10 ~~When~~ Where a party files a document ~~sing~~ in physical form ~~hard copy at an in-person appearance~~:

(1) ~~the party must file~~:

- (a) two copies of the document if the appearance is before a single-member panel;
- (b) four copies of the document if the appearance is before a three-member panel; or
- (c) six copies of the document if the appearance is before a five-member panel;

together with an electronic copy, or an additional un-tabbed and unbound ~~hard copy of the physical document~~.

(2) ~~the electronic copy of the physical document filed by the party, or an electronic copy created by the Tribunal if no electronic copy is filed by the party, becomes part of the record of proceeding but the physical document does not~~.

Layout

5.11 (1) Documents ~~prepared for~~ filed with the Tribunal ~~proceedings~~ must be legible. Written documents must be typed or printed. Electronic documents must be formatted to be printed on white 8.5 by 11 inch paper 216 millimetres by 279 millimetres (8.5 by 11 inches), using 12 point font, double spaced, except for quotations which may be single spaced, with a margin of at least 1 ½ inches on the left hand side.

(2) Physical documents must be on white 8.5 by 11 inch paper 216 millimetres by 279 millimetres (8.5 by 11 inches).

5.12 (3) ~~These requirements do not apply to documentary evidence or copies of documentary evidence~~.

Commented [A4]: This mirrors the current Rules of Civil Pro.

Commented [A5]: This mirrors the current Rules of Civil Pro.

Facta

5.13 A factum must include at least the following sections:

- (a) overview;

- (b) issues;
- (c) facts, argument and law;
- (d) the order requested;
- (e) schedule A, containing a list of authorities referred to; and
- (f) schedule B, containing the text of the relevant portions of statutes, regulations, by-laws and rules.

5.14 Without leave, a factum shall be no more than 30 pages.

Books of authorities

- 5.15 (1) Parties must mark those passages in their book of authorities to which they intend to refer in oral argument.
- (2) Parties should not include authorities contained in the Tribunal Book of Authorities or in a book of authorities already filed by another party.

Covers

~~5.16 The front and back covers of bound documents must be:~~

- ~~(a) green if filed by the Law Society;~~
- ~~(b) white if filed by a licensee or licence applicant;~~
- ~~(c) buff if filed by any other party; or~~
- ~~(d)(a) red if the document is subject to a not public order, non-disclosure order or publication ban, unless the document was filed before the order was made.~~

RULE 6: SCHEDULING, ADJOURNMENTS AND ACCOMMODATION

First appearance

- 6.1 (1) The date of the first appearance, in Hearing Division proceedings, is set out on the information sheet.
- (2) For a summary hearing, interlocutory suspension or restriction motion, or motion to vary or cancel an interlocutory suspension or restriction, the first appearance is the scheduled hearing date. The applicant must confirm the availability of a proposed hearing date with the Tribunal Office before including it in the information sheet.

(3) For all other Hearing Division proceedings, the first appearance is a proceeding management conference. Available proceeding management conference dates are posted on the Tribunal website.

(4) An appeal hearing is scheduled by the Tribunal Office once the appeal has been perfected.

Who may schedule or adjourn

6.2 An appearance may be scheduled or adjourned by:

- (a) a pre-hearing conference or proceeding management conference;
- (b) the assigned hearing panel or its chair; or
- (c) the Tribunal Office, if the scheduling or adjournment is on consent.

Adjournments

6.3 Adjournments are not automatic, even if the parties consent. Once an appearance before the assigned hearing panel is scheduled, that date is firm and adjournments will be granted only in exceptional circumstances, as set out in the Tribunal's Practice Direction on Adjournments. Parties must be ready to proceed on the dates scheduled.

6.4 An order adjourning an appearance may include such terms and conditions as the panel considers appropriate. The Tribunal may order that there be terms to an adjournment.

Commented [A6]: Tracking the language of section 49.26 of the Act

Accommodation

6.5 Participants in proceedings are entitled to accommodation of their needs under the *Human Rights Code*, RSO 1990, c. H. 19, to the point of undue hardship. A participant in a proceeding must notify the Tribunal as soon as possible of any accommodation requests.

Accommodation for Witnesses

6.6 Where it would be fair and in the interests of justice, the Tribunal may:

- (a) permit a support person to sit near a witness while the witness testifies;
- (b) order that a witness testify in a manner that would allow the witness not to see the licensee, licence applicant or any other person;
- (c) order that a licensee or licence applicant not personally conduct the cross-examination of a witness, and shall appoint counsel for the purpose of conducting the cross-examination without cost to the licensee or licence applicant; and

- (d) make other orders accommodating or protecting witnesses.

Failure to attend or participate

- 6.7 Where notice of an appearance has been given to a party and the party does not attend or does not participate, the panel may proceed in the absence of the party or without the party's participation. The party will not be entitled to any further notice in the proceeding.

RULE 7: CASE MANAGEMENT

Principles

- 7.1 The Tribunal applies active case management throughout the course of proceedings, so that, among other things:
- (a) proceedings move forward in a fair and timely way, in the public interest;
 - (b) scheduled hearing time is used efficiently and effectively so the assigned hearing panel hears and decides the issues in dispute;
 - (c) issues are identified early so the parties have the opportunity to fully prepare; and
 - (d) adjournments are granted only due to unforeseeable and exceptional circumstances.

Case management directions

- 7.2 Case management directions may be made at the request of a party or on the Tribunal's own initiative at:
- (a) a proceeding management conference;
 - (b) a pre-hearing conference;
 - (c) a hearing or case conference, by the assigned hearing panel; or
 - (d) a case conference, by the chair of the assigned hearing panel, prior to or between hearing days.

[Format

- 7.3 ~~A proceeding management conference, pre-hearing conference or case conference may be held in person, by telephone, by videoconference, in writing or any combination of these formatsDeleted].~~

Endorsement

- 7.4 A panelist shall prepare an endorsement after each proceeding management conference, pre-hearing conference or case conference, recording any directions made and appearances scheduled.

Proceeding management conference

- 7.5 The Tribunal may hold a proceeding management conference on its own initiative or at the request of any party.

Directions at proceeding management conference

- 7.6 A proceeding management conference panel may:
- (a) schedule or adjourn an appearance;
 - (b) set timelines and deadlines for steps in the proceeding;
 - (c) hear and decide a procedural motion;
 - (d) make a not public order, non-disclosure order or publication ban; and
 - (e) make any other procedural directions, including directions about process at the hearing.

Pre-hearing conference

- 7.7 The purpose of a pre-hearing conference is to facilitate the just and most expeditious disposition of a proceeding.

Issues discussed at pre-hearing conference

- 7.8 A pre-hearing conference panel may discuss with the parties,
- (a) the identification, limitation or simplification of the issues in the proceeding;
 - (b) the identification and limitation of evidence and witnesses;
 - (c) the possibility of settlement of any or all of the issues in the proceeding;
 - (d) the possibility of the parties entering into an agreed statement of facts; and
 - (e) the procedural steps appropriate to moving the matter toward a hearing in a fair and timely manner.

When a pre-hearing conference is scheduled

- 7.9 A pre-hearing conference shall be promptly scheduled in every proceeding other than a summary hearing, interlocutory suspension or restriction motion, motion to vary or cancel an interlocutory suspension or restriction, or appeal unless the matter is ready for hearing. The Tribunal may, at the request of a party, or on its own initiative, schedule a pre-hearing conference in any proceeding, at any time.

Confidential and without prejudice

- 7.10 A pre-hearing conference is confidential and without prejudice. No one may disclose what occurred at a pre-hearing conference or what is contained in a pre-hearing conference memorandum, unless otherwise ordered or required by law. The panel may summarize in the endorsement the results of the discussions and the directions made.

Directions at pre-hearing conference

- 7.11 (1) A pre-hearing conference panel may:
- (a) schedule or adjourn an appearance;
 - (b) set timelines and deadlines for steps in the proceeding; and
 - (c) make any other procedural directions to move the matter forward toward hearing in a fair and timely manner, including directions about process at the hearing.
- (2) Procedural directions may be made by a pre-hearing conference panel whether or not the parties consent.

Pre-hearing conference memoranda

- 7.12 (1) Each party must prepare a pre-hearing conference memorandum containing a statement of the facts the party relies upon and its position on the issues in the proceeding.
- (2) Each party's memorandum must be sent by e-mail to the other parties and to the Tribunal Office. The Law Society's memorandum must be sent at least seven days prior to the first pre-hearing conference. The licensee or licence applicant's memorandum must be sent at least two days prior to the first pre-hearing conference.
- (3) The Tribunal may waive the requirement to file a memorandum, if the preparation of the memorandum would not be practical or of assistance in the circumstances.

Limitation on assignment of pre-hearing conference Tribunal member

- 7.13 (1) Except with agreement of the parties, a Tribunal member who conducted a pre-hearing conference in an application shall not be assigned to a motion or merits hearing

or to any appeal of that proceeding, nor shall a member of the panel assigned to a hearing preside at a pre-hearing conference. The parties must confirm their agreement by filing a consent (Form 31).

(2) This rule does not preclude a Tribunal member who conducted a pre-hearing conference from conducting a proceeding management conference.

Case conference

7.14 The Tribunal may hold a case conference on the assigned hearing panel's own initiative, as directed at a proceeding management conference, or at the request of any party.

Directions at case conference

7.15 At a case conference, the assigned hearing panel or its chair may:

- (a) schedule or adjourn an appearance;
- (b) set timelines and deadlines for steps in the proceeding;
- (c) make a not public order, non-disclosure order or publication ban; and
- (d) make any other procedural directions.

RULE 8: MOTIONS

Motions

8.1 (1) A motion must be made by notice of motion (Form 28) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

(2) If a motion date has not been confirmed by the Tribunal at the time the notice of motion is served and filed, the notice of motion must indicate that the motion will be heard on a date to be set by the Tribunal.

(3) The Tribunal may direct that the parties attend a proceeding management conference before setting a motion date.

(4) A motion may not be brought prior to the start of the proceeding to which it relates.

Motion materials

8.2 (1) This rule applies where a motion is made by notice of motion, unless the Tribunal has made specific directions otherwise.

(2) At least 10 days before the hearing of the motion, the moving party must serve and file a motion record that includes the notice of motion, together with a factum and a book of authorities.

(3) A responding party to the motion must serve and file a factum, together with a motion record and book of authorities, if any, at least three days before the hearing of the motion.

(4) A motion record must have consecutively numbered pages and contain;

- (a) a table of contents that lists each document contained in the motion record and describes each by its nature and date, including exhibits, which shall be described by their nature, date and exhibit number or letter;
- (b) the notice of motion, if not already included in another party's motion record; and
- (c) all affidavits and other material upon which the party intends to rely.

(5) Where cross-examination on an affidavit in a motion record occurs, it will take place before the panel at the motion hearing, unless the parties agree or the Tribunal orders that it take place before a court reporter. The party calling the witness must ensure the attendance of the witness for cross-examination.

Motions on consent or unopposed motions

8.3 When a motion is on consent or unopposed:

- (a) facta and books of authorities are not required unless ordered by the Tribunal; and
- (b) the moving party must file a draft of the order sought and any consents.

RULE 9: APPEARANCES

Manner of appearance

9.1 (1) ~~Unless otherwise provided, an appearance shall take place in person. As directed by the Tribunal, an appearance shall occur by telephone, by videoconference, in writing or in person.~~

(2) In directing the manner of an appearance, the Tribunal takes into account the purposes set out in Rule 1.1, that applications before the Tribunal involve parties, witnesses and members who may be remote from the Tribunal and that there are costs and benefits associated with in-person hearings to be taken into account.

Commented [A7]: This change removes the default of in-person hearings.

Attending an in-person appearance electronically

~~9.49.2~~ (1) Subject to Rule 9.2(2), a party or the party's representative may attend an in-person appearance by telephone or by videoconference electronically on request.

(2) A witness giving oral evidence and a representative or self-represented party examining a witness must attend an in-person appearance in person, unless the other party consents or the Tribunal gives leave.

(3) Subject to direction by the panel, a panelist may attend an in-person appearance by videoconference.

Written or electronic appearance

~~9.2~~ (1) The Tribunal may direct, at the request of a party or on its own initiative, that an appearance or part of an appearance take place in writing or electronically.

~~(2) A request that an appearance take place in writing or electronically may be heard in writing.~~

Converting the manner of appearance

~~9.3~~ (3) The panel assigned to an ~~in writing~~ appearance may convert the appearance to a telephone, a videoconference, an in-writing or an in-person appearance from the manner of appearance otherwise directed. to an electronic or in-person appearance and the panel assigned to an electronic appearance may convert the appearance to an in-person appearance.

