Law Society of Ontario | Barreau de l'Ontario

Tab 4

Tribunal Committee

For Decision and Information

November 30, 2023

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For decision

Tab 4.1 Service through LSO Connects

Tab 4.2 Public access and openness

Tab 4.3 Failure to co-operate applications

For information

Tab 4.4 Q1-Q2 2023 Tribunal Statistics

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Motion

That Convocation adopt amendments to the Tribunal *Rules of Practice and Procedure* (the "Rules") as detailed in this report and redlined at Tab 4.1.1.

Context

The proposed amendments at Tab 4.1.1 allow for the service of documents in Tribunal proceedings through LSO Connects, the Law Society's new enhanced communications platform or portal.

Background

Over the last 18 months, the Law Society has been engaged in a business and technology transformation initiative to replace a number of old, legacy systems, including the core databases and case management systems that support Professional Regulation, Licensing and Accreditation, Membership Services, and Finance. Part of this project has involved modernizing interactions and information sharing, to move from traditional phone/in-person interactions to electronic touchpoints, 24/7 convenience, self-service and centralized data and document availability.

Convocation recognized this shift in June 2020, when the following motion was approved:

> That all licensees be required to use the Portal to complete standard interactions with the Law Society unless the Society has a duty to provide alternative methods of interaction pursuant to its duty to accommodate persons as prescribed in the Ontario *Human Rights Code*.

In July 2023, the Law Society launched a new Client Relationship Management platform, which includes the public face of the system, LSO Connects. LSO Connects is now in use for case management functions related to Professional Regulation (i.e., complaints and discipline processes). The second release, scheduled for summer 2024, will include functionality related to licensee databases. At the completion of release 2, LSO Connects will fully replace the Law Society's current Portal and will become the default communication method for the Law Society. Over time, this will encourage licensees to use the platform, a shift that will be familiar to many who increasingly use similar electronic platforms to communicate with other regulators, institutions, courts, and administrative tribunals.

During the current release, licensees involved in the complaints and discipline processes are invited to LSO Connects via an email that explains that we are implementing a new system, that communications will be through LSO Connects, and that they are required to create their account once they receive their invitation email. Once a licensee is involved in a Tribunal proceeding, they will have been using LSO Connects throughout the complaint and investigation process.

Each licensee's username for LSO Connects is their email address. Since 1999, the Law Society has required licensee email addresses as part of the contact information collected on the Annual Report. That information is collected once a year and is only current as of December 31 in the applicable year. Therefore, in 2008, By-Law 8 was amended to require that licensees provide detailed contact information to the Law Society (including personal and business email addresses) and report changes in that information as they occur.

Attached at Tab 4.1.2 are screenshots, which provide an overview of:

- How a party to a proceeding would receive an email notification that they have been served with a Notice of Application;
- The sign-in process for LSO Connects;
- How the email message would appear in the person's LSO Connects Inbox; and
- An example of how the content of the Law Society's communication and attached documents would appear.

Recommendations

This report recommends amendments to Rules 3.1 and 5.1 of the *Rules* to include LSO Connects as one of the means by which a party may serve documents to start a proceeding, and one of the ways in which documents other than an originating process may be served. These proposed amendments align with Convocation's policy decision noted above, as well as with the Law Society's ongoing business and technology transformation initiative.

Rule 3 details the requirements for starting and withdrawing proceedings. Rule 3.1 provides that an originating process and the required information sheet may be served by hand delivery, regular or registered mail or by courier, electronically by email, or by any other method agreed to by the person being served or directed by the Tribunal.

Rule 5 addresses service, filing, communicating with the Tribunal, and form of documents. Rule 5.1 prescribes the same methods as Rule 3.1 by which a document other than an originating process may be served, and also permits the uploading of electronic documents to the Tribunal's File Sharing Platform, if the other party is served with notice that the electronic document has been uploaded.

To facilitate the service of documents through LSO Connects, the redlined amendments at Tab 4.1.1 are proposed to include LSO Connects as one of the methods by which an originating process, information sheet, and other documents may be served, with service through LSO Connects requiring the licensee being informed by email that the specific documents have been uploaded.

In addition, it is recommended that Rule 2.3 be amended to define the Law Society Portal as "the online platform made available by the Law Society, accessible using a unique

username and password, which automatically generates a notification that is delivered to the other party by e-mail when electronic documents are uploaded".

The proposed amendments do not alter any of the methods of service currently available under the *Rules*. Therefore, parties in Tribunal proceedings and their counsel will be able to continue interacting with the Law Society and the Tribunal in the same manner as they have always done.

The Tribunal's information system is independent of the Law Society. Therefore, documents will continue to be filed separately with the Tribunal in accordance with Rules 5.4 to 5.11. Although the Rules permit service and filing through a single email to the opposing party and copied to the Tribunal, it is a common practice to send separate emails. This method has the benefit of ensuring that correspondence between parties, which is not shared with the Tribunal, can be delivered but not filed. Law Society staff, who serve the bulk of materials in Tribunal proceedings, confirm that this two-step process is not a significant additional effort.

Rationale

As noted above, these proposed amendments align with Convocation's decision to require that licensees use the Portal to complete standard interactions with the Law Society, as well as with the Law Society's ongoing business and technology transformation initiative. That initiative includes an operational shift to better facilitate communication with licensees through LSO Connects, and to actively encourage licensees to use that platform to communicate with their regulator.

The new system will allow for the secure delivery of messages and information, directly and confidentially to the recipient's password protected platform account, with an accompanying notice delivered to their email. Communications from the Law Society will come from a single source, in a standard format, which will simplify interactions for licensees. Unlike regular mail or email, where there is no means by which to determine whether a notice has been received by the intended recipient, the new system will provide a clear audit trail of all communications, notifications, and information sent and received through the platform.

Serving documents through LSO Connects, and the existing ShareFile platform for larger files, will ensure the best possible tracking and exchange of documents in Tribunal proceedings. Evidentiary issues will be simplified and clarified by the automatic creation of a clear chain of custody for documents and a record that LSO Connects messages have been opened by the recipient. Confidentiality will be increased, and privacy will be protected in the discipline process, by uploading documents to the secure LSO Connects platform as opposed to sending documents by email or regular mail to the person's last known business address.

Modernizing interactions through LSO Connects will streamline the litigation process and generate significant efficiencies by allowing business processes to be streamlined through

enhanced workflows, which are not available in current legacy systems. Absent accommodation issues, licensees will receive all Law Society communications in the same manner, from a single source, and with a clear record of all communications, notifications, and information sent from, and to their regulator. In contrast to email, delivery through LSO Connects is more reliable and has greater capacity for attachments. For parties involved in Tribunal proceedings, and their counsel where applicable, all documents relating to the proceeding sent through LSO Connects will be located and stored in a single, searchable library, no longer requiring a manual search through multiple emails or paper files to retrieve a document.

Rule 2.3 Definitions

"Law Society Portal" means the online platform made available by the Law Society, accessible using a unique username and password, which automatically generates a notification that is delivered to the other party by e-mail when electronic documents are uploaded.

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;
c. ~~electronically by~~ e-mail sent to the party's home and/or business e-mail addresses; ~~or~~
d. uploading to the Law Society Portal and informing the person by email that the electronic document has been uploaded; or
e. any other method agreed to by the person being served or directed by the Tribunal.

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; ~~or~~
e. uploading an electronic document to the Law Society Portal and informing the person by email that the electronic document has been uploaded; or
f. any other method agreed to by the person being served or directed by the Tribunal.

Règle 2.3 Définitions

« Portail du Barreau » S'entend de la plateforme en ligne du Barreau, accessible à l'aide d'un nom d'utilisateur et mot de passe uniques, avisant automatiquement l'autre partie par courriel lorsque des documents électroniques sont téléversés.

Règle 3 : Introduction et retrait d'une instance

Signification

3.1 (1) Une partie introduit une instance en signifiant et en déposant l'acte introductif d'instance (formulaires 1 à 17) et la fiche d'information appropriée (formulaires 18 à 25).

(2) Une partie doit signifier l'acte introductif d'instance et la fiche d'information par l'un ou l'autre des modes suivants :

f. en main propre à la personne qui reçoit la signification ;
g. par la poste, courrier recommandé ou par messagerie au domicile de la partie ou à son adresse professionnelle ;
h. par courriel à l'adresse personnelle de la partie ou à son adresse professionnelle ;
i. en téléversant le document électronique dans le portail du Barreau et en informant la personne par courriel qu'il a été téléversé ;
j. par tout autre mode accepté par la personne qui reçoit la signification ou permis par une directive du Tribunal.

Règle 5 : Signification, dépôt, communication avec le tribunal et format des documents

Mode de signification

5.1 Un document autre que l'acte introductif d'instance peut être signifié selon l'un ou l'autre des modes suivants :

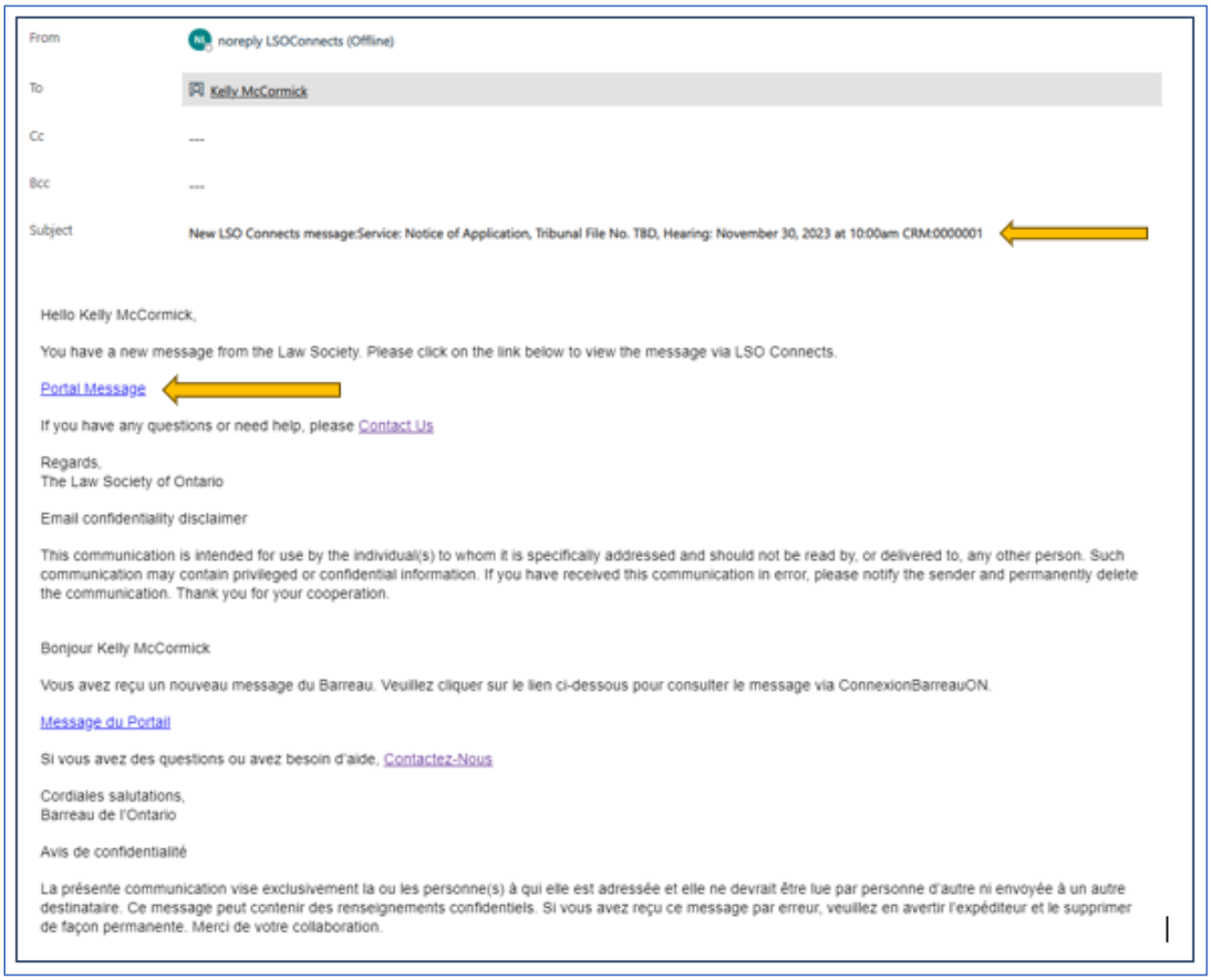
g. en main propre ;
h. par la poste, par courrier recommandé ou par messagerie ;
i. par courriel, si le document est inférieur à 20 M ;
j. en téléversant un document électronique sur la plateforme de partage de dossiers du Tribunal et en signifiant un avis à l'autre partie indiquant que le document électronique a été téléversé ;
k. en téléversant un document électronique dans le portail du Barreau et en informant la personne par courriel qu'il a été téléversé;