Language

~~9.49.3~~ (1) A proceeding shall be conducted in English, French, or both English and French, at the choice of the licensee or licence applicant.

(2) A licensee or licence applicant who asks that the language of the proceeding be changed from the language in which it was started must make the request within 30 days of service of the originating process.

(3) Documents provided in a language other than English or French must be accompanied by a translation of the document into the language of the proceeding by a qualified translator as well as a certificate by the translator setting out that the translation is a true and accurate translation to the best of the translator's skill and ability.

(4) A party intending to call a witness whose testimony will require interpretation must notify the Tribunal as early as possible, no later than seven days before the hearing at which the witness will be examined.

Location

9-59.4 (1) Subject to Rules 9.5(2) and (3), an in-person hearing shall be held at the Law Society Tribunal in Toronto.

(2) Where all parties consent to a hearing being held outside Toronto and within the Province of Ontario, the hearing shall be held in that place.

(3) The Tribunal may order that a hearing be held in another place.

Hearing proceedings together or consecutively

9-69.5 (1) The Tribunal may order that two or more proceedings, in whole or in part, be heard at the same time or one immediately after the other, if:

- (a) the proceedings have a question of fact, law or mixed fact and law in common;
- (b) the proceedings involve the same parties;
- (c) the proceedings arise out of the same transaction or occurrence or series of transactions or occurrences; or
- (d) for any other reason an order ought to be made under this rule.

(2) Where an order is made under Rule 9.6 (1), the Tribunal shall determine the effects of hearing the merits of the proceedings together or one immediately after the other, and may give directions about those effects.

Consent to hearing before one member of the Tribunal

9-79.6 The parties to a conduct proceeding may consent to the application being heard by one member of the Tribunal under O. Reg. 167/07, s. 2(1) by filing a consent (Form 31) with the Tribunal.

Transcripts

9-89.7 (1) A person wishing to have a copy of the transcript of a public appearance must order it, at their own expense, from the reporting service that recorded the appearance.

(2) The first party to obtain a transcript of an appearance is responsible for the cost of the Tribunal's electronic and hard copies, which will be provided to the Tribunal directly by the reporting service.

Images and recording

9.9 Subject to rule 9.10, No one other than a court reporting service may, without leave,

(a) take photographs or make a video or audio recording in the Tribunal premises or the hearing room; or

~~(b)~~ take a screen shot or make a video or audio recording of an **electronic** appearance.

9.10 Subject to providing prior written notice to the Tribunal, a representative, a party acting in person or a journalist may unobtrusively make an audio recording at an appearance for the sole purpose of supplementing or replacing notes made during the appearance.

RULE 10: DISCLOSURE AND PRODUCTION

Law Society's obligation to disclose

10.1 The Law Society must disclose to the licensee or licence applicant, within a reasonable period of time following the filing of the application, all potentially relevant documents in its possession, except for those it is not disclosing due to privilege. Privileged documents must be identified to the other party.

Production from the Law Society

10.2 A licensee or licence applicant bringing a motion for further production from the Law Society must include in the motion record prior correspondence to the Law Society's representative requesting the documents and the Law Society representative's response.

Interlocutory suspension or restriction motions

10.3 Rules 10.1 and 10.2 do not apply to interlocutory suspension or restriction motions, but this rule does not preclude a panel from making disclosure orders in such cases.

Production from third parties

10.4 Where a party seeks production of documents from a third party, the party seeking the documents must obtain a motion date, and serve on the third party a summons to witness requiring the third party to attend on the motion date, attendance money and a Notice of Motion. The Notice of Motion must set out the relevance of the documents requested from the third party.

Witness statements and document books

10.5 (1) Each party must provide to every other party:
(a) a document book containing all anticipated documentary evidence;

(b) a list of witnesses that the party intends to call; and

(c) an affidavit, signed witness statement or summary of the anticipated oral evidence of each witness, as well as the witness's contact information or the contact information of a person through whom the witness may be contacted.

(2) The Law Society must comply with this rule no later than 14 days before a summary hearing and no later than 20 days before any other merits hearing. A licensee or licence applicant must comply with this rule no later than seven days before a summary hearing and no later than 10 days before any other merits hearing.

Expert reports

10.6 (1) Each party must provide to every other party, no later than 60 days before a hearing, a copy of the affidavit or written report of every expert witness the party intends to call.

(2) An affidavit or report of an expert must include an Acknowledgement of Expert's Duty (Form 33).

Consequences of failure to disclose

10.7 Evidence not disclosed or produced as required by this rule may not be relied upon without leave of the Tribunal.

RULE 11: EVIDENCE

Agreed facts

11.1 A panel may receive and rely on any facts agreed to by the parties without further proof or evidence.

Affidavit evidence

11.2 (1) The evidence-in-chief of a witness may be given by affidavit, unless the Tribunal orders otherwise.

(2) Any cross-examination on an affidavit will take place before the assigned hearing panel, unless the parties agree or the Tribunal orders that it take place before a court reporter.

(3) The party calling the witness must ensure the attendance of the witness for cross-examination.

Deemed admissions

11.3 (1) A party may request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document. The request must be in Form

29 and served on the other party. The request to admit must include a copy of any document mentioned in it unless the other party already has the document. A request must be served no later than:

- (a) 30 days before the hearing if the request contains 75 paragraphs or less;
- (b) 50 days before the hearing if the request contains 76-200 paragraphs;
- (c) 70 days before the hearing if the request contains more than 200 paragraphs.

(2) The party on whom the request is served must serve a response no later than;

- (a) 20 days after the date of service if the request contains 75 paragraphs or less;
- (b) 40 days after the date of service if the request contains 76-200 paragraphs;
- (c) 60 days after the date of service if the request contains more than 200 paragraphs.

(3) The response must be in Form 30 and must, in relation to each fact and document mentioned in the request:

- (a) admit the truth of the fact or the authenticity of the document;
- (b) specifically deny the truth of the fact or the authenticity of the document and set out the reason for the denial; or
- (c) refuse to admit the truth of the fact or the authenticity of the document and set out the reason for the refusal.

(4) If a party fails to respond to a request to admit or fails to respond in a manner that complies with this rule, that party will be deemed to admit, for the purposes of the proceeding only, the truth of the facts or the authenticity of the documents mentioned in the request to admit.

(5) If a party on whom a request to admit was served does not attend or does not participate in the hearing on the merits of the proceeding, whether or not the party served a response, the party will be deemed, for the purposes of the hearing only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

(6) If a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved, the Tribunal shall take the denial or refusal into account in exercising its discretion respecting costs.

(7) The Tribunal may relieve a party from a deemed admission.

Filing materials before the hearing

- 11.4 A party may file an agreed statement of facts, request to admit that has been deemed admitted, affidavit or document book for the panel to review to prepare for the hearing. Filing such documents does not preclude another party from objecting to their admissibility at the hearing. Parties may request that documents be not public pending the hearing.

Summons

- 11.5 (1) The Tribunal may, by summons, require any person to give evidence on oath or affirmation at a hearing and/or produce in evidence at a hearing specified documents and things.
- (2) A summons shall be in Form 32, and may be signed by the Registrar or a Tribunal member.
- (3) On request of a party, unless a panel has directed otherwise, the Tribunal Office may provide a blank summons to a party.
- (4) The party that obtains a summons must serve the summons on the witness, and pay attendance money as set out in Tariff A under the *Rules of Civil Procedure*.

Exclusion of witnesses

- 11.6 (1) Subject to Rule 11.6(2), the Tribunal may direct that a witness be excluded from a hearing until the witness is called to give evidence.
- (2) A party or a person instructing a party's representative shall not be excluded, but an order may be made that that person's evidence be called before the party's other witnesses.
- (3) Unless the Tribunal orders otherwise, there must be no communication to an excluded witness of any evidence given during the witness' absence until after the witness has given evidence.

Admission of evidence

- 11.7 (1) The rules of evidence applicable in civil proceedings apply in Tribunal proceedings, except where these rules provide otherwise.
- (2) Sections 15(4) and 16 of the *Statutory Powers Procedure Act*, RSO 1990, c. S.22 apply to the admission of evidence in Tribunal proceedings.
- (3) Sections 15(1) and (2) of the *Statutory Powers Procedure Act* apply to the admission of evidence in interlocutory suspension or restriction motions.

(4) Any proof that must be given or any requirement that must be met prior to a bank record or a business record being received or admitted in evidence under any common law or statutory rule may be given or met by the oral testimony or affidavit of an individual given to the best of the individual's knowledge and belief.

Previously Admitted Evidence

11.8 Previously admitted evidence may be admitted on consent, or if

- (a) the party against whose interest the evidence is sought to be admitted was a party to the other proceeding,
- (b) the party against whose interest the evidence is sought to be admitted either gave the evidence sought to be admitted or had the opportunity to cross-examine the witness who gave the evidence at the other proceeding; and
- (c) an issue in the other proceeding is substantially similar to an issue in the current proceeding.

Limits on examination or cross-examination

11.9 (1) A panel shall not permit cross-examination that is repetitive, abusive or otherwise inappropriate.

(2) A panel may reasonably limit further examination or cross-examination of a witness where it is satisfied the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

Information obtained by the Discrimination and Harassment Counsel

11.10 Despite any other rule, information obtained by the Discrimination and Harassment Counsel as a result of the performance of her duties under clause 19 (1) (a) of By-Law 11 must not be used and is inadmissible in a hearing.

RULE 12: INTERLOCUTORY SUSPENSION OR RESTRICTION MOTIONS

Authority

12.1 (1) On the motion of the Law Society, the Tribunal may make an interlocutory order suspending a licence or restricting the manner in which a licensee may practise law or provide legal services.

(2) On the motion of a licensee or the Law Society, the Tribunal may vary or cancel an interlocutory order made under this rule.

Motions rule applies

- 12.2 Rule 8 applies to interlocutory suspension or restriction motions, except where it differs from this rule.

When authorization required

- 12.3 If the motion relates to a proceeding where the Hearing Division has not started a hearing on the merits, the Law Society shall obtain the authorization of the Proceedings Authorization Committee to bring an interlocutory suspension or restriction motion.

Service and materials

- 12.4 (1) In an interlocutory suspension or restriction motion, the Law Society must serve and file its Notice of Motion, Information Sheet, motion record, factum and book of authorities at least three days before the hearing of the motion unless the motion is being heard on 10 days' notice or more, in which case they must be filed no later than 10 days prior to the hearing, or unless the Tribunal orders otherwise.
- (2) The Tribunal may order that service is not necessary if:
- (a) it is not practical; or
 - (b) the delay it could cause may lead to serious consequences.
- (3) The licensee must serve and file a motion record, factum and book of authorities, if any, not later than 2 p.m. on the day before the hearing of the motion, unless the motion is being heard on 10 days' notice or more, in which case they must be filed no later than three days prior to the hearing.

Interim interlocutory suspension or restriction

- 12.5 Unless ordered otherwise, an interim interlocutory suspension or restriction order remains in effect until the interlocutory suspension or restriction motion is determined.

Duration of interlocutory suspension or restriction

- 12.6 Unless ordered otherwise, an interlocutory suspension or restriction order remains in effect until a final order is made in the conduct proceeding to which the motion relates, or the Tribunal varies or cancels the order.

Grounds to vary or cancel

- 12.7 An interlocutory suspension or restriction order may be varied or cancelled on the basis of fresh evidence or a material change in circumstances.

Motion to vary or cancel

- 12.8 A party starts a request to vary or cancel an interlocutory suspension or restriction order by serving and filing a Motion – Vary or Cancel Interlocutory Suspension or Restriction (Form 8 or 9) and information sheet (Form 21 or 22).

RULE 13: RECORD OF PROCEEDING AND TRANSPARENCY

Record of proceeding

- 13.1 [\(1\)](#) The record of proceeding consists of:

- (a) all materials filed with the Tribunal, unless the Tribunal refuses them for failure to comply with these rules, an order or direction;
- (b) all exhibits, including any marked “for identification”;
- (c) all other documents and correspondence from a party or other participant, reviewed by a panel, except for the purpose of a pre-hearing conference;
- (d) all notices of hearing;
- (e) all endorsements;
- (f) all orders made by the Tribunal;
- (g) all reasons issued by the Tribunal; and
- [\(h\)](#) all transcripts filed with the Tribunal.

[\(2\) Items listed out in Rule 13.1\(a\) to 13.1\(h\) that became part of the Record of Proceeding after \[date to be determined\] shall be maintained in electronic form unless the Tribunal determines otherwise.](#)

Commented [A8]: This change reflects the intention that the Tribunal will only maintain electronic files in the future. Physical documents provided at an in-person hearing for example, will be scanned and retained electronically only unless the nature of the document dictates otherwise.

Open tribunal

- 13.2 (1) The contents of the record of proceeding and all appearances except pre-hearing conferences are public, unless the Tribunal or a court orders otherwise.
- (2) Anyone may attend a public appearance unless the Tribunal orders otherwise.

Departing from openness

- 13.3 (1) The Tribunal may make a not public order, non-disclosure order or publication ban only if:

- (a) an order is necessary to prevent a serious risk to the administration of justice because reasonable alternative measures will not do so; and
- (b) the benefits of the order outweigh the effects on the right to free expression and the transparency of the administration of justice.

(2) If a not public order, non-disclosure order or publication ban is necessary, the Tribunal shall make the order that affects openness the least while achieving the objective.

Capacity proceedings

13.4 In applying Rule 13.3 to a request for a not public order, non-disclosure order or publication ban in a capacity proceeding, a panel shall consider:

- (a) that a central issue in capacity proceedings is the licensee's health;
- (b) the nature and impact on the public of any of the licensee's actions that led to the proceeding;
- (c) any stigma related to the nature of the licensee's health issues;
- (d) the possible impact of disclosure on the licensee's or others' health; and
- (e) any other relevant factor.

Children and sexual misconduct complainants

13.5 A not public order, non-disclosure order or publication ban shall be made to ensure that the identities of children and persons who allege sexual assault or misconduct are not made public, except where an adult who alleges sexual assault or misconduct requests otherwise.

Privilege

13.6 Unless the holder of the privilege has given consent, the Tribunal shall order that privileged or possibly privileged documents, and evidence about privileged or possibly privileged documents and communications be not public.

Effect of not public order

13.7 (1) When an appearance is not public, no one may attend except for the licensee or licence applicant, the parties' representatives, witnesses and anyone else permitted by the panel.

(2) When an appearance is not public, no one other than the licensee or licence applicant and the parties' representatives may receive or view the transcript, except that witnesses may view the transcript of their own testimony.

(3) When a document is not public, it must not be provided to anyone other than the parties, their representatives, or a witness testifying about the document.

(4) No one may disclose what occurred during a not public appearance to anyone other than the parties or their representatives. No one who has become aware of a not public document as a result of the proceeding may disclose its contents to anyone other than the parties or their representatives.

Effect of non-disclosure order

13.8 (1) When there is a non-disclosure order, no one other than the licensee or licence applicant and the parties' representatives may receive or view the transcript, except that witnesses may view the transcript of their own testimony.

(2) No one may disclose what occurred during an appearance subject to a non-disclosure order to anyone other than the parties or their representatives. No one who has become aware of a not public document as a result of attending the appearance may disclose its contents to anyone other than the parties or their representatives.

Effect of publication ban

13.9 (1) When a publication ban has been made, the hearing and Tribunal file remain open to the public.

(2) No one may publish in any document or broadcast or transmit in any way information or documents subject to a publication ban.

(3) The Tribunal and the court reporting service that transcribes the proceeding shall include a written notice of a publication ban on documents and transcripts to which it applies.

Effect of order

13.10 No order under this part prevents Tribunal staff or panelists from accessing materials in the Tribunal's file or attending an appearance.

RULE 14: ORDERS AND REASONS

Orders

- 14.1 Unless otherwise provided, an order or direction is effective from the date it is made, whether orally on the record, in an endorsement, in reasons or in a formal order, and whether or not an endorsement or formal order has been issued.

Power to make orders

- 14.2 A single member of the Tribunal assigned to a summary hearing shall not make an order revoking a licensee's licence or permitting a licensee to surrender a licence.

Addressing capacity issues in conduct applications

- 14.3 With the consent of the parties, a panel assigned to a conduct application under s. 34 of the Act may deal with matters that would otherwise have to be the subject of a capacity application under s. 38 of the Act, and may make any order referred to in s. 40 of the Act.

Formal order

- 14.4 (1) Any party may prepare a draft of a formal order.
- (2) A formal order shall be in Form 34-38 as appropriate.
- (3) A party that has prepared a draft of a formal order may submit it to the Tribunal, before or after a panel makes its decision.
- (4) The draft order will be treated as a submission and the panel may amend the order.
- (5) Where a formal order is not prepared by any party, it will be prepared by the Tribunal Office.
- (6) Any member of a panel may sign the formal order or reasons.

Reasons

- 14.5 A panel must give reasons for its final order in any capacity proceeding or appeal. For any other proceeding, the panel is required to give reasons only if a party, within 30 days of the order, has requested them.

Correction of errors

- 14.6 The Registrar, the Registrar's designate or a panelist on the panel that made the endorsement, order or reasons may correct typographical errors, errors of calculation or similar minor errors.

RULE 15: COSTS

Power to award costs

- 15.1 (1) Costs may only be awarded against the Law Society,
- (a) in a licensing, conduct, capacity, competence or non-compliance proceeding, where the proceeding was unwarranted, or where the Law Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default; or
 - (b) in a proceeding not mentioned in clause (a), where the Law Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.
- (2) Costs may be awarded against the licensee or licence applicant,
- (a) where a determination adverse to the licensee or licence applicant was made; or
 - (b) where the licensee or licence applicant caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.
- (3) Costs may be awarded against an intervenor or third party where the intervenor or third party caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

Tariff

- 15.2 When a panel awards costs, it shall consider, but is not bound by, the tariff of fees for services (Appendix A).

Security for costs

- 15.3 (1) Security for costs may be sought by the Law Society in: a licensing proceeding, if the applicant was previously a licensee of the Law Society in Ontario; a restoration proceeding; a reinstatement proceeding; or a terms dispute proceeding.
- (2) On the motion of the Law Society, an order may be made for security for costs as is just where it appears that,
- (a) the applicant has an order against him or her for costs in the same or another proceeding under the Act that remains unpaid in whole or in part;
 - (b) in the case of a reinstatement or terms dispute proceeding, there is good reason to believe that the proceeding is without merit and the applicant has

insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made; or

- (c) in the case of a licensing or restoration proceeding, there is good reason to believe that the applicant has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made.

(3) Unless the Tribunal orders otherwise, the applicant against whom an order for security for costs has been made may not, until the security has been given, take any step in the proceeding.

(4) Where the applicant defaults in giving the security required by an order for security for costs, on the motion of the Society, an order may be made dismissing the proceeding.

RULE 16: REPRIMANDS

Administration of reprimands

- 16.1 (1) A reprimand shall be administered either orally at a hearing open to the public or in writing.
- (2) A written reprimand is part of the record of the proceeding.
- (3) A reprimand may be administered by any panelist on the panel that ordered the reprimand.

Appeals and reprimands

- 16.2 The administration of a reprimand does not affect the right to appeal the order or the arguments that can be raised on appeal.

RULE 17: APPEALS

Orders that may be appealed

- 17.1 (1) Sections 49.32 and 49.33 of the Act set out when an appeal of a final order may be started.
- (2) There is no appeal of an interim or interlocutory order of the Hearing Division, except of an order that finally disposes of an interlocutory suspension or restriction motion, which can be appealed by either party.

Deadline for appeal

- 17.2 (1) To start an appeal, the appellant must file a notice of appeal (Form 14 or 15) and information sheet (Form 24 or 25) within 30 days of the date of the final order in the

Hearing Division proceeding appealed from. After that, an appeal may be started only with the written consent of the respondent to the appeal or with leave.

(2) The motion record for a motion to extend the time to appeal must include a draft notice of appeal.

(3) No later than 10 days after filing the notice of appeal, the appellant must serve and file written confirmation from the court reporting service that all transcripts of the proceeding under appeal not already filed in the Hearing Division, have been ordered.

(4) If otherwise entitled to appeal, the respondent may cross-appeal by serving and filing a notice of cross-appeal (Form 17) no later than 15 days after being served with the notice of appeal. No information sheet is required with a notice of cross-appeal.

Perfecting the appeal

17.3 The appellant must perfect the appeal within 60 days of filing the notice of appeal or 60 days from the panel giving its reasons for the final order, whichever comes last. An appeal is perfected by serving and filing the appellant's appeal book, factum, book of authorities and any transcripts not filed in the Hearing Division proceeding.

Dismissal for delay and deemed **withdrawal**

17.4 (1) If an appeal is not perfected by the deadline, the respondent may bring a motion to dismiss the appeal for delay.

(2) If the appeal has not been perfected ~~five-three~~ months from the ~~date the notice of appeal was filed~~~~deadline~~, the Registrar shall ~~advise-notify~~ the parties that the appeal will be deemed withdrawn if not perfected within ~~six months after the notice of appeal was filed by 30 days after the date of the Registrar's notice~~.

(3) If an appellant to cross-appeal wishes to pursue the cross-appeal even if the appeal is deemed withdrawn, the respondent must notify the Tribunal ~~within two weeks by 14 days after the date of of receiving~~ the Registrar's notice under Rule 17.4 (2).

(4) If the appeal has not been perfected within ~~six months of the date the notice of appeal was filed by 30 days after the date of the Registrar's notice under Rule 17.4(2)~~, the Registrar shall deem the appeal withdrawn. If the appellant to cross-appeal has advised of a desire to pursue a cross-appeal, a proceeding management conference shall be scheduled to set a timeline for the hearing of the cross-appeal.

(5) The Tribunal may reinstate an appeal or cross-appeal that was deemed withdrawn.

Commented [A9]: This change updates 17.4 so that the actions taken to deem an appeal withdrawn are all based off of the deadline (either Rule 17.3 or as otherwise set by an adjudicator) and not tied to the date the appeal was filed.

The change is recommended based on recent experience with implementing the Rule.

Deadline for respondent's materials if no cross-appeal filed

- 17.5 If the respondent has not filed a cross-appeal, the respondent must serve and file the respondent's appeal book, factum and book of authorities no later than 14 days before the appeal hearing.

Deadline for respondent's materials if cross-appeal filed

- 17.6 If the respondent has filed a cross-appeal, the respondent must serve and file the respondent's appeal book, factum and book of authorities no later than 30 days after the appeal was perfected. The respondent must file a factum and appeal book that cover both the appeal and cross appeal.

Respondent to cross-appeal materials

- 17.7 If the respondent has filed a cross-appeal, the appellant must file a factum as respondent by cross-appeal and may file a supplementary appeal book and book of authorities no later than 14 days prior to the appeal hearing.

Compendia

- 17.8 No later than five days before the hearing of the appeal, each party must file a compendium containing the documents it intends to refer to in oral argument.

RULE 18: FRESH EVIDENCE ON APPEAL

Motion to introduce fresh evidence

- 18.1 Except where the respondent consents, an appellant who wishes to introduce evidence at the hearing of the appeal that was not before the Hearing Division must, by notice of motion, make a motion to the Appeal Division to do so.

Proposed fresh evidence ~~in sealed envelope~~

- 18.2 The appellant who makes a fresh evidence motion must file, together with the motion record, sufficient an electronic copies copy of the evidence ~~as required by Rule 5.6, each copy in a separate sealed envelope, identified as proposed fresh evidence,~~ which shall not be public pending a decision on the motion.

Hearing of fresh evidence motion

- 18.3 A motion under this rule will be heard at the beginning of the appeal hearing.

Hearing of appeal in any event

- 18.4 The parties must be prepared to proceed with the hearing of the appeal on the date scheduled regardless of the disposition of a motion under this rule.

Where respondent consents

- 18.5 Where the respondent consents to the introduction of fresh evidence, the evidence may be included and referred to in the parties' materials, so long as the evidence is clearly identified as fresh evidence that was not before the Hearing Division.

Timing of Fresh Evidence Motion

- 18.6 A fresh evidence motion shall be served and filed at the same time as the appeal is perfected, unless the fresh evidence is discovered after that time.