l. par tout autre mode accepté par la personne qui reçoit la signification ou permis par une directive du Tribunal.

The external user receives an email notifying them that a portal message has been published to their LSO Connects account. (Note: the specific format of the email will depend on the external user's email system.)

The "Subject" line of the email will include the "Title" of the portal message, meaning that Law Society employees can tailor the subject line to include information relevant to service.

The email will contain a live link to LSO Connects so that external users can link directly to the system, sign in, and view the message.



Zoomed in, the content of the email is as follows:

Hello Kelly McCormick,

You have a new message from the Law Society. Please click on the link below to view the message via LSO Connects.

Portal Message

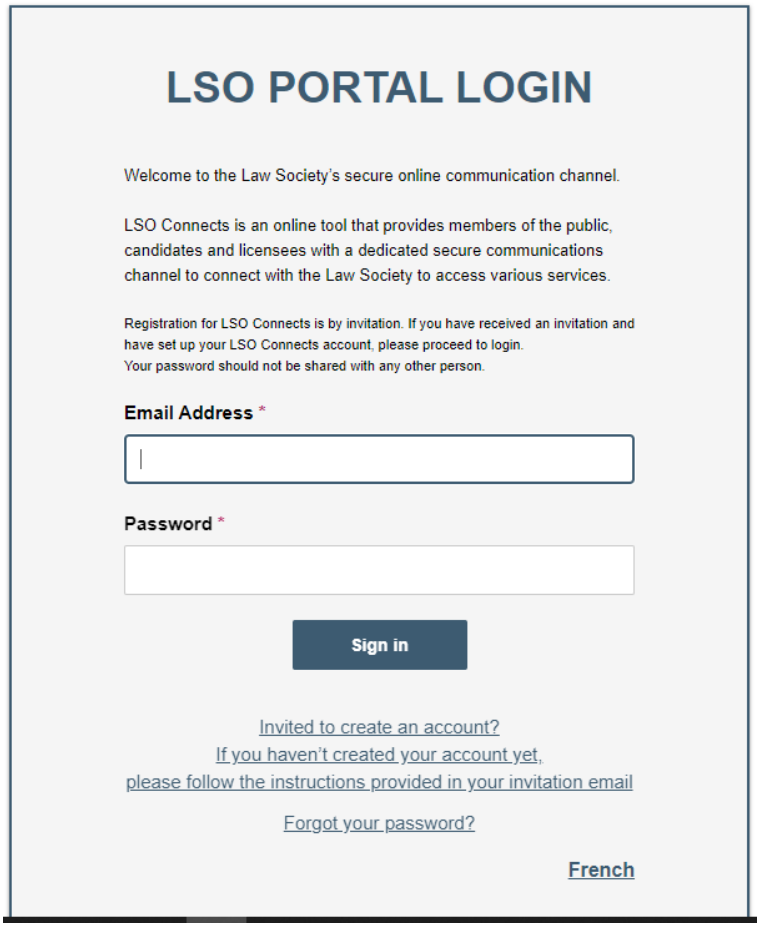
If you have any questions or need help, please Contact Us

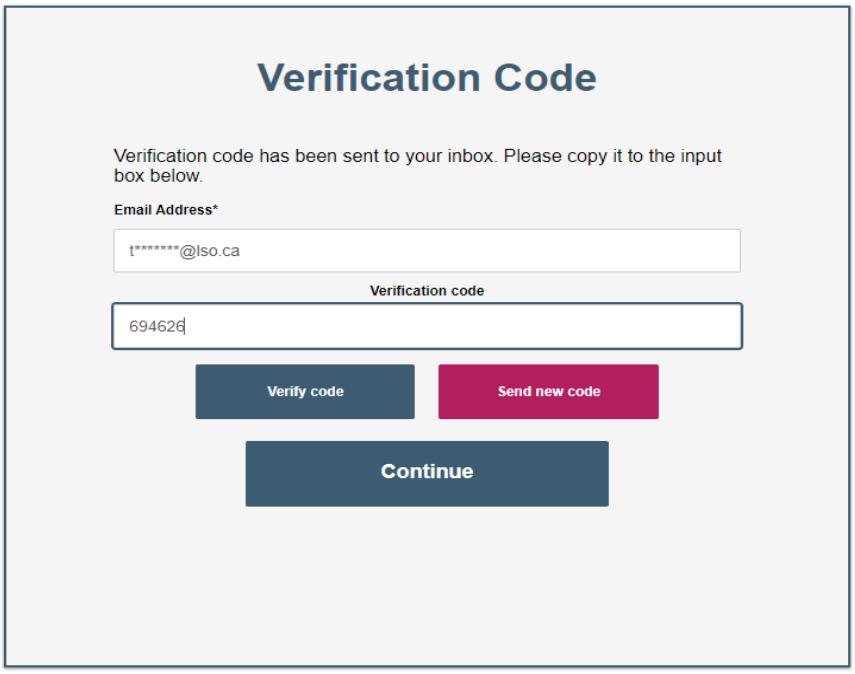
Regards,
The Law Society of Ontario

Email confidentiality disclaimer

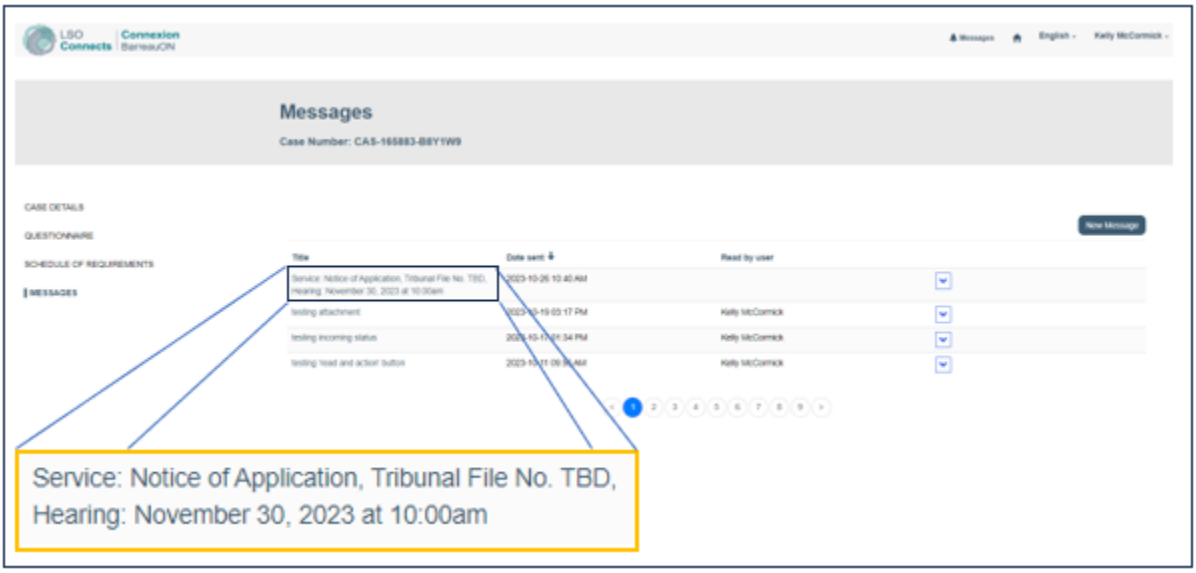
This communication is intended for use by the individual(s) to whom it is specifically addressed and should not be read by, or delivered to, any other person. Such communication may contain privileged or confidential information. If you have received this communication in error, please notify the sender and permanently delete the communication. Thank you for your cooperation.

The LSO Connects sign in requires a password and uses two-factor authentication for security purposes.




Verification Code
Verification code has been sent to your inbox. Please copy it to the input box below.
Email Address*
t*******@lso.ca
Verification code
694626
Verify code
Send new code
Continue

Once in LSO Connects, the message can be easily identified as the title of the message mirrors that of the notification email.

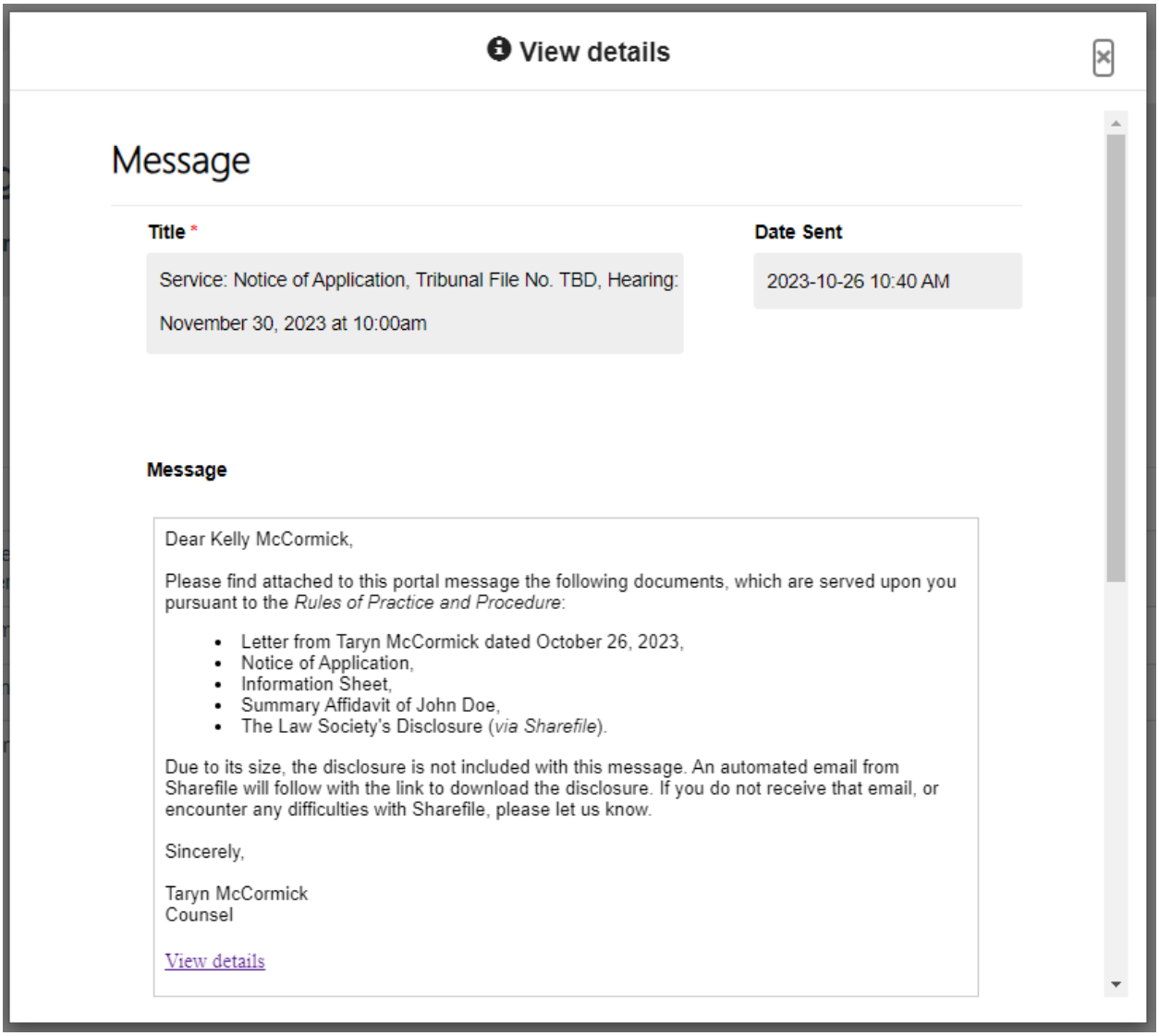


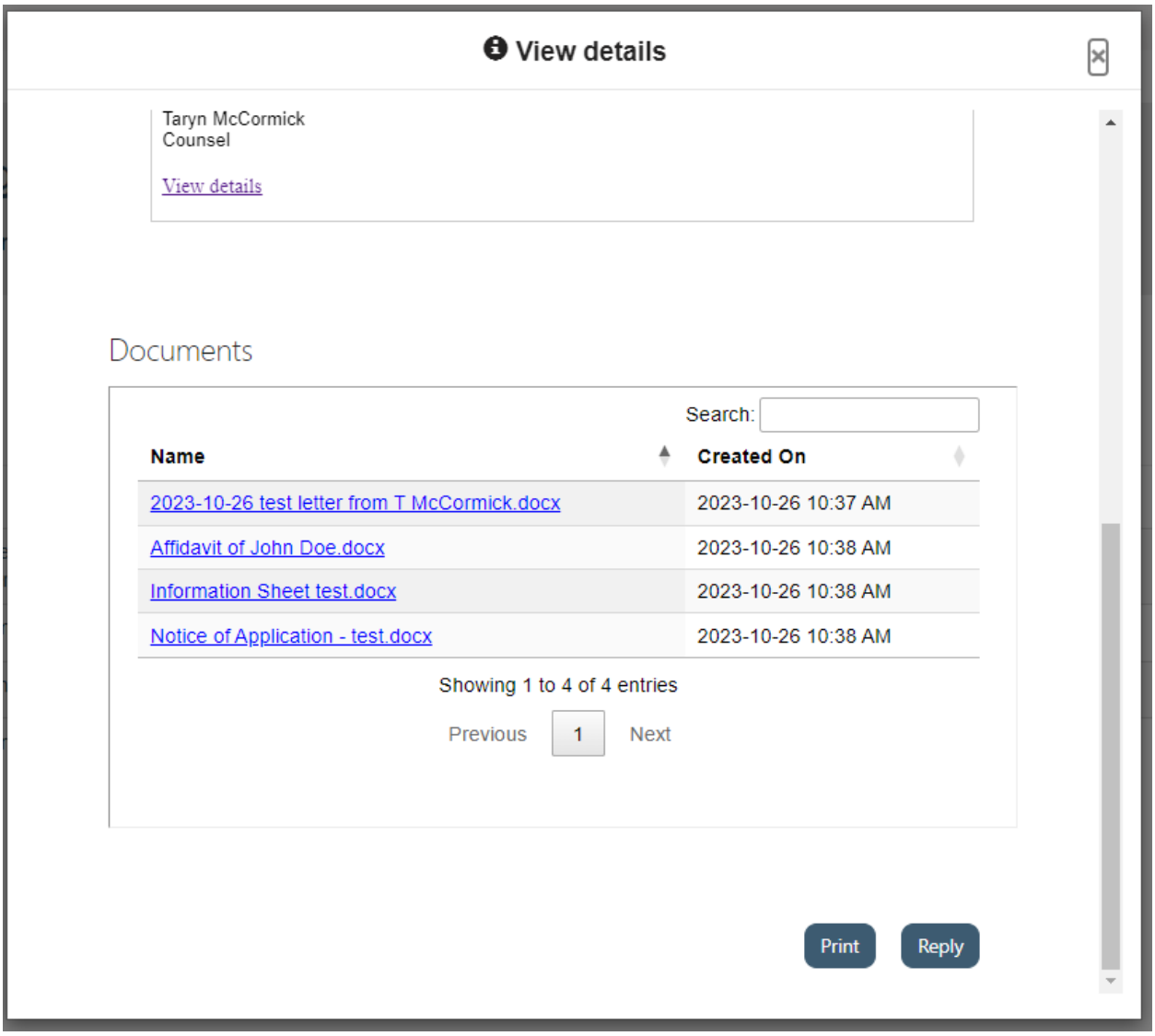
Zoomed in, the message box list appears as follows:

Title	Date sent	Read by user	
Service: Notice of Application, Tribunal File No. TBD, Hearing: November 30, 2023 at 10:00am	2023-10-26 10:40 AM	Kelly McCormick	
testing attachment	2023-10-19 03:17 PM	Kelly McCormick	
testing incoming status	2023-10-17 01:34 PM	Kelly McCormick	
testing 'read and action' button	2023-10-11 09:56 AM	Kelly McCormick	

< 1 2 3 4 5 6 7 8 9 >

When the external user opens the portal message, they will see the content of the Law Society's communication and, scrolling further down, attached documents that can be opened by clicking the links to each individual file.




View details
Taryn McCormick
Counsel
View details
Documents
Search:
Name
Created On
2023-10-26 test letter from T McCormick.docx
2023-10-26 10:37 AM
Affidavit of John Doe.docx
2023-10-26 10:38 AM
Information Sheet test.docx
2023-10-26 10:38 AM
Notice of Application - test.docx
2023-10-26 10:38 AM
Showing 1 to 4 of 4 entries
Previous
1
Next
Print
Reply

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Public Access and Tribunal Openness

Motion

That Convocation approve the proposed English and French amendments to the Rule 13 of the Law Society Tribunal Rules of Practice and Procedure, effective January 1, 2024, as set out at TAB 4.2.1 (English) and TAB 4.2.2 (Français) and approve the corresponding new form TAB 4.2.3 (English) and TAB 4.2.4 (Français).

Summary

The Tribunal Committee asks Convocation to approve the proposed amendments Law Society Tribunal *Rules of Practice and Procedure*, to be effective December 1, 2023.

Like the courts and all quasi-judicial administrative tribunals, the Law Society Tribunal is bound to the principles of openness and freedom of the press.

Rule 13 of the Tribunal's *Rules of Practice and Procedure* address the record of proceeding, transparency and public access. Adhering to the open court principle, open hearings are the default. But there are circumstances where another important public interest can require a limitation on openness.

Where a limitation on openness is sought, the Tribunal must make a discretionary determination whether notice of the request should be given to the media. If notice to the media is required, notice should be given in a way which does not unnecessarily compromise the request before it is considered by the panel.

While it is a discretionary adjudicative decision whether to require notice to be provided to the press, there is no Tribunal procedure in place to guide the process.

The proposed amendments generally provide the person seeking a limitation on openness with a choice. They may provide notice to the media. However, they may alternatively ask that notice to the media be dispensed with. The proposed amendments do not apply to ordinary course protection of privilege and client confidentiality nor to circumstances where the rules provide for limitations on openness such as under Rule 13.5 regarding the identities of children and persons who allege sexual assault or misconduct.

Where notice will be provided to the media, the proposed amendments provide for limited disclosure prior to any decision being made.

Committee Process

The Committee met on October 12 and November 9, 2023 and approved the proposed amendments to Rule 13.

Committee members Rebecca Durcan (Chair), Catherine Banning (Vice-Chair), Malcolm M. Mercer (*ex officio*), Peter Wardle (*ex officio*), Neha Chugh, Jasminka Kalajdzic and Murray Klippenstein attended on October 12 and November 9, 2023. Staff members Celia Lieu, Cynthia Pay and Lisa Mallia also attended.

Prior to consideration by the Tribunal Committee, a draft of the proposed amendments was reviewed with the Chair's Practice Roundtable.

Background and Discussion

Attached at **Tab 4.2.5** is the practice direction on public access to hearings and materials. This is supplied to provide an overview of the Tribunal's approach to public access.

Protection of openness

Tribunal proceedings, except for pre-hearing conferences, are open to the public unless a panel orders otherwise. The record of proceeding is similarly available for review by anyone, except for any documents that have been ordered not public. Rule 13 sets out what documents are available to the public as part of the record.

Rule 13 reflects the constitutional protection of openness articulated in *Sherman Estate* v. *Donovan*, 2021 SCC 25, as well as the Tribunal's jurisprudence, predominantly from the *Xynnis* decision, 2014 ONLSAP 9. It is common that limitations on openness are sought under Rule 13.

In *Toronto Star v. AG Ontario*, 2018 ONSC 2586, Justice Morgan wrote at paras. 54 and 55:

> The open court principle is one of the hallmarks of a democratic society . . . [and] is inextricably tied to the rights guaranteed by s. 2(b) of the Charter. The Supreme Court has declared that this principle includes "guaranteed access to the courts in order to gather information", and that "measures that prevent the media from gathering that information, and from disseminating it to the public, restrict the freedom of the press. …
>
> … these principles apply to administrative tribunals as well as to courts. While the source of administrative tribunals' authority is their enabling statute, "[t]he legitimacy of such tribunals' authority . . . can be effected only if their proceedings are open to the public". This open access, and concomitant protection of freedom of the press, is in keeping with those tribunals' obligation "in exercising their statutory functions . . . [to] act consistently with the Charter and its values". This is not optional or discretionary on the part of administrative tribunals. As the Supreme Court has stated, "the protection of Charter guarantees is a fundamental and pervasive obligation, no matter which adjudicative forum is applying it."