RULE 19: APPEAL MATERIALS

Appeal books

- 19.1 (1) The appellant's appeal book must contain, in consecutively numbered pages with numbered tabs:
- (a) a table of contents listing each document contained in the appeal book and describing each document by its nature and date;
 - (b) a copy of the notice of appeal and any notice of cross-appeal, as amended;
 - (c) a copy of the order or orders appealed from;
 - (d) a copy of all endorsements and reasons of the Hearing Division in the proceeding;
 - (e) a copy of the originating process that initiated the proceeding before the Hearing Division;
 - (f) a copy of any exhibits that are referred to in the appellant's factum;
 - (g) a copy of any other documents filed with the Hearing Division that are relevant to the appeal and referred to in the appellant's factum;
 - (h) a copy of any directions given at a proceeding management conference in the appeal;
 - (i) a copy of any endorsements, orders and reasons of the Appeal Division made in the appeal; and
 - (j) where any of the materials are subject to a non-publication order, a copy of the non-publication order.
- (2) The respondent's appeal book must contain, in consecutively numbered pages with numbered tabs:

- (a) a table of contents listing each document contained in the appeal book and describing each document by its nature and date;
- (b) a copy of any exhibits referred to in the respondent's factum that are not included in the appellant's appeal book; and
- (c) a copy of any other documents filed with the Hearing Division that are relevant to the appeal and referred to in the respondent's factum that are not included in the appellant's appeal book.

(3) Any documents subject to a not public order, non-disclosure order or publication ban must be included in a separate appeal book volume.

Appeal facta

19.2 (1) In an appeal factum, references to the transcript of the proceeding before the Hearing Division must be by date, page number and line, while references to exhibits must be by tab and page number in the appropriate appeal book.

RULE 20: ADMINISTRATIVE SUSPENSION ORDER APPEALS

Starting administrative suspension order appeal

20.1 (1) An appellant may start an administrative suspension order appeal by serving on the Law Society and filing with the Tribunal a Notice of Administrative Suspension Order Appeal (Form 16) and an information sheet (Form 25) no later than 30 days from the date the administrative suspension order was deemed to have been received by the appellant.

(2) An administrative suspension order appeal may be started beyond this time limit with consent of the Law Society or leave of the Tribunal.

Administrative suspension order appeals on consent

20.2 Where an administrative suspension order appeal is on consent, the appeal shall be heard in writing. The written consent of the parties and a draft order must be filed with the Tribunal at the time the notice of administrative suspension order appeal is filed or as soon after that as possible. No other material needs to be filed unless directed by the Tribunal.

Filing of affidavits and hearing

20.3 (1) The Law Society must file an affidavit or affidavits that set out the factual basis for making the administrative suspension order no later than 30 days after the filing of the Notice of Administrative Suspension Order Appeal.

(2) The appellant must file an affidavit or affidavits that set out the factual basis for the appeal no later than 45 days after the filing of the Notice of Administrative Suspension Order Appeal.

(3) Cross-examination on the affidavits and any reply evidence will take place orally at the appeal hearing, unless otherwise ordered.

(4) No facts need be filed prior to the hearing, unless otherwise ordered.

Pre-hearing conference

20.4 The Tribunal Office shall schedule a pre-hearing conference in every administrative suspension order appeal after filing of the affidavits.

APPENDIX A – Tariff of Fees for Services

Experience	Rate
Lawyer (20 years and over)	Up to \$350 per hour
Lawyer (12 to 20 years)	Up to \$325 per hour
Lawyer (11 to 12 years)	Up to \$315 per hour
Lawyer (10 to 11 years)	Up to \$300 per hour
Lawyer (9 to 10 years)	Up to \$285 per hour
Lawyer (8 to 9 years)	Up to \$270 per hour
Lawyer (7 to 8 years)	Up to \$255 per hour
Lawyer (6 to 7 years)	Up to \$240 per hour
Lawyer (5 to 6 years)	Up to \$225 per hour
Lawyer (4 to 5 years)	Up to \$215 per hour
Lawyer (3 to 4 years)	Up to \$205 per hour
Lawyer (2 to 3 years)	Up to \$195 per hour
Lawyer (1 to 2 years)	Up to \$180 per hour
Lawyer (less than 1 year)	Up to \$165 per hour
Lawyer on staff with the Law Society of Ontario, other than Discipline Counsel	Up to \$190 per hour
Licensed paralegal and paralegal on staff with the Law Society of Ontario (10 years and more of paralegal experience)	Up to \$150 per hour
Licensed paralegal and paralegal on staff with the Law Society of Ontario (5 to 10 years of paralegal experience)	Up to \$120 per hour
Licensed paralegal and paralegal on staff with the Law Society of Ontario (1 to 5 years of paralegal experience)	Up to \$90 per hour
Student	Up to \$90 per hour

Experience	Rate
Law Clerk	Up to \$90 per hour
Forensic auditor on staff with the Law Society of Ontario	Up to \$190 per hour
Investigator or Complaints Resolution Officer on staff with the Law Society of Ontario	Up to \$90 per hour



Law Society Tribunal Quarterly Statistics

For the period from October 1, 2020 to December 31, 2020

Table of contents

Introduction	2
Volume	2
Files Opened	2
Files Closed	5
Caseload	6
Hearings	7
Timeliness.....	8
Proceedings Milestones.....	8
Orders and Reasons	10
Outcomes.....	14
Applications by the Law Society.....	14
Interlocutory Suspension or Restriction Motions	15
Applications by the Licensee or Licence Applicant.....	16
Appeals	17

Introduction

Statistics are critical to understanding the work of the Law Society Tribunal. By recording, analyzing and sharing data, we can identify areas for improvement, inform the continual evolution of our processes and policies, assist Convocation in making policy decisions, and be transparent with the public about the work we do.

This report provides operational statistics during a period where the Tribunal continued to operate remotely during COVID-19.

In this quarter, the Tribunal saw an increase in hearings held due to the result of rescheduled hearings that were previously cancelled due to COVID-19.

Volume

Files Opened

A Tribunal file is opened when an applicant files a notice of application, notice of referral for hearing, notice of motion for an interlocutory suspension or restriction or notice of appeal with the Tribunal.

Figure 1: Types of files opened in this quarter

Type of file	Lawyer	Paralegal	Total
Regular	16	9	25
Summary	7	8	15
Appeal	5	2	7

Unlike non-summary files, summary hearings tend to be brief, and are always heard by a single adjudicator.

There has been an increase with the number of files opened compared to quarter three of 2020, when there were 32 files opened. There was also an increase in files opened compared to the third quarter of last year, representing a 38% increase in files that were opened in this quarter.

Figure 2: Files opened in each quarter by file type

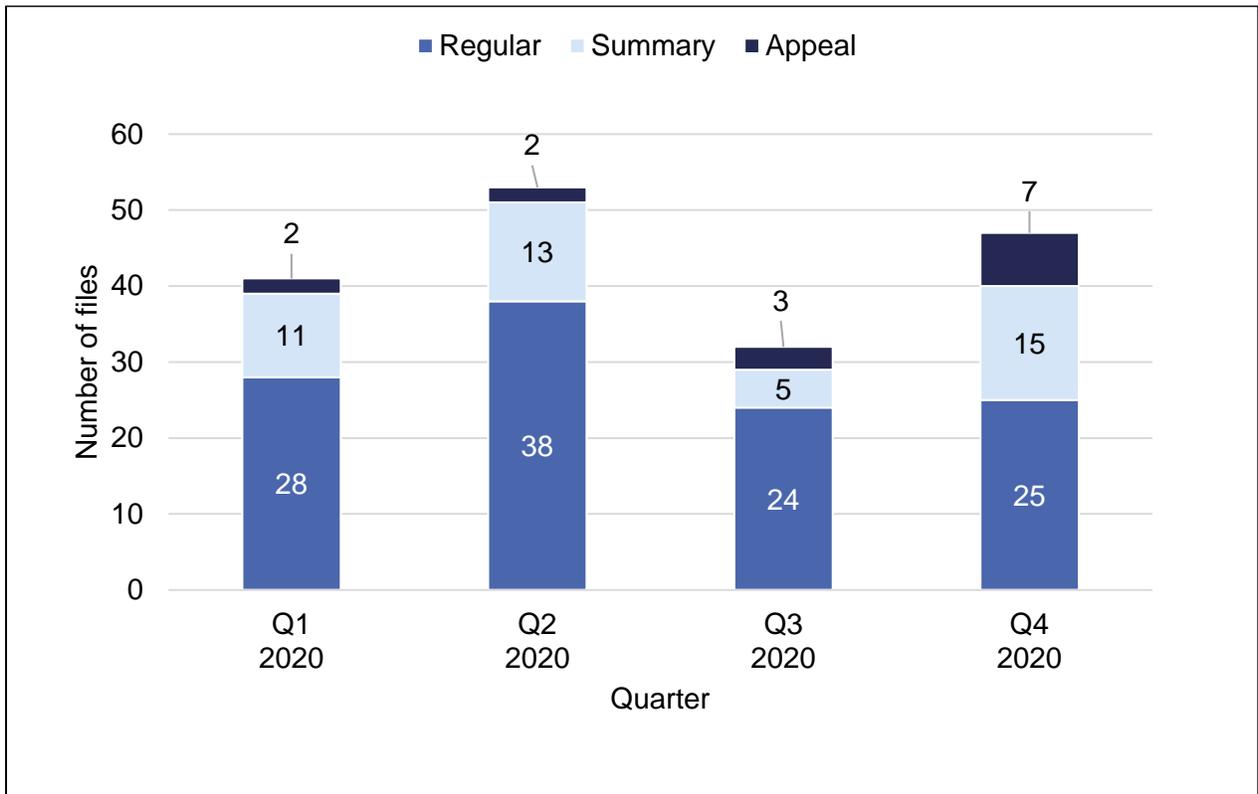


Figure 3: Ratio of licence types for the 41 files opened in Q1 of 2020

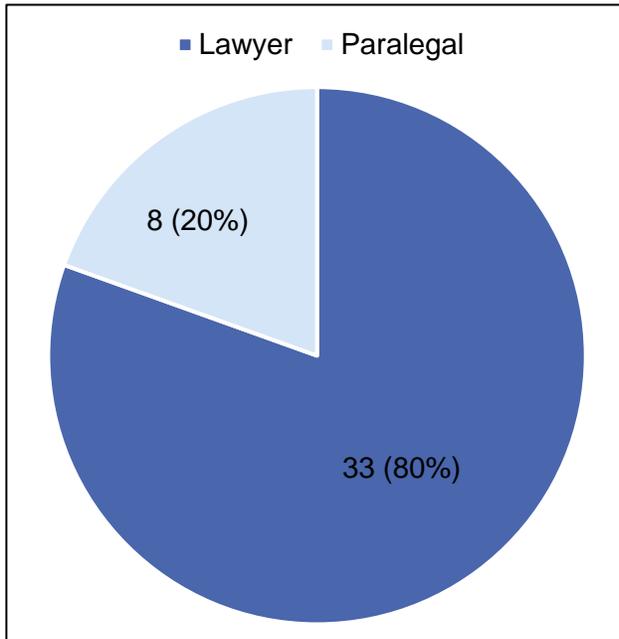


Figure 4: Ratio of licence types for the 52 files opened in Q2 of 2020

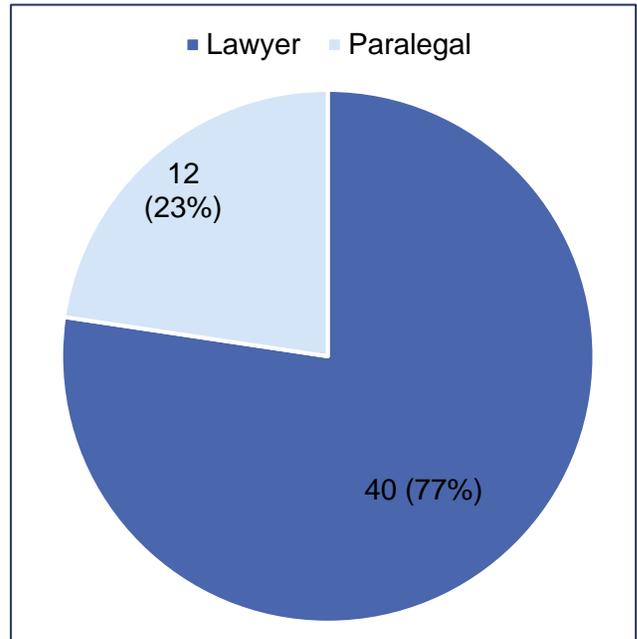


Figure 5: Ratio of licence types for the 32 files opened in Q3 of 2020

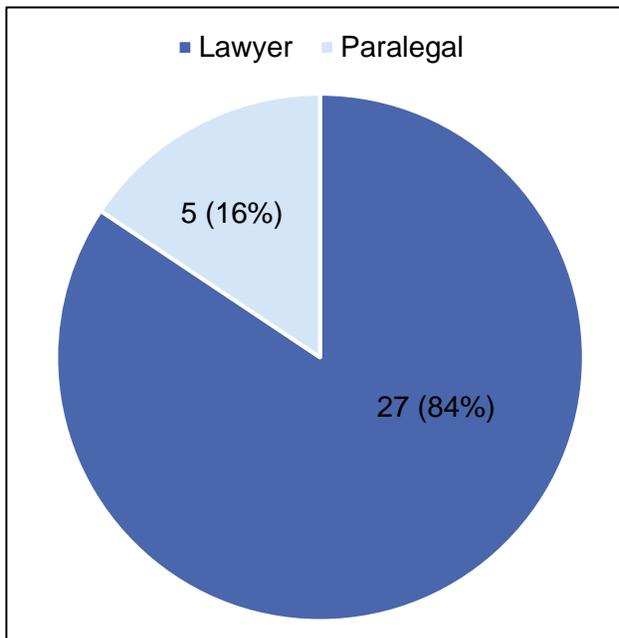
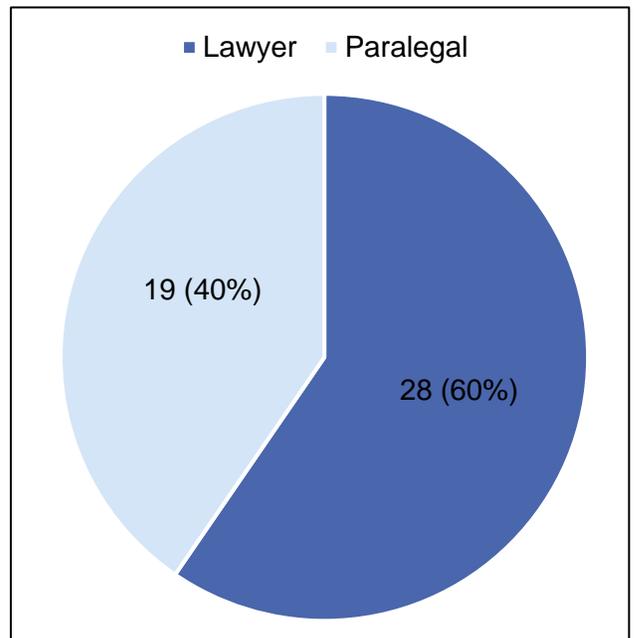


Figure 6: Ratio of licence types for the 47 files opened in Q4 of 2020



There has been an increase in the number of paralegal licence type related cases opened in the fourth quarter compared to previous quarters of this year.

Files Closed

The Tribunal closes a file after the final order is issued, final reasons are published, or if the matter is withdrawn, abandoned or deemed abandoned.

Figure 7: Types of files closed in this quarter

Type of file	Lawyer	Paralegal	Total
Regular	20	5	25
Summary	4	3	7
Appeal	1	0	1

There has been a slight decrease in the number of files closed in this quarter compared to last quarter, however, there was an increase of 18% when compared to the fourth quarter of 2019.

Figure 8: Files closed in each quarter by file type

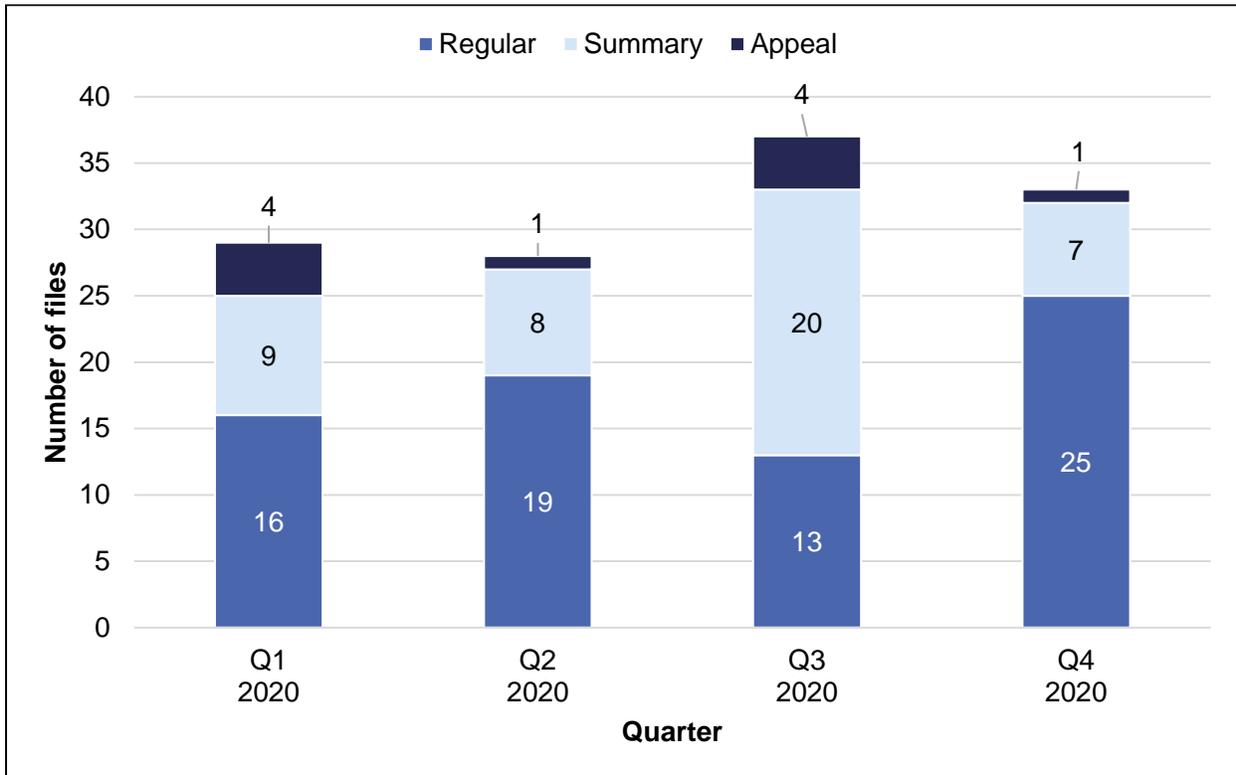


Figure 9: Ratio of licence types for the 29 files closed in Q1 of 2020

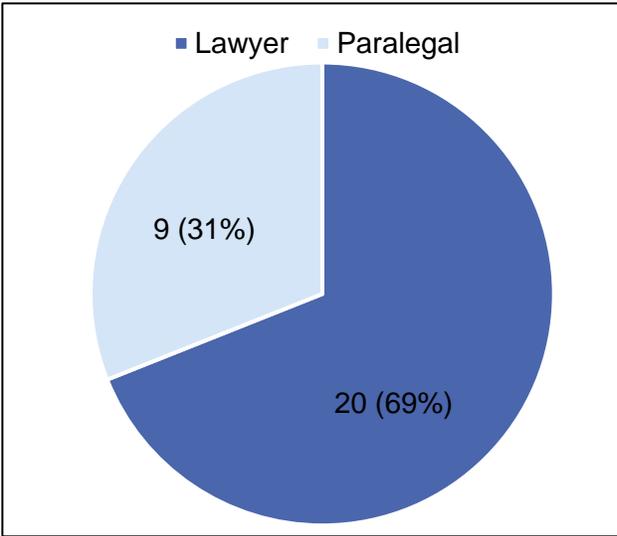


Figure 10: Ratio of licence types for the 28 files closed in Q2 of 2020

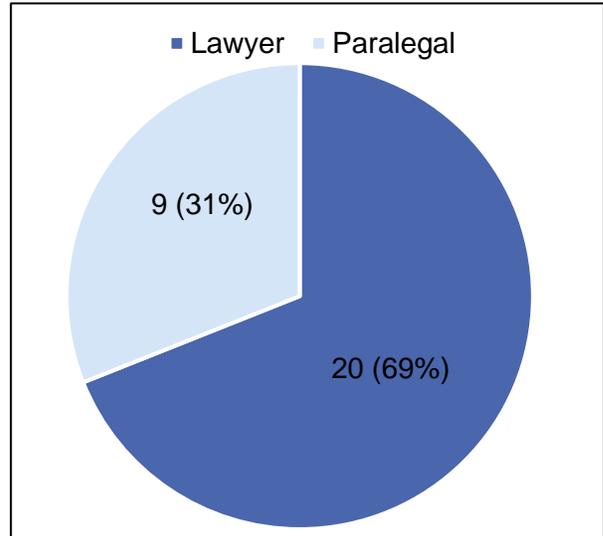


Figure 11: Ratio of licence types for the 37 files closed in Q3 of 2020

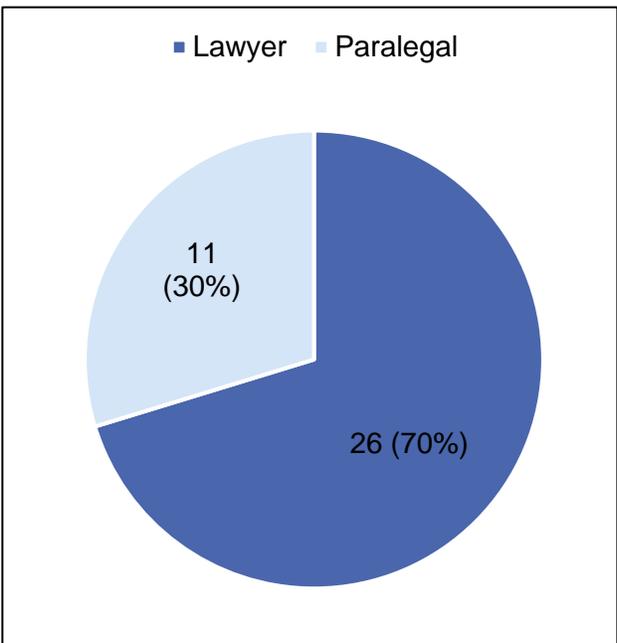
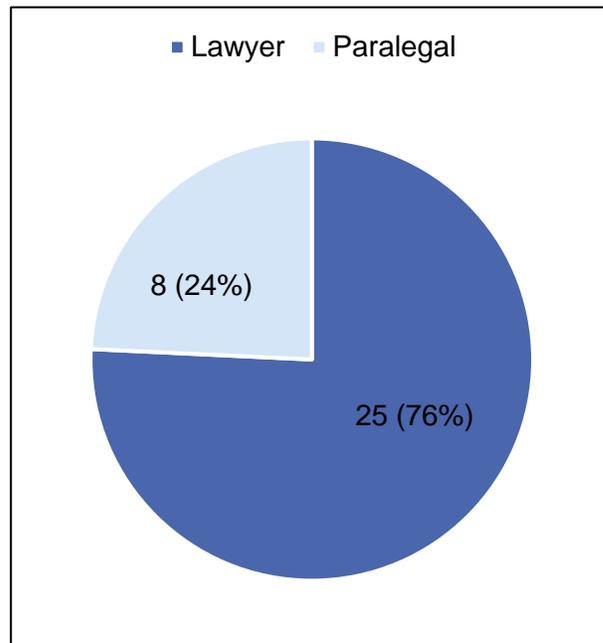


Figure 12: Ratio of licence types for the 33 files closed in Q4 of 2020



Caseload

219 files (173 lawyer and 46 paralegal files) were open at the end of the fourth quarter of 2020 compared to 205 at the end of the previous quarter and 173 at the end of the quarter of 2019.

Hearings

Oral hearing days (either in-person or electronic) that are more than three hours are considered a full hearing day and those that conclude within three hours are considered a half hearing day.

Written hearings are conducted by written submissions, with the panel making its decision based on the documents without an in-person or electronic hearing. There were 27 written hearings this quarter compared to 7 last quarter and 19 in the fourth quarter of 2019.