In *CBC v. Ferrier*, 2019 ONCA 1025, Justice Sharpe described the *Toronto Star* decision, with apparent approval, as "a strong statement on the need for openness in proceedings before quasi-judicial tribunals."

In *CBC v. Chief of Police*, 2021 ONSC 6935, Justice Backhouse wrote for the Divisional Court that "the open court principle informs openness for tribunals," "quasi-judicial hearings are presumptively open" and the "openness principles apply to all quasi-judicial proceedings."

Recognizing that the Law Society Tribunal is, and should be, bound by openness principles, in 2021 Convocation amended Rule 13 of the *Rules of Practice and Procedure* in accordance with the law as articulated by Justice Kasirer in *Sherman Estate*.

The discretionary decision whether to require notice to the media

The courts have been clear that openness principles entitle the media to standing to challenge limitations to openness. This makes practical sense. The parties often do not have an interest in openness. Sometimes the opposite is true.

There is, of course, little value in having standing without notice.

Justice Nordheimer, then a Superior Court judge, considered notice in *A.M. v Toronto Police Service*, 2015 ONSC 5684 (Div. Ct.). At paras. 4 to 6, he wrote:

> …it was stated in *Dagenais* that, where a common law publication ban was being sought, the judge "should give the media standing (if sought)" (p. 890 S.C.R.). Obviously, the media cannot seek standing if they do not have notice of the matter.
>
> That said, I recognize that the decision on whether to give notice to the media appears to be a discretionary one. There is no absolute rule that the media must be informed of a motion seeking a publication ban. As Lamer C.J.C. said in *Dagenais*, at p. 869 S.C.R.:
>
> > The judge hearing the application thus has the discretion to direct that third parties (e.g., the media) be given notice. Exactly who is to be given notice and how notice is to be given should remain in the discretion of the judge to be exercised in accordance with the provincial rules of criminal procedure and the relevant case law.
>
> Even though that discretion exists, there is, in my view, a presumption that the media will be given notice of any motion where relief is sought that will have the effect of restricting the public's, and thus the media's, right to access court proceedings. That presumption flows from a combination of the open court principle and the salient fact that the media is the mechanism by which members of the public are informed of the activities that take place in the courts.

Justice Nordheimer's decision in *A.M. v Toronto Police Service* has been cited with approval by the Supreme Court of Canada in *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 at para. 51. As Justice Kasirer wrote for the majority at para. 51 :

> Given the importance of the open court principle and the role of the media in informing the public about the activities of courts, it may generally be appropriate to give prior notice to the media, in addition to those persons who would be directly affected by the publication ban or sealing order, when seeking a limit on court openness (see *Jane Doe v. Manitoba*, 2005 MBCA 57, 192 Man. R. (2d) 309, at para. 24; *M. (A.) v. Toronto Police Service*, 2015 ONSC 5684, 127 O.R. (3d) 382 (Div. Ct.), at para. 6). But whether and when this notice should be given is ultimately a matter within the discretion of the relevant court (*Dagenais*, at p. 869; M. (A.), at para. 5). I agree with the submissions of the attorneys general of British Columbia and Ontario that the circumstances in which orders limiting court openness are made vary and that courts have the requisite discretionary authority to ensure justice is served in each individual case.

The Superior Court protocol after *A.M. v Toronto Police Service*

Shortly after *A.M. v Toronto Police Service*, the Ontario Superior Court of Justice established a process which gave effect to Justice Nordheimer's decision. This was done by implementing a formal protocol for notice to be provided to the media. The protocol requires that notice be given to the media of a request for a publication ban, absent an order otherwise. The possibility of an order otherwise maintains the discretion not to give prior notice where appropriate.

The Superior Court of Justice protocol provides for a list to which the media can subscribe whereby notice can easily be given by the court based on a standard notice. This saves the parties from having to provide service and provides a standard form. The standard form avoids the burden of having to serve all of the motion materials and the problem of unnecessary broad disclosure.

As described in *AP v. LK*, 2019 ONSC 4031,[1] the Superior Court protocol is carefully designed to balance the competing interests of the parties in privacy and the open court principle. There are protections built into the Practice Direction scheme which ensure that the information sought to be protected is not subject to publication or release simply through the act of notifying the media.

Through the use of the standard form and the subscribed list for notice, notice is efficiently provided to the media and limited information is provided so that the horse is not out of the barn door before there is a chance to decide whether to close the door.

The proposed rule follows the Superior Court protocol. It is open to the parties to request that service not be required. But presumptively, the media obtains notice though the standard form sent by the Tribunal. From inquiries made, it does not appear that tribunals other than Ontario

[1] Cited with approval in *Doe v. College of Physicians and Surgeons*, 2021 ONSC 1424

Physicians and Surgeons Discipline Tribunal (*OPSDT*) have addressed how the question of prior notice to the media should be addressed. The *OPSDT* has taken the same approach as the Superior Court.

Other possible approaches

There are other ways that the issue of prior notice could be achieved. The parties could be required to submit every request for an adjudicative determination as to whether the media should be notified and, if so, how. This would be a burden on the parties and on the Tribunal.

Motion and hearing panels could be required to decide whether media notice should be required at every hearing. This would result in many delays as notice is presumptively required and adjournments for the purpose of notice would be routine.

Of course, the question of prior notice could be left effectively unaddressed. However, this is not appropriate given the constitutional requirement of openness and freedom of the press and the importance of transparency in the context of self-regulation.

Recommended approach

The approach taken by the Superior Court appears to work. It has been adopted by the Ontario Physicians and Surgeons Discipline Tribunal which also appears to work.

However, notice to the media would not be required for orders limiting openness in order to protect solicitor-client privilege and/or client confidentiality. This limitation reflects the necessity, and routine nature, of protecting these public interests in regulatory proceedings involving lawyers and paralegals. Further, notice would also not be required where an order is sought to protect the identities of children and persons who allege sexual assault or misconduct as Rule 13.5 requires that a protective order be made. The proposed amendment has been revised to reflect Rule 13.5.

Assuming that prior notice to the media should be given subject to discretion otherwise, the proposal is the least burdensome approach available. Parties can easily give notice through the Tribunal. The Tribunal's role is limited to maintain a list of media organizations and forwarding the notice electronically to that list. Requiring an exercise of discretion where parties are content to give notice is burdensome. Requiring service of motion materials by the parties is burdensome and may require making unnecessary disclosure of sensitive information.

Other matters

A further amendment is also proposed to address access to documents that have been filed with the Tribunal where an order under Rule 13.3 is being sought but a panel has not yet made a decision.

This proposal was presented to the Chair's Practice Roundtable before being considered by the Tribunal Committee. The proposal received support.

Proposed amendment

The proposed amendment is as follows. Proposed sub-rule 13.3(4) has been revised so that notice is not required where an order is requested to protect the identities of children and persons who allege sexual assault or misconduct.

Departing from openness

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

(a) openness poses a serious risk to an important public interest,

(b) the order is necessary to prevent this risk because reasonable alternative measure will not be effective; and

(c) the benefits of the order will outweigh its negative effects.

(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.

(3) If there is a request for a not-public order, non-disclosure order or publication ban relating to documents filed with the Tribunal, the Tribunal will hold the documents as not public until a panel has made a decision regarding the request.

(4) Unless otherwise directed by the Tribunal and subject to subsection (4) of this rule, a person requesting a not-public order, non-disclosure order or publication ban shall give notice to the media of a request for a not public order, non-disclosure order or publication ban as follows:

(a) The requesting person must serve on all parties and file a completed "Notice of Request for a Departure from Openness" form available on the Tribunal's website.
(b) This form must be filed at least seven days before the hearing of the request for a not-public order, non-disclosure order or publication ban.
(c) The information on the form will be distributed electronically by the Tribunal to members of the media who have subscribed to receive notice of all not-public order, non-disclosure order and publication ban motions in the Tribunal.
(d) Any member of the media who wishes to receive copies of the forms filed under this section should submit a request to tribunal@lstribunal.ca.

(4) Notice to the media is not required by this rule where a not-public order, non-disclosure order or publication ban is requested to protect the identities of children and persons who allege sexual assault or misconduct or is requested only on basis that openness poses a serious risk to:

(a) solicitor-client privilege; and/or
(b) lawyer/paralegal-client confidentiality.

Departing from openness

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

(a) openness poses a serious risk to an important public interest,

(b) the order is necessary to prevent this risk because reasonable alternative measure will not be effective; and

(c) the benefits of the order will outweigh its negative effects.

(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.

(3) If there is a request for a not public order, non-disclosure order or publication ban relating to documents filed with the Tribunal, the Tribunal will hold the documents as not public until a panel has made a decision regarding the request.

(4) Unless otherwise directed by the Tribunal and subject to subsection (5) of this rule, a person requesting a not public order, non-disclosure order or publication ban shall give notice to the media of a request for a not public order, non-disclosure order or publication ban as follows:

(a) The requesting person must serve on all parties and file a completed "Notice of Request for Publication Ban or Other Departure from Openness" form available on the Tribunal's website.
(b) This form must be filed at least seven days before the hearing of the request for a not public order, non-disclosure order or publication ban.
(c) The information on the form will be distributed electronically by the Tribunal to members of the media who have subscribed to receive notice of all not public order, non-disclosure order and publication ban motions in the Tribunal.
(d) Any member of the media who wishes to receive copies of the forms filed under this section should submit a request to tribunal@lstribunal.ca.

(5) Notice to the media is not required where a not public order, non-disclosure order or publication ban is requested to protect the identities of children and persons who allege sexual assault or misconduct or is requested only on the basis that openness poses a serious risk to:

(a) solicitor-client privilege; and/or
(b) lawyer/paralegal-client confidentiality.

Dérogation au principe de publicité

13.3 (1) Le Tribunal peut rendre une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication seulement dans les cas suivants :

a) la publicité pose un risque sérieux à un intérêt public important ;
b) l'ordonnance est nécessaire pour écarter ce risque parce que d'autres mesures raisonnables ne seront pas suffisantes ;
c) les effets bénéfiques de l'ordonnance sont plus importants que ses effets préjudiciables.

(2) Si une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication est nécessaire, le Tribunal rend l'ordonnance qui affecte le moins le principe de publicité tout en atteignant son objectif.

(3) Si une demande d'ordonnance interdisant l'accès au public, d'ordonnance de non-divulgation ou d'interdiction de publication se rapportant à des documents déposés auprès du Tribunal est présentée, le Tribunal considèrera les documents comme confidentiels tant qu'une formation n'aura pas rendu une décision concernant la demande.