Figure 13: Half days used for hearings in each quarter

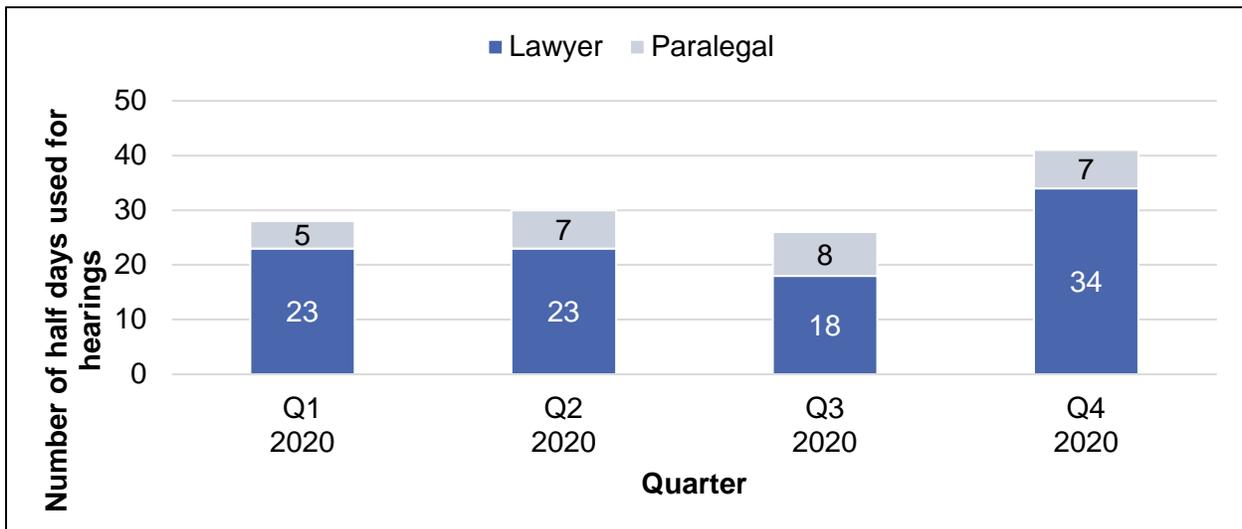
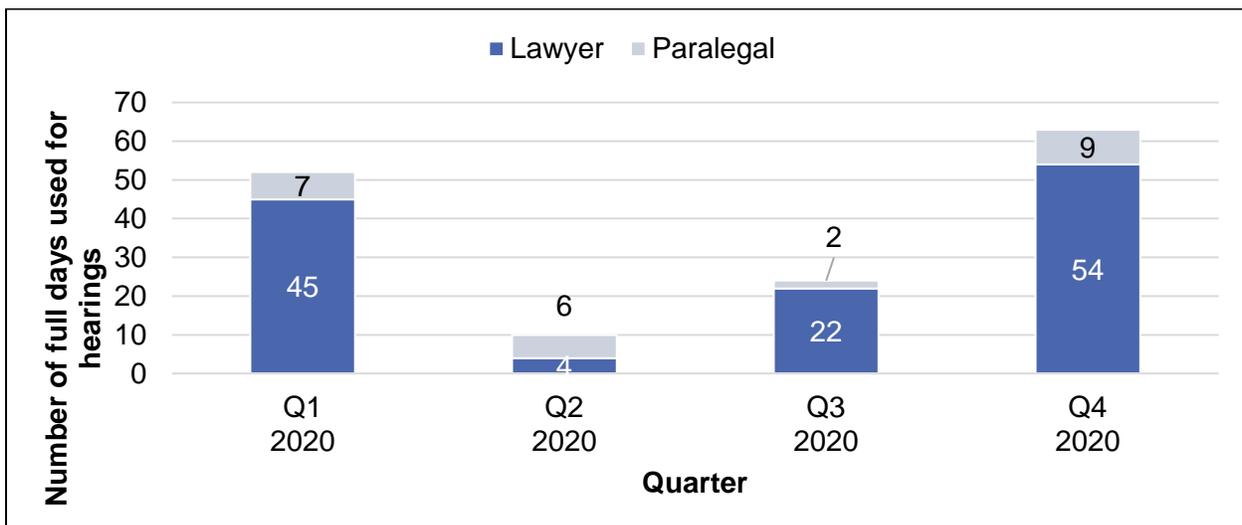


Figure 14: Full days used for hearings in each quarter



The increase in hearing days used can be attributed to the fact that most hearings were rescheduled in the third quarter and held during this quarter.

The average number of hearing days used per file closed in this quarter was 1.7 days.

Timeliness

Proceedings Milestones

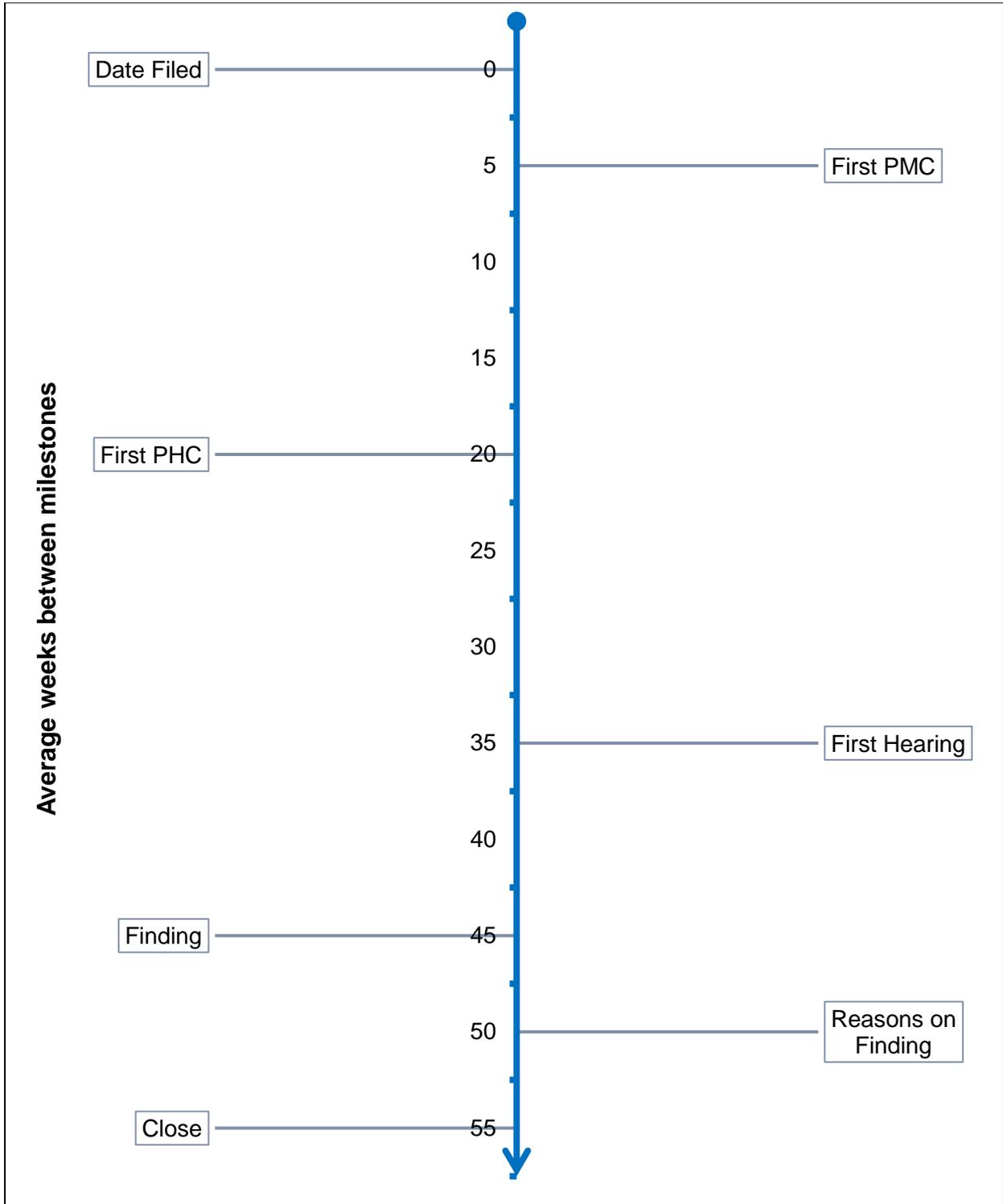
Tribunal proceedings pass most or all of the following milestones, though not always in the order listed below.

Averages are based on files that do pass the corresponding milestone.

Figure 15: Average days to significant milestones for files closed in Q4

Milestone	Lawyer files	Paralegal files	All files
First PMC	34	94	49
First PHC	184	82	153
First hearing	261	215	249
Decision on finding / determination	311	320	313
Reasons on finding / determination	327	346	332
Decision on penalty (conduct matters only)	228	336	264
Reasons on penalty (conduct matters only)	270	380	307
File closed	373	480	399

Figure 16: Approximate average weeks between milestones for files closed this quarter



The Law Society of Ontario requires approval from the Proceedings Authorization Committee (PAC) to commence certain proceedings at the Tribunal. Conduct, capacity, non-compliance and interlocutory suspension or restriction motions require PAC approval.

Of the 33 files closed in this quarter **25** files were authorized by PAC.

Figure 17: Average days from authorization to significant milestones for PAC-authorized files closed this quarter

Milestone	Lawyer files	Paralegal files	Overall average
Date filed	22	21	22
First PMC	56	59	56
First PHC	159	110	150
First hearing	242	180	223
Decision on finding / determination	288	285	287
Reasons on finding / determination	305	306	305
Last hearing / written submissions	302	287	298
Decision on penalty (conduct matters only)	183	268	211
Reasons on penalty (conduct matters only)	308	401	341
File closed	399	401	399

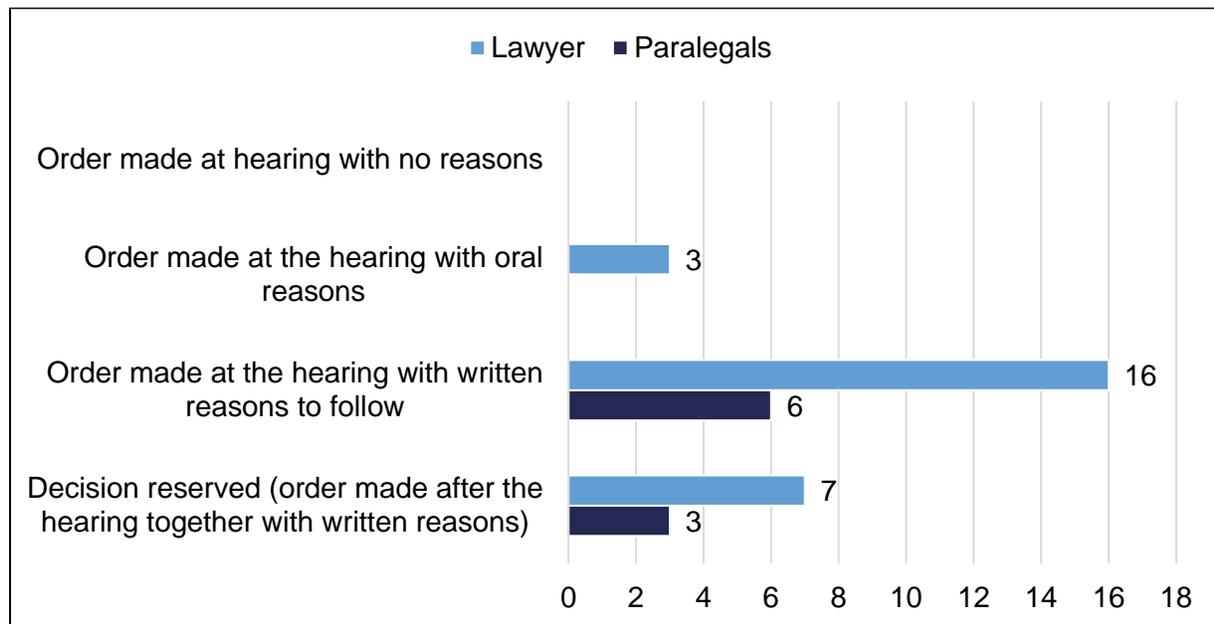
Orders and Reasons

Orders

There are many types of orders that the Tribunal may make during a proceeding. Merits orders decide an application on its merits (for example, whether an interlocutory suspension is granted or whether a licensee has engaged in misconduct and will be subject to penalty) and are often accompanied by reasons.

The panel may reserve its decision at the end of a hearing or may provide its decision at the hearing with oral reasons given on the record or with written reasons to follow.

Figure 18: Merits orders issued this quarter and their corresponding reasons



The Tribunal issued **64** orders this quarter, 35 of which were merits only or merits and costs orders while the remaining 29 were orders pertaining to a motion, public access or costs only. This is an increase from last quarter and in keeping with the number of overall orders issued in 2019 for the same period. However, there is a 30% increase in merits or disposition orders from the same period last year, which may be a result of the increased hearings held during this reporting period.