(4) À moins d'une ordonnance contraire du Tribunal et sous réserve du paragraphe (5) de cette règle, la personne qui demande une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication avisera les médias de la demande de la manière suivante :

a) la personne qui fait la demande doit déposer un formulaire d'« Avis de demande d'interdiction de publication ou de dérogation au principe de publicité » disponible sur le site Web du Tribunal, dument rempli et signifié à toutes les parties.

b) ce formulaire doit être déposé au moins sept jours avant l'audition de la demande d'ordonnance interdisant l'accès au public, d'ordonnance de non-divulgation ou d'interdiction de publication.

c) les renseignements contenus dans le formulaire seront diffusés par voie électronique par le Tribunal aux membres des médias qui se sont inscrits pour recevoir un avis de toutes les motions visant à obtenir une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation et une interdiction de publication.

d) les membres des médias qui souhaitent recevoir des copies des formulaires déposés en application du présent paragraphe devraient envoyer une demande à tribunal@lstribunal.ca.

(5) Il n'est pas nécessaire d'adresser un avis aux médias lorsqu'une ordonnance interdisant l'accès au public, une ordonnance de non-divulgation ou une interdiction de publication est demandée pour protéger l'identité des enfants et des personnes qui allèguent une agression ou une inconduite sexuelle, ou est demandée seulement pour le motif que la publicité pose un risque sérieux :

a) au secret professionnel de l'avocat ;
b) à la confidentialité des communications entre l'avocat(e) ou le (la) parajuriste et son (sa) client(e).

FORM 42 - NOTICE OF REQUEST FOR PUBLICATION BAN OR OTHER DEPARTURE FROM OPENNESS

LAW SOCIETY TRIBUNAL
(HEARING/APPEAL) DIVISION

(Panelist(s))

(Date)

BETWEEN:

(name)
(*Applicant / Appellant*)

and

(name)
(*Respondent / Respondent in appeal*)

NOTICE OF REQUEST FOR PUBLICATION BAN OR OTHER DEPARTURE FROM OPENNESS

This form is to be completed and submitted by any participant requesting an order restricting openness under Rule 13.3 of the Rules of Procedure.

The form will be posted on the Tribunal's website, distributed electronically to members of the media and accessible by members of the public and the media. Unless the Tribunal directs otherwise, completion and posting of this form is considered notice to the media of the pending request for an order under Rule 13.3.

Requestor: (*Insert name*)

The requestor asks that the request be:

☐ heard at the hearing on (*insert date*).
(*Please file this form at least <u>three</u> days prior to the hearing date*)

☐ decided in writing at least seven days after the date this form is filed. Written submissions are filed with this form.

Order Requested:

(Set out the exact wording of the proposed order)

Date: (*insert date*)

(Requestor or requestor's representative)
(address)

(telephone)
(e-mail)

TO:

(*Insert names of other participants and their representatives, if applicable*)

FORMULAIRE 42 – AVIS DE DEMANDE D'ORDONNANCE RESTREIGNANT LA PUBLICITÉ

TRIBUNAL DU BARREAU
SECTION (DE PREMIÈRE INSTANCE/D'APPEL)

(Membre(s) de la formation)

(Date)

ENTRE :

(nom)
(*demandeur(resse)/appelant(e)*)

et

(nom)
(*intimé(e)/intimé(e) en appel*)

AVIS DE DEMANDE D'INTERDICTION DE PUBLICATION OU DE DÉROGATION AU PRINCIPE DE PUBLICITÉ

Le présent formulaire doit être rempli et présenté par le participant qui demande une ordonnance restreignant la publicité en application de la règle 13.3 des Règles de procédure.

Le formulaire sera affiché sur le site Web du Tribunal, diffusé par voie électronique aux membres des médias et accessible aux membres du public et des médias. Sauf directive contraire du Tribunal, le présent formulaire rempli et affiché vaut avis aux médias de la demande d'ordonnance en instance au titre de la règle 13.3.

Demandeur : (*inscrire le nom*)

Le demandeur souhaite que sa demande soit :

☐ entendue à l'audience le (*inscrire la date*).
(*Veuillez déposer le présent formulaire au moins <u>trois</u> jours avant la date de l'audience*)

☐ jugée sur dossier au moins sept jours après la date de dépôt du présent formulaire. Les observations écrites sont déposées avec le formulaire.

Ordonnance demandée :

(Énoncer le libellé exact de l'ordonnance proposée)

Date : (*inscrire la date*)

(Demandeur ou représentant du demandeur)
(adresse)

(téléphone)
(courriel)

À L'INTENTION DE :

(*Inscrire les noms des autres participants et de leurs représentants, s'il y a lieu*)

Law Society Tribunal
Tribunal du Barreau

PRACTICE DIRECTION ON PUBLIC ACCESS TO HEARINGS AND TO TRIBUNAL FILES

Introduction

The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just, and in the public interest. The Tribunal applies the open court principle and proceedings are presumed to be open and accessible to the public, including the media. Transparency is a core value of the Tribunal and decisions, rules, processes and policies are available to licensees and the public.

This practice direction refers to cases; please note that there may be other or new cases that also apply.

Open Tribunal

Tribunal proceedings, except for pre-hearing conferences, are open to the public unless there is an order otherwise. Tribunal files may be reviewed by anyone, except for documents that have been ordered to be not public: Rule 13.2.

Attending a hearing

Information about all merits hearings is posted on the Tribunal's website 90 days before the hearing, or less if the hearing is to be held within 90 days of being scheduled. The Tribunal's Communications Coordinator sends a weekly "proceeding update" by e-mail that includes a list of the next week's scheduled hearings. There is a sign-up box for this e-mail on the Tribunal's homepage.

The Tribunal has prepared a Guide to Attending a Hearing, available on the Tribunal's website at https://lawsocietytribunal.ca/wp-content/uploads/2019/12/EN-Guide-for-Attending-a-Hearing.pdf.

Most in-person hearings are held at the Tribunal's offices at 375 University Ave, Suite 402, in Toronto. Some are held at different locations across the province. Hearings also take place using videoconferencing, notably Zoom. Members of the public and the media can attend electronic hearings by contacting the Tribunal Office. Observers can connect to a Zoom hearing using a computer, mobile device or telephone.

Accessing the Tribunal file

The Tribunal keeps a copy of all documents that are filed in a proceeding or are received by the panel. Any member of the public may ask to review any of the public documents in a Tribunal file. Rule 13.1 of the *Rules of Practice and Procedure* sets out what documents are available to the public. They include:

- materials filed with the Tribunal;
- exhibits;
- other documents and correspondence from a party reviewed by a panel, except for the purpose of a pre-hearing conference;

- notices of hearing, endorsements, orders, and reasons of the Tribunal;
- transcripts filed with the Tribunal.

Information about how to request access to materials from active and closed files is on the Tribunal website: http://lsotribunal.wpengine.com/accessing-closed-tribunal-files/.

Not public orders, non-disclosure orders and publication bans

It is a basic principle of Canadian law that proceedings of courts and administrative tribunals should be open to the public, with the ability to be publicized and reported upon. The right to publish information about proceedings falls within the right to freedom of expression guaranteed by s. 2(b) of the *Canadian Charter of Rights and Freedoms*. Tribunal proceedings must be transparent so that members of the public and of the legal professions are aware of and can have confidence in the impartial and fair resolution of issues that come before the Tribunal.

However, the Tribunal may sometimes depart from openness by making an order that an appearance, or documents that would otherwise form part of the public record, be not public, not disclosed or subject to a publication ban.

When a participant asks that there be a not public order, non-disclosure order or publication ban, the panel must determine whether three conditions have been satisfied before making an order:

- openness poses a serious risk to an important public interest
- the order is necessary to prevent this risk because reasonable alternative measures will not prevent the risk
- the benefits of the order will outweigh its negative effects

The courts have identified several important public interests that can be used to justify limits on openness, namely hearing fairness, the proper administration of justice, a general commercial interest in preserving confidential information, anonymity of young offenders to encourage rehabilitation and the protection of human dignity. *Sherman Estate v. Donovan*, 2021 SCC 25.

It is important to recognize that an important public interest must be engaged. While new important public interests may be recognized, panels will take care before doing so. Mere private interests are not enough. An order is not justified merely on the basis of a desire to avoid publicity, embarrassment, or exposure of personal information about the licensee or licence applicant.

As there is existing jurisprudence identifying the important public interests that apply, the panel will usually focus on whether the order is necessary to prevent serious risk of harm, whether other reasonable measures can avoid the serious risk of harm, and whether the benefits of the order outweigh its negative effects. In this context, the Tribunal takes seriously the importance of openness in maintaining independence and impartiality, public confidence in and understanding of its work and the legitimacy of the Tribunal's processes.

Privileged, or possibly privileged, documents are automatically not public: Rule 13.6. So are children's identities, and the identities of persons who allege sexual assault or misconduct, unless they are an adult and request otherwise: Rule 13.5.

Specific considerations are set out in Rule 13.4 regarding departures from openness in capacity proceedings recognizing that there may be special privacy considerations when an individual's health is the main issue in the proceeding.

Where the hearing or documents are subject to a not public order

When an oral appearance is not public, no one other than the licensee or licence applicant and the parties' representatives may attend or order or review the transcript. Witnesses may view the transcript of their own testimony: Rule 13.7(2). Members of the public will be asked to leave the hearing for the portion of the hearing that is being held in the absence of the public. Not public documents will not be provided to any members of the public reviewing the file.

Where the hearing or documents are subject to a publication ban

When a publication ban has been made, the hearing and Tribunal file remain open to the public. Members of the public will not be asked to leave the hearing and anyone can order the transcript. No one may publish or broadcast in any way information or documents subject to the publication ban: Rule 13.9(2). A copy of the order is provided to any members of the public reviewing the file.

Where the hearing is subject to a non-disclosure order

A non-disclosure order is made when it is determined that information should not be public after it was referred to in an open hearing. A non-disclosure order prohibits anyone who was present from disclosing what was said, and the documents are treated in the same manner as not public documents: Rule 13.8.

Recordings and transcripts

Recording

No one, other than the reporting service hired by the Tribunal for that purpose, may take photographs or make a video or audio recording in the Tribunal premises or the hearing without leave. This includes taking a screenshot or making a video or audio recording of an electronic appearance: Rule 9.9. Recordings made by the reporting service are used to prepare the transcripts and as a result are considered internal working documents and are not available to the public pursuant to the terms of the contract between the Tribunal and the reporting service.

A party acting in person, a representative or a journalist may unobtrusively make an audio recording at a hearing for the sole purpose of supplementing or replacing their notes. Any individual who wishes to do so is required to advise the Tribunal by e-mail in advance of the hearing: Rule 9:10.

Transcripts

All oral appearances are recorded by a reporting service, except pre-hearing conferences. Any person, whether a party to the proceeding or not, may order a copy of the transcript from the reporting service at their own expense. The first party to order a transcript must also pay a fee for the Tribunal's electronic and hard copies. The Tribunal's copies are provided directly to the Tribunal by the reporting service: Rule 9.8. Links to the court reporting services used by the Tribunal are on the Tribunal's website: https://lawsocietytribunal.ca/useful-links/.

Hearing transcripts, if contained in the Tribunal file, can be viewed by any person reviewing a file. Transcripts cannot be copied or photographed.

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Failure to Co-operate applications

Motion

That Convocation approve the proposed English and French amendment to the definition of "failure to co-operate proceeding" in the Law Society Tribunal Rules of Practice and Procedure, effective immediately, as set out at TAB 4.3.1 (English) and TAB 4.3.2 (Français).

Summary

The Tribunal Committee asks Convocation to approve the proposed amendments Law Society Tribunal *Rules of Practice and Procedure*, to be effective immediately.

For over thirty years,[1] allegations of failure to co-operate with the Law Society employee conducting an audit, investigation, review, search or seizure under the *Law Society Act* have been heard by a one-person hearing panels. These "failure to co-operate" applications, as well as some other conduct applications, are called "summary hearings."

In early 2022, Rule 21 of the Tribunal's Rules of Practice and Procedure was approved by Convocation. Depending on what, if anything, is in dispute, Rule 21 provides for a written hearings and for oral hearings. Rule 21, and this proposed amendment, do not change the very long-standing use of one-person hearing panels for summary hearings, including failure to co-operate applications.

When Rule 21 was introduced, it was limited in application to failures to co-operate with conduct investigations under the Act. After the first year, it has become evident that there are two other types of failures to co-operate which are rare but for which the same procedural approach is appropriate. These are failures to co-operate with audits and failures to co-operate with reviews.

The proposed amendment only affects alleged failure to co-operate with audits and reviews. These are rare applications.

Earlier this year, Convocation considered a different proposal for a simplified procedure for undefended conduct applications. This proposed amendment of Rule 21 is an entirely different matter and has nothing to do with the prior proposal.

Committee Process

The Committee met on October 12 and November 9, 2023 and approved the proposed amendments to Rule 13.

[1] O. Reg. 30/99, s. 2(1)(1)(vii) and O. Reg. 167/07, s. 2(1)(1)(vii)

Committee members Rebecca Durcan (Chair), Catherine Banning (Vice-Chair), Malcolm M. Mercer (*ex officio*), Peter Wardle (*ex officio*), Neha Chugh, Jasminka Kalajdzic and Murray Klippenstein attended on October 12 and November 9, 2023. Staff members Celia Lieu, Cynthia Pay and Lisa Mallia also attended.

Prior to consideration by the Tribunal Committee, a draft of the proposed amendment was reviewed with the Chair's Practice Roundtable.

Background and Discussion

The *Rules of Practice and Procedure* were amended in 2022 to provide for a streamlined process for dealing with allegations of 'failure to co-operate' with Law Society investigations.

Effective professional regulation requires prompt and complete responses to investigative inquiries. As Associate Chief Justice Fairburn put it in *Law Society of Ontario v. Diamond*, 2021 ONCA 255 at para. 67:

> [the duty to co-operate] requires nothing more than prompt and complete responses when requested, which are essential to moving investigations forward. Delays in doing so can only serve to shake the public's confidence in the Law Society's self-regulatory authority…
>
> [citations omitted]

The test for failure to co-operate was articulated by the Associate Chief Justice *Diamond* at para. 50:

- all of the circumstances must be taken into account in determining whether a licensee has acted responsibly and in good faith to respond promptly and completely to the Law Society's inquiries;
- good faith requires the licensee to be honest, open, and helpful to the Law Society;
- good faith is more than an absence of bad faith.

The Tribunal's new procedure reflects the relatively straightforward nature of most failure to co-operate applications, the desirability of moving investigations forward and of avoiding unnecessary expense for practitioners and the professions, and the need to ensure that the procedures adopted are appropriate in the circumstances.

At the same time that Rule 21 was adopted, the Tribunal and the Law Society worked together to put duty counsel assistance in place for licensees who imminently face failure to co-operate conduct applications in order to assist licensees in better understanding their professional obligations and to assist in diversion, where appropriate, for mental health and other reasons.

Rule 21 went into effect on May 1, 2022. The duty counsel program took some time after that to become established. Since May 1, 2022, the Law Society has filed 40 failure to co-operate applications under Rule 21 for an annualized volume of approximately 27 applications.

It appears that the adoption of Rule 21 may have reduced the number of failure to co-operate applications and has focused resources on applications where there are actually issues to be resolved. By all accounts, Rule 21 has worked well.

After the first year, it has become evident that there are two other types of failures to co-operate which are much less common but for which the same procedural approach is appropriate.

The proposed amendment will expand the definition of "failure to co-operate application" and thereby expand the application of Rule 21:

> … means a summary hearing in which the notice of application alleges one or more failure(s) to respond promptly and completely to ~~investigative~~ requests ~~only~~ made pursuant to any of sections 42(2), 49.2(2) and 49.3(2) of the *Law Society* Act but not other misconduct;

The current definition "to investigative requests only" is linked to s. 49.3(2) of the Act and investigations related to professional misconduct or conduct unbecoming a licensee:

> *Investigations*
> *Conduct*
>
> **49.3** (1) The Society may conduct an investigation into a licensee's conduct if the Society receives information suggesting that the licensee may have engaged in professional misconduct or conduct unbecoming a licensee.
>
> *Powers*
>
> (2) If an employee of the Society holding an office prescribed by the by-laws for the purpose of this section has a reasonable suspicion that a licensee being investigated under subsection (1) may have engaged in professional misconduct or conduct unbecoming a licensee, the person conducting the investigation may,
>
> (a) enter the current or former business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee or, in the case of a former business premises, by a person with the authority to allow entry into the premises;
>
> (b) require the production of and examine any documents that relate to the matters under investigation, including client files; and
>
> (c) require the licensee and people who work or worked with the licensee to provide information that relates to the matters under investigation.

Section 49.2(2) of the Act mirrors the above provisions but in regards to a financial audit.

Audit of financial records

49.2 (1) The Society may conduct an audit of the financial records of a licensee or group of licensees for the purpose of determining whether the financial records comply with the requirements of the by-laws.

Powers

(2) A person conducting an audit under this section may,

(a) enter the current or former business premises of the licensee or group of licensees between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee or by any licensee in the group of licensees or, in the case of a former business premises, by a person with the authority to allow entry into the premises;

(b) require the production of and examine the financial records maintained in connection with the professional business of the licensee or group of licensees and, for the purpose of understanding or substantiating those records, require the production of and examine any other documents in the possession or control of the licensee or group of licensees, including client files; and

(c) require the licensee or group of licensees, and people who work or worked with the licensee or group of licensees, to provide information to explain the financial records and other documents examined under clause (b) and the transactions recorded in those financial records and other documents.

Similarly, s. 42(2) makes the same provisions in the context of a professional competence review:

Review: professional competence

42 (1) The Society may conduct a review of a licensee's professional business in accordance with the by-laws for the purpose of determining if the licensee is failing or has failed to meet standards of professional competence, if,

(a) the circumstances prescribed by the by-laws exist; or

(b) the licensee is required by an order under section 35 to co-operate in a review under this section.

Powers

(2) A person conducting a review under this section may,

(a) enter the current or former business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee or, in the case of a former business premises, by a person with the authority to allow entry into the premises;

(b) require the production of and examine documents that relate to the matters under review, including client files, and examine systems and procedures of the licensee's professional business; and

(c) require the licensee and people who work or worked with the licensee to provide information that relates to the matters under review.

Consequently, pursuant to s. 2(1)-(1)(viii) of O. Reg. 167/07 the Tribunal Chair can assign a single adjudicator to determine the merits of an application that includes failure to co-operate "with a person conducting an audit, investigation, review, search or seizure under Part II of the Act." This proposed amendment is a natural next-step expansion following the current successful implementation of Rule 21.

If adopted, the proposed amendment will reduce the burden for the Tribunal, the Law Society and Licensees in the rare occasions where a licensee is alleged to have failed to co-operate with an audit or a review.

This proposal was presented to the Chair's Practice Roundtable before consideration by the Tribunal Committee. The proposal received support.

Rule 2: Application and Definitions

Definitions

2.3…

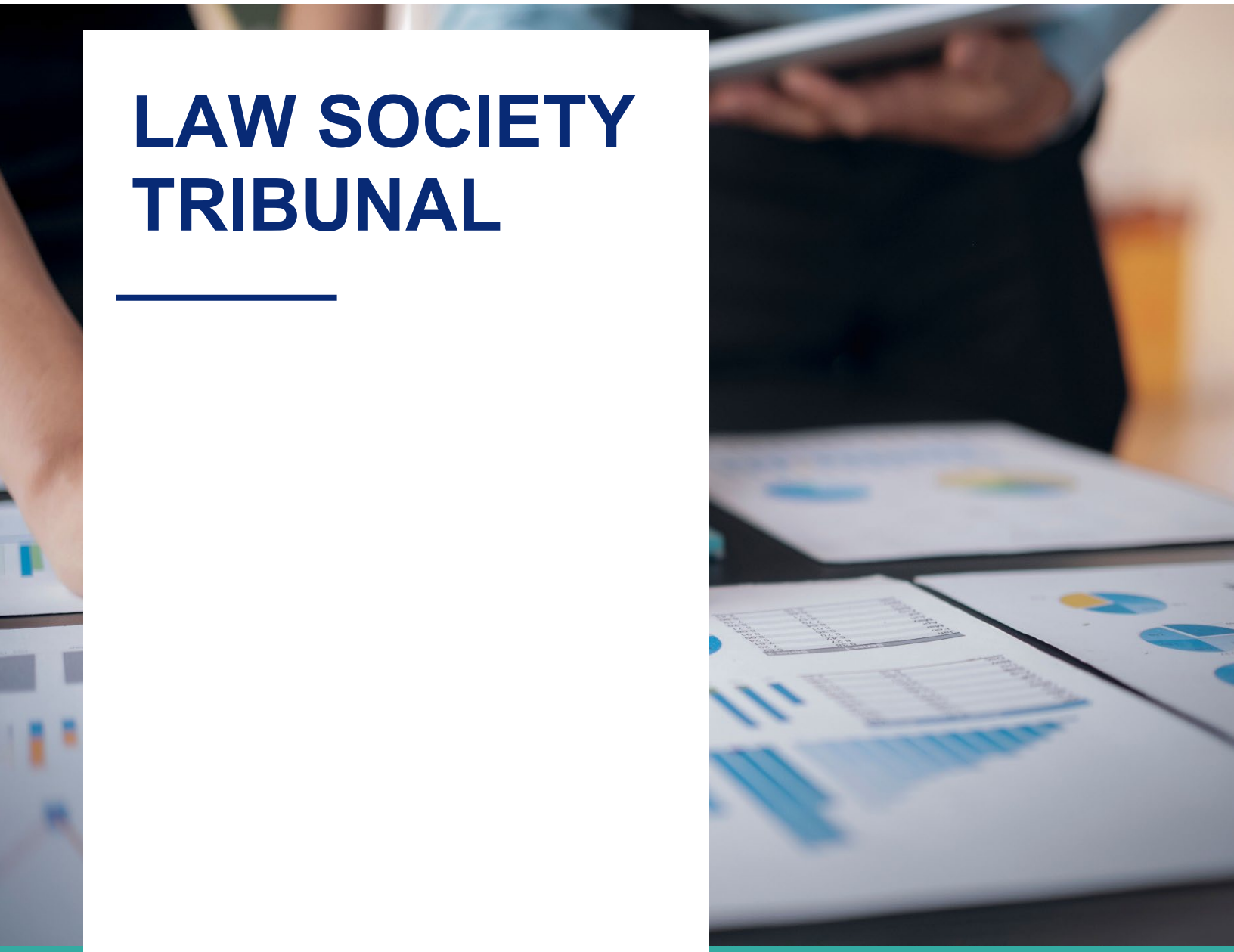
“failure to co-operate application” means a summary hearing in which the notice of application alleges one or more failure(s) to respond promptly and completely to requests made pursuant to any of sections 42(2), 49.2(2) and 49.3(2) of the *Law Society Act* but not other misconduct;