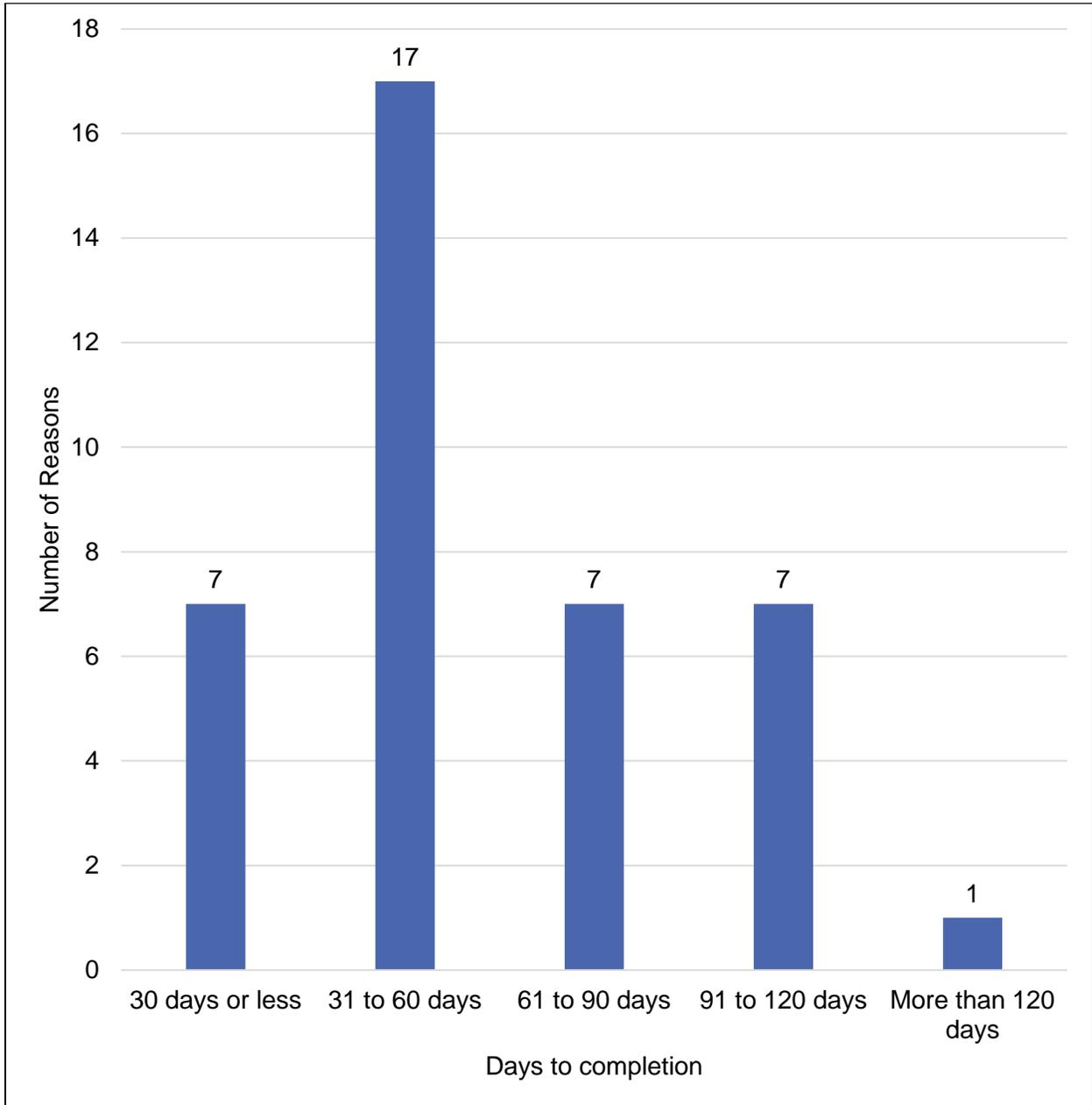
Reasons

At the end of an oral hearing, or when the last submissions are received in a written hearing, the panel can begin the process of writing reasons. The Tribunal publishes written reasons on CanLII, usually within a week of their delivery to the parties.

Sometimes the panel delivers oral reasons at the end of the hearing instead of written reasons. When oral reasons are given, the Tribunal also publishes a written version on CanLII.

*The Tribunal published a total of **40** reasons this quarter, with 39 written reasons and 1 written version of oral reasons.*

Figure 19: Number of written reasons issued this quarter and time taken to release them

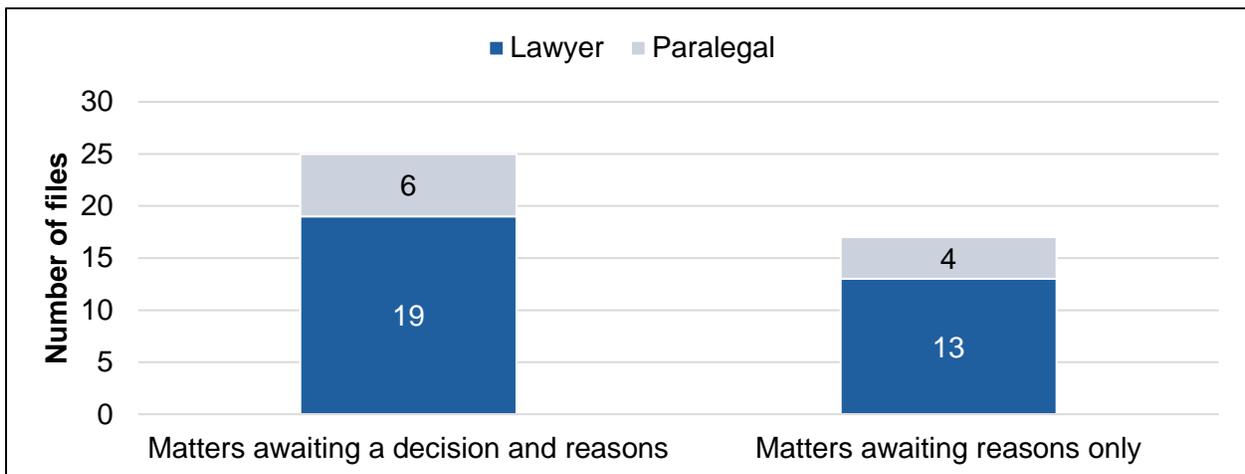


The average number of days taken to deliver written reasons this quarter was 57 days compared with 61 in the last quarter.

Figure 20: Time taken to complete reasons in each quarter

Days taken to deliver reasons to the parties	Q1 2020	Q2 2020	Q3 2020	Q4 2020
Oral reasons at the hearing	6	5	3	1
30 days or less	7	8	10	7
31 to 60 days	10	11	13	17
61 to 90 days	6	7	7	7
91 to 120 days	5	4	3	7
More than 120 days	11	6	2	1
Total	45	41	38	40

Figure 21: Matters awaiting reasons and/or a decision at the end of this quarter



42 reasons were outstanding at the end of this quarter. Of those, 5 had been outstanding for more than 90 days.

Outcomes

Applications by the Law Society

Most matters that are heard by the Tribunal are initiated by the Law Society, with the Law Society as the applicant and a licensee as the respondent.

For Figures 22-25 below please refer to the following legend key.

■ Granted in full ■ Granted in part ■ Dismissed ■ Abandoned / Withdrawn

Figure 22: Results of the 17 applications by the Law Society that were closed in Q1 of 2020

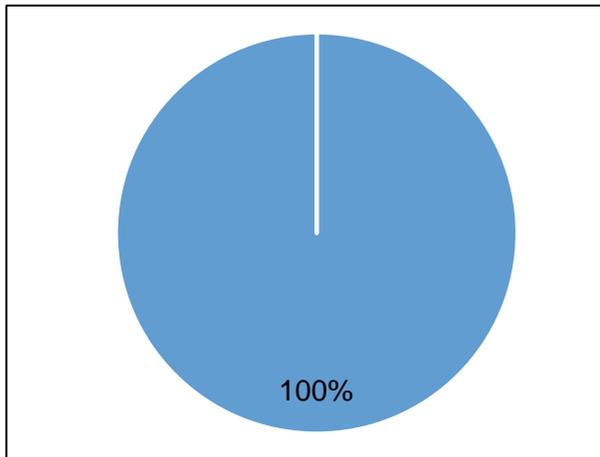


Figure 23: Results of the 19 applications by the Law Society that were closed in Q2 of 2020

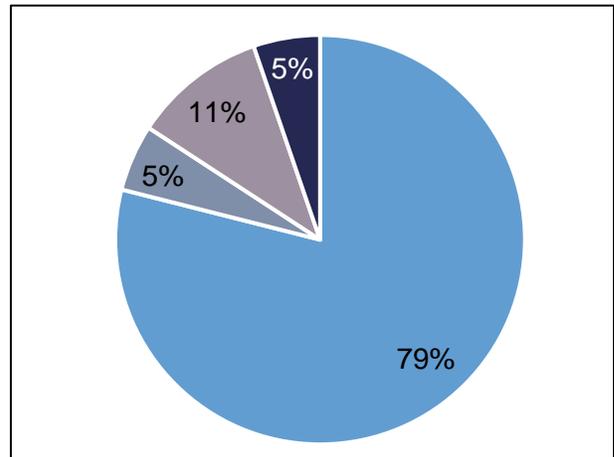


Figure 24: Results of the 27 applications by the Law Society that were closed in Q3 of 2020

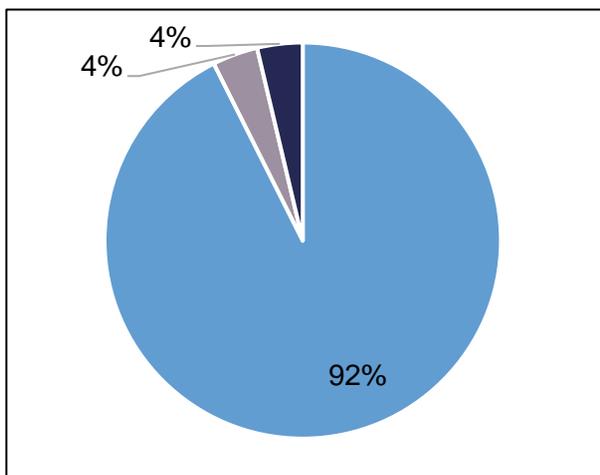
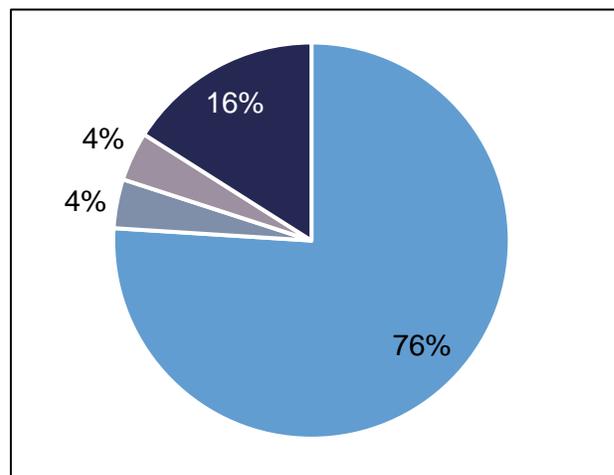


Figure 25: Results of the 25 applications by the Law Society that were closed in Q4 of 2020



Interlocutory Suspension or Restriction Motions

An interlocutory suspension or restriction is an interim measure that may be requested by the Law Society before a case is heard on its merits. Interlocutory suspensions may be ordered when significant risk to the public, or to the public interest in the administration of justice, has been demonstrated.

For Figures 26-28 below please refer to the following legend key.