Règle 2: Champ d’application et definitions

Définitions

2.3…

« requête pour défaut de coopérer » S’entend d’une audience sommaire donnant suite à un avis de requête alléguant un ou plusieurs défauts de répondre rapidement et complètement aux demandes faites en application des paragraphes 42 (2), 49.2 (2) et 49.3 (2) de la *Loi sur le Barreau*, mais ne mentionnant aucun autre manquement;



LAW SOCIETY TRIBUNAL

Q1-2 COMBINED STATISTICS

January 1, 2023 to June 30, 2023

Law Society Tribunal
Tribunal du Barreau

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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 a consolidated snapshot of the first half of 2023 comprising Q1 (Jan-Mar) and Q2 (Apr-Jun) together. This recognises that quarterly statistics may not best reflect the overall efficiency of the Tribunal's work, considering that many complex matters straddle multiple operational quarters of the year. Comparable statistics for the combined first halves of 2021 and 2022 have been included for comparison.

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, a notice of motion to vary or cancel an interlocutory order or notice of appeal with the Tribunal.

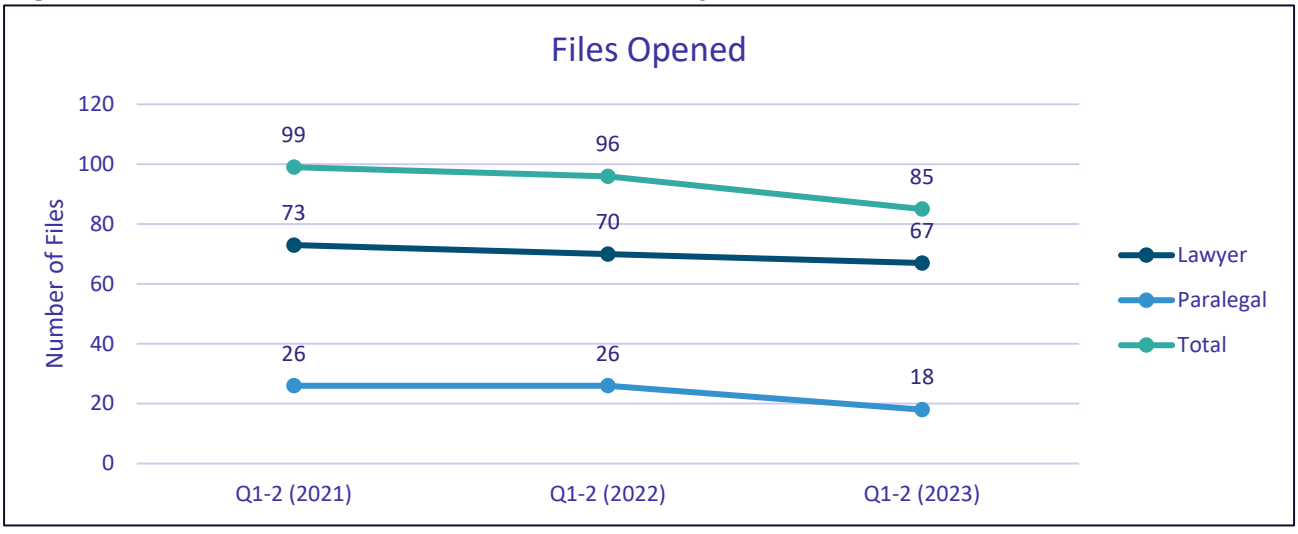
Unlike regular files, summary hearings tend to be brief, and are always heard by a single adjudicator.

Figure 1: Types of Files Opened in the first half of this year (Q1-2 2023)

Type of File	Lawyer	Paralegal	Total
Regular	47	9	56
Summary	13	5	18
Appeal	7	4	11
Total	67	18	85

Files related to the same lawyer or paralegal that are heard concurrently are counted as separate files.

Figure 2: Total Number of Files Opened and File Types



The bencher election took place in April 2023. This may explain the slight decrease in opened cases during the first two quarters of 2023, as the new Proceedings Authorization Committee may have authorized fewer cases while it onboarded its new members.

Files Closed

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

Figure 3: Types of Files Closed in the first half of this year (Q1-2 2023)

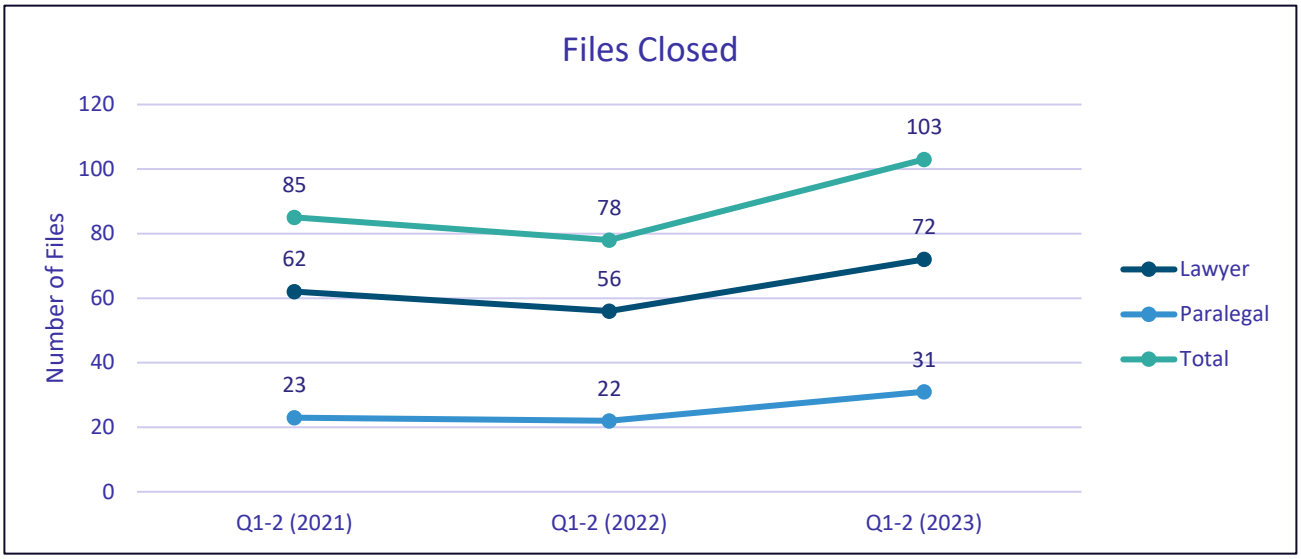
Type of File	Lawyer	Paralegal	Total
Regular	48	24	72
Summary	15	6	21
Appeal	9	1	10
Total	72	31	103

Regular files are applications which are required to be heard by a three-person panel. Summary files are applications which are heard by one-person panels.

In May 2022, a new rule was adopted for a sub-set of the summary files. These “failure to cooperate” cases now proceed under Rule 21. Licensees are required to respond promptly and completely to investigative requests from the Law Society. In some cases, it may not be possible to provide requested information and documents. There may be defences available. Rule 21 provides a process for oral hearings where there are factual and legal issues to address but otherwise provides for written hearings.

In this reporting period, 17 out of 21 summary hearings were applications under Rule 21, 10 of those 17 (59%) were heard in writing.

Figure 4: Total Number of Files Closed and File Types



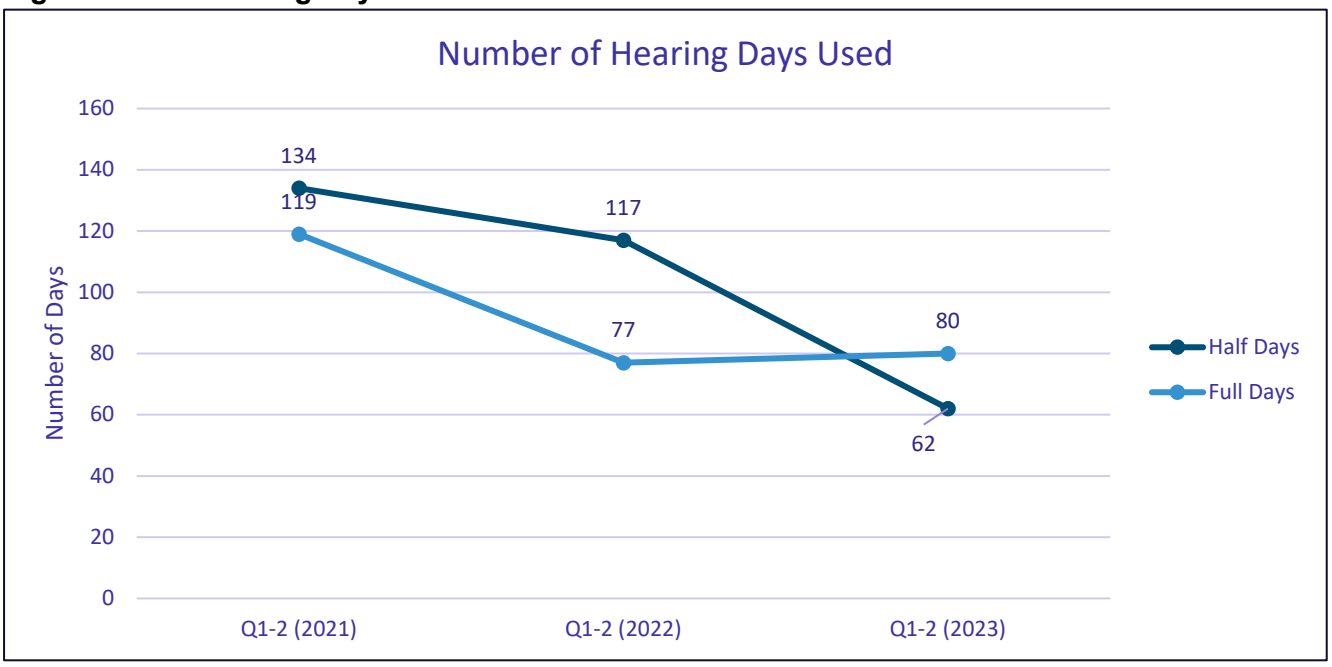
Caseload

The number of active files can fluctuate through the year based on the number of existing files closed and the number of new files opened. As reported earlier, for the first half of this year, 103 files were closed at the Tribunal compared to 85 files opened. This has resulted in a decrease in inventory of files. At the end of Q2 this year, 178 files remain active at the Tribunal. This is much lower compared to previous years with 233 open files at the end of Q2 in 2022 and 235 active files at the end of Q2 in 2021.

Hearings

All hearings at the Tribunal are either oral or written. 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.

Figure 5: Oral Hearing Days Used



For Q1-2 2023, the Tribunal held many multi-day hearings that involved an increased number of full days compared to half days. Even still, there continues to be a downwards trend of hearing days used when compared to previous years.

Written hearings are conducted with the panel making its decision based on documents without an in-person or electronic hearing. There were 32 written hearings at the end of this reporting period—a slightly lower number to the 36 written hearings reported at same time last year.

Orders and Reasons

Orders

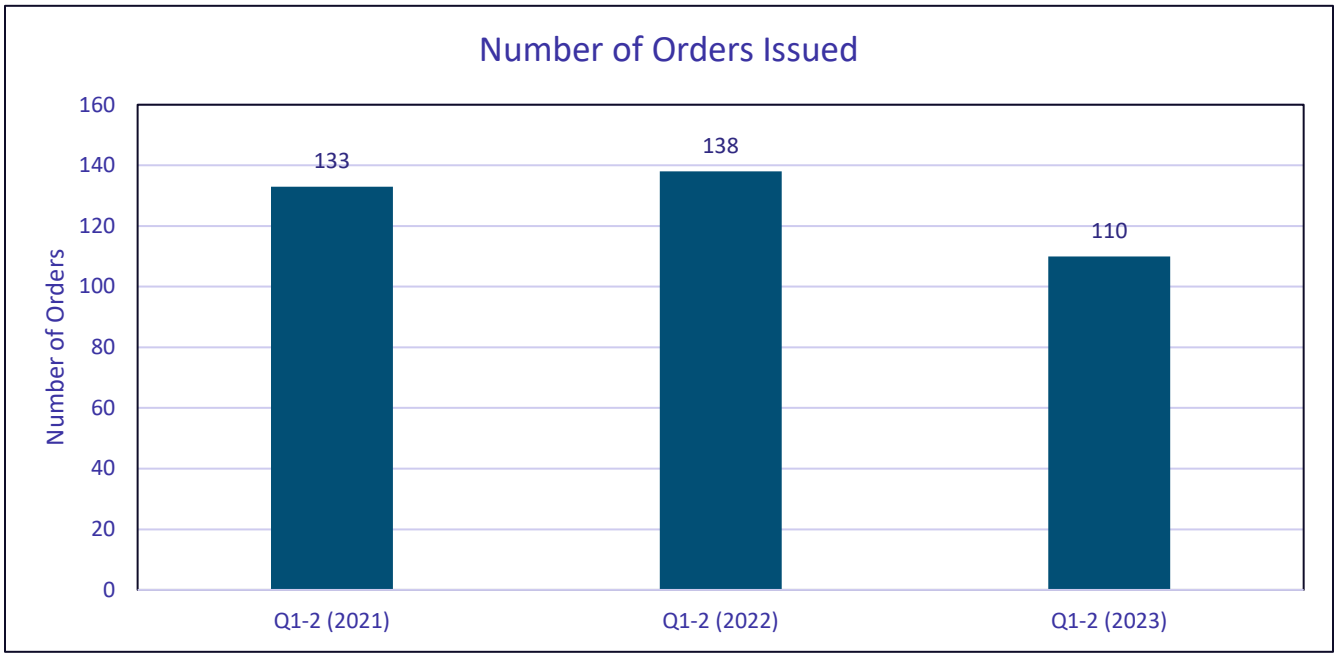
There are many types of orders that the Tribunal may make during the course of a proceeding. Merits orders decide an application on its merits (for example, whether an interlocutory suspension is granted or whether a licensee has engaged in professional misconduct and will be subject to penalty) and 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 6: Merits Orders Issued Q1-2 2022 and their Corresponding Reasons

	Q1-2 (202	Q1-2 (2022)	Q1-2 (2023)
	Total	**Total**	**Total**
Order made at hearing with no reasons	35	41	27
Order made at hearing with oral reasons	5	8	1
Order made at hearing with reasons to follow	49	47	32
Decision reserved (order made after hearing together with written reasons)	44	42	50
	133	138	110

Figure 7: Total Number of Orders Issued



Reasons

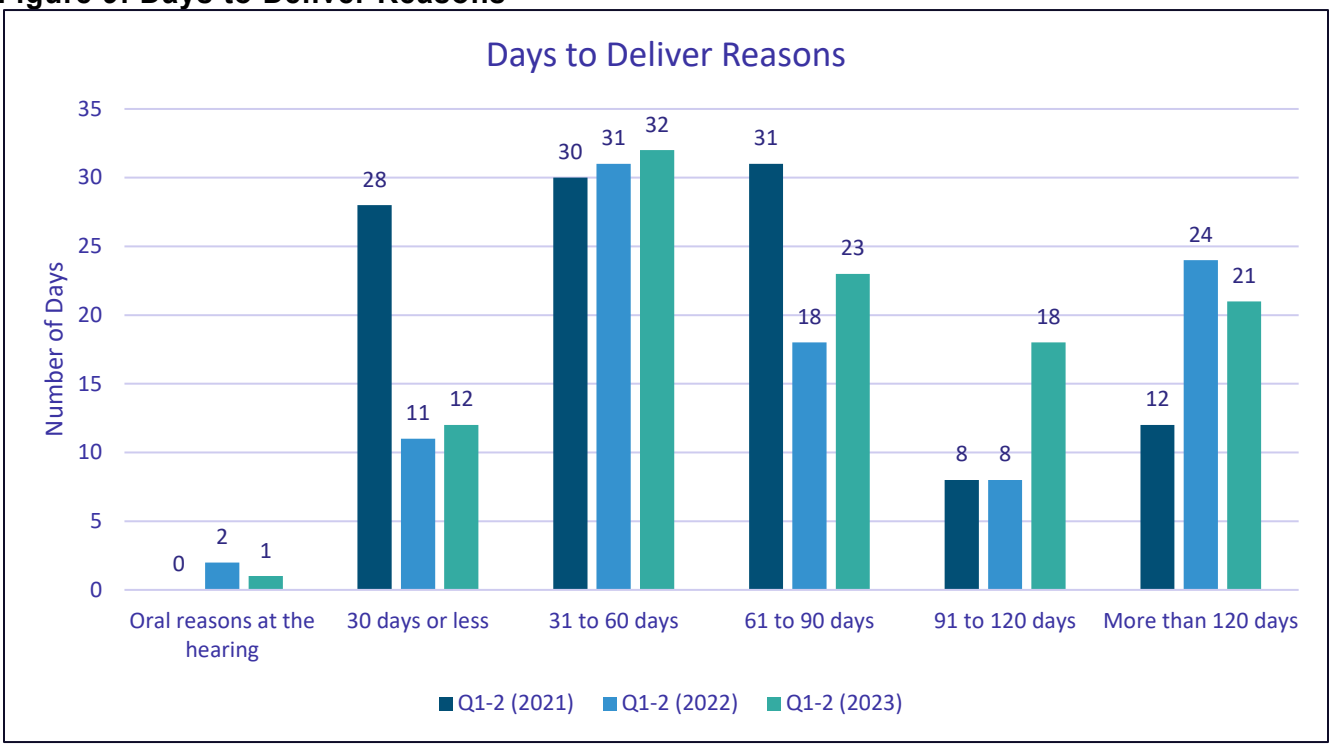
At the end of an oral hearing, or when the last submissions are received in a written hearing, the panel can begin the process of writing reasons. The Tribunal sends written reasons to CanLII, where they are usually published within a week of their delivery to the parties. Sometimes the panel delivers 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 107 reasons in the first half of this year.

Figure 8: Time Taken to Complete Reasons

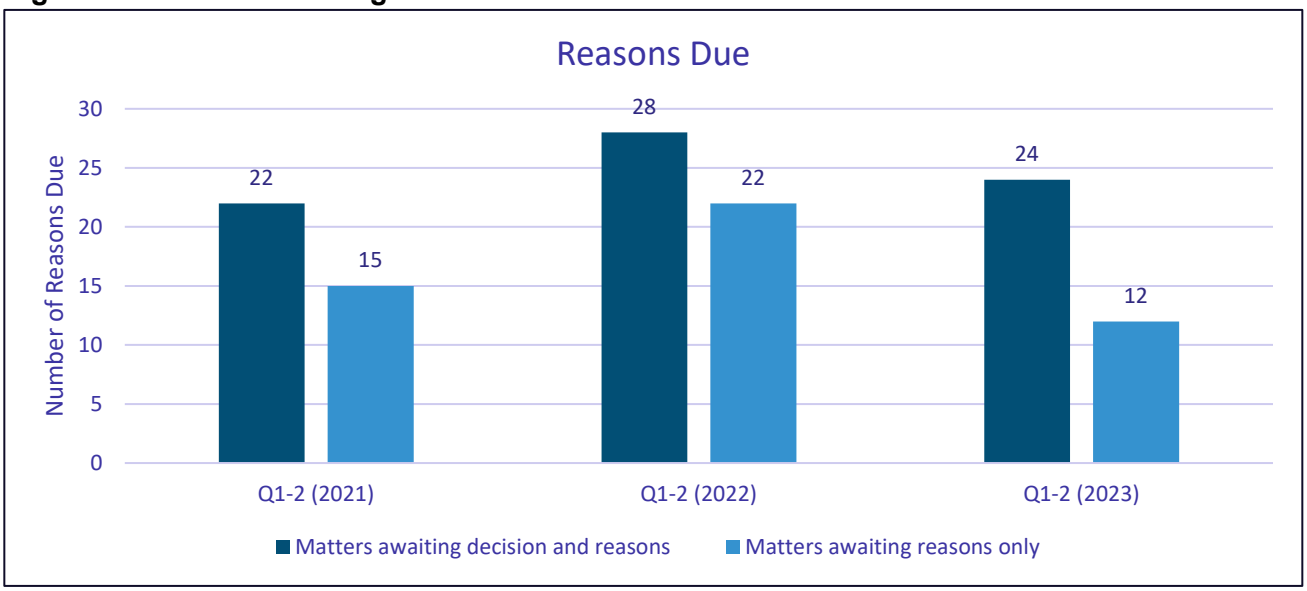
Days taken to deliver reasons to parties	Q1-2 (2021)	Q1-2 (2022)	Q1-2 (2023)
Oral reasons at hearing	0	2	1
30 days or less	28	11	12
31 to 60 days	30	31	32
61 to 90 days	31	18	23
91 to 120 days	8	8	18
More than 120	12	24	21
Total	109	94	107

Figure 9: Days to Deliver Reasons



The average number of days from reserve to release of written reasons during this period was 85, similar to the 83 days reported in 2022.

Figure 10: Matters Awaiting Reasons and/or a Decision



At the end of the first half of this year, there were 36 outstanding reasons with 9 of those reasons being more than 90 days after the reserve.