■ Granted in full ■ Granted in part ■ Dismissed ■ Abandoned / Withdrawn

Figure 26: Results of the 5 motions for interlocutory suspension or restriction closed in Q1 of 2020

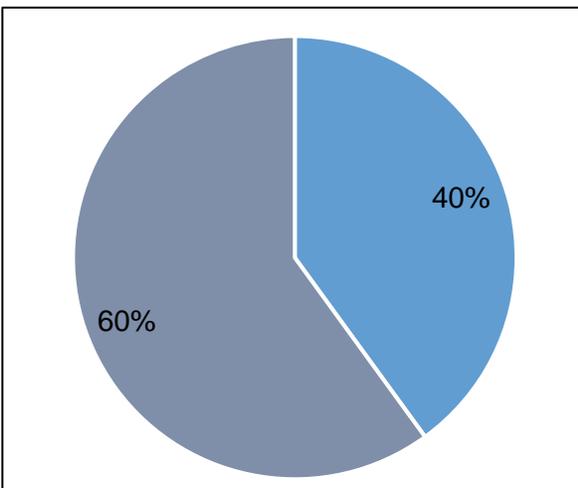
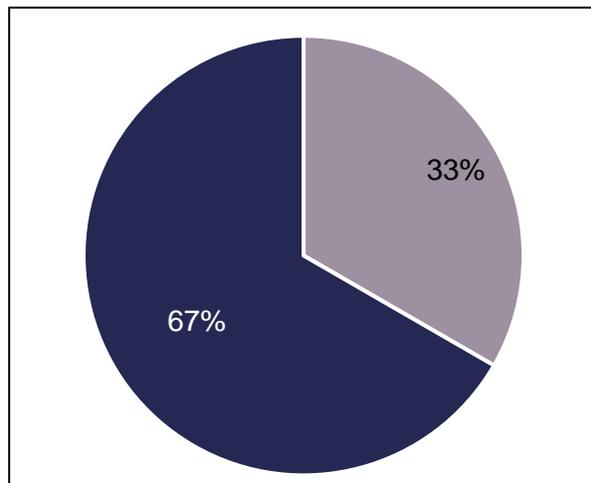
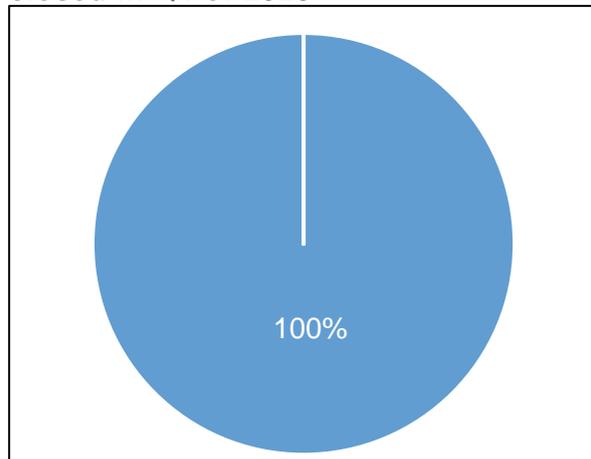


Figure 27: Results of the 3 motions for interlocutory suspension or restriction closed in Q2 of 2020



There were no motions for interlocutory suspension or restriction files closed in Q3 of 2020.

Figure 28: Results of the 2 motions for interlocutory suspension or restriction closed in Q4 of 2020



Applications by the Licensee or Licence Applicant

Some matters that are heard by the Tribunal are initiated by the licensee or licence applicant with the Law Society as the respondent.

For Figures 29-32 below please refer to the following legend key.

■ Granted in full ■ Granted in part ■ Dismissed ■ Abandoned / Withdrawn

Figure 29: Results of the 3 matters initiated by the licensee / licence applicant that were closed in Q1 of 2020

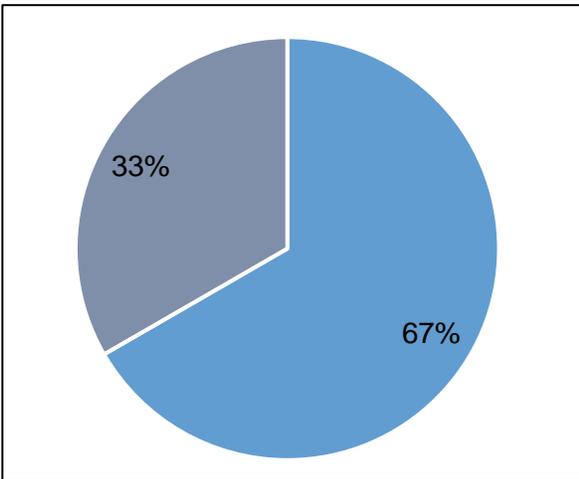


Figure 30: Results of the 5 matters initiated by the licensee / licence applicant that were closed in Q2 of 2020

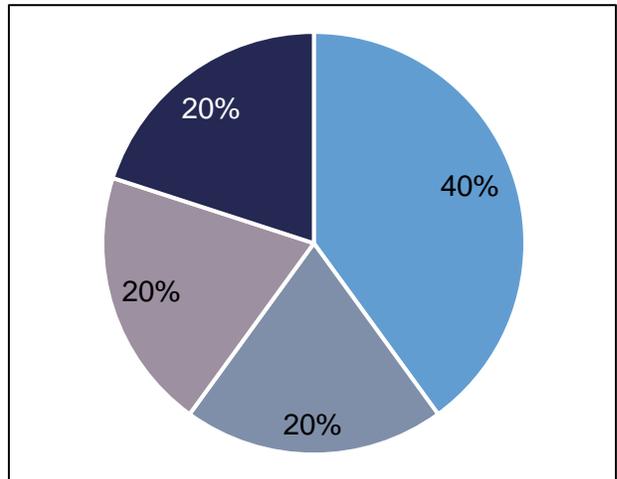


Figure 31: Results of the 6 matters initiated by the licensee / licence applicant that were closed in Q3 of 2020

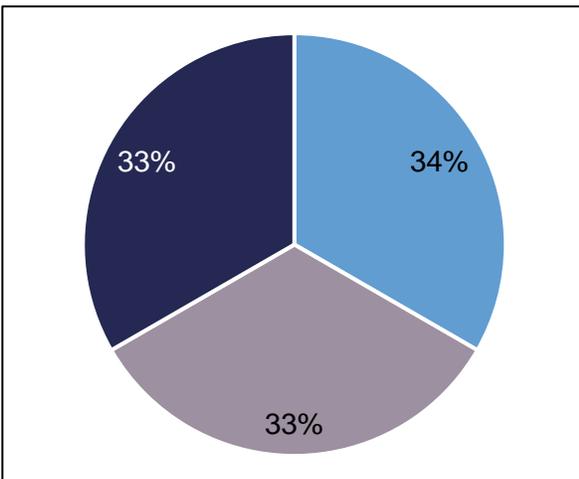
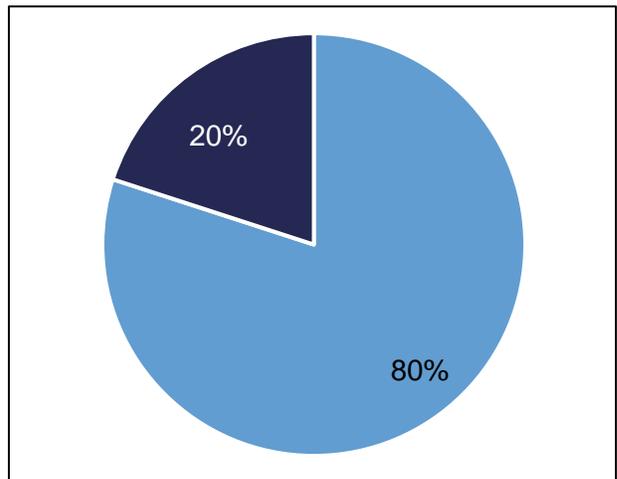


Figure 32: Results of the 5 matters initiated by the licensee / licence applicant that were closed in Q4 of 2020



Appeals

If an applicant or respondent believes that the Tribunal's Hearing Division has made an incorrect decision, they may appeal the decision to the Appeal Division.

For Figures 33-36 below please refer to the following legend key.

■ Granted in full ■ Granted in part ■ Dismissed ■ Abandoned / Withdrawn

Figure 33: Results of the 3 appeals by licensee / licence applicant that were closed in Q1 of 2020

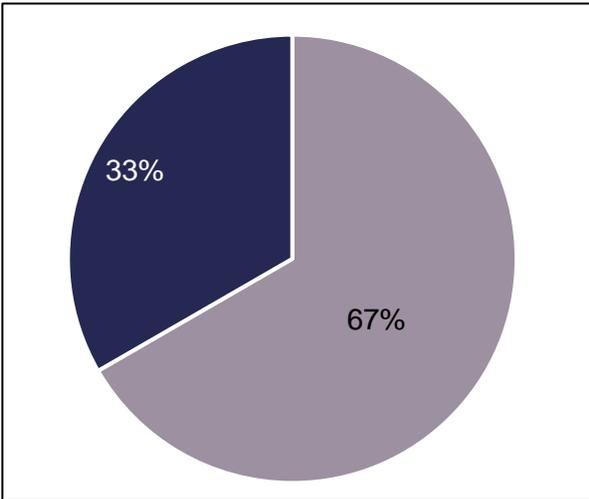


Figure 34: Results of the 1 appeal by licensee / licence applicant that was closed in Q2 of 2020

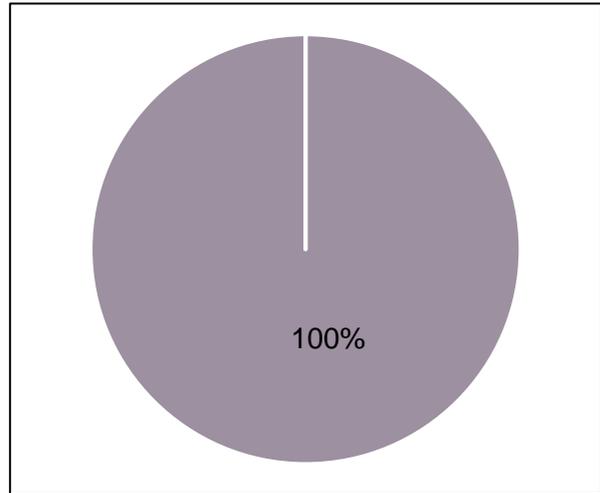


Figure 35: Results of the 4 appeals by licensee / licence applicant that were closed in Q3 of 2020

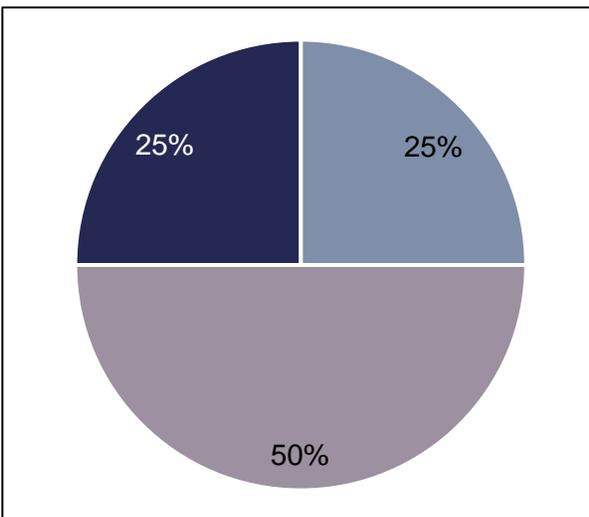
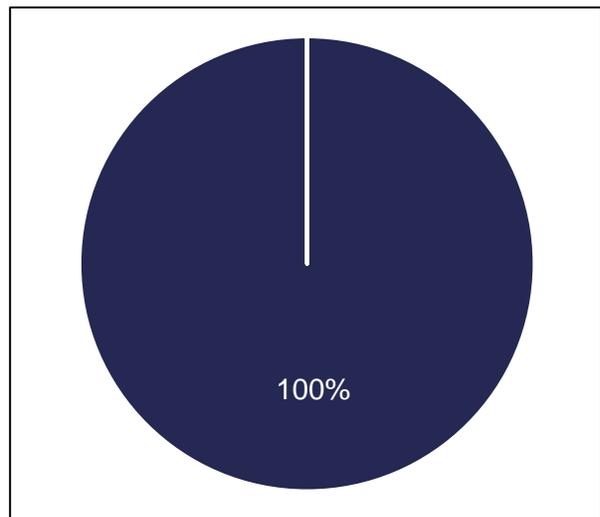


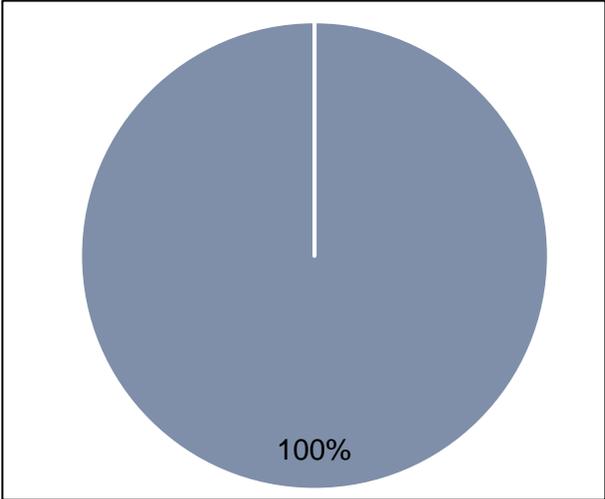
Figure 36: Results of the 1 appeal by licensee / licence applicant that were closed in Q4 of 2020



For Figure 37 below please refer to the following legend key.

■ Granted in full ■ Granted in part ■ Dismissed ■ Abandoned / Withdrawn

Figure 37: Results of the one appeal by the Law Society that was closed in Q1 2020



There were no appeals by the Law Society closed in Q2, Q3 and Q4 of 2020.