



**Tab 9**

## **Tribunal Committee**

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### **For Information**

April 25, 2024

**Committee Members:**

Rebecca Durcan (Chair)

Catherine Banning (Vice-Chair)

Malcolm M. Mercer (*ex officio*)

Peter Wardle (*ex officio*)

Ryan Alford

Paula Callaghan

Neha Chugh

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## 2023 Statistics – For information

### 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.

### Committee Process

The Committee met on April 11, 2024 and received the report. Committee members Rebecca Durcan (Chair), Catherine Banning (Vice-Chair), Malcolm M. Mercer (*ex officio*), Ryan Alford, Paula Callaghan, Neha Chugh, and Murray Klippenstein were in attendance. Staff members Cynthia Pay and Lisa Mallia also attended.

### Background

The statistics we report 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.

### 2023 Annual Report on Statistics – some highlights

The annual report shows that the number of files opened and closed continues to vary only slightly year to year. Figure 1 shows that in 2023, 156 files were opened. This compares to the 162 opened in 2022 and 161 opened in 2019.

The number of files closed tends to follow the number of files opened although fewer files were closed in 2020 than usual as a result of re-scheduled hearings amidst COVID-19.

### Proceeding Types

Conduct files continue to make up the majority of the applications brought to the Tribunal (Fig. 3), with 58% of lawyer files and 47% of paralegal files opened in 2023 being non-summary conduct files (56% of the total files opened). Summary conduct files are the second largest category, accounting for approximately 13% of all files opened. 51% of all lawyer files and 43% of paralegal files closed were non-summary conduct files.

Two capacity applications were opened in 2023 and five were closed.

Twenty-three appeals were opened in 2023, four brought by the Law Society. Twenty-two appeals were closed in 2023.

### Conduct subject areas

Figure 5 sets out the subject areas for the conduct applications opened in 2023. The most common subject area was responsibility to the Law Society.

This report is the first to look at the effects of Rule 21 – the new approach to failure to co-operate applications introduced in May 2022. In 2023, 27 of 35 summary hearing cases dealt with failure to co-operate applications. Of those 27 applications, 13 were dealt with in writing and 14 orally.

### Vacated hearing days

In 2023, 137 full-day hearing days and 21 half-day hearing days were vacated. In 2022, 157 full-days and 14 half-days were vacated. Most full-day hearing days were vacated between 8 and 29 days out from the scheduled hearing. Most half-day hearing days were vacated the week before the scheduled hearing. (Fig. 10)

### Penalties in conduct files

Figure 20 sets out the penalties ordered for the conduct files that were closed in 2023. Definite suspensions were ordered in most cases. The average suspension was for three months.

Figure 24 shows the range of costs awarded in 2023 with 38 files ordering costs of under \$5,000 (31% of all costs ordered) to more than \$20,000 (19% of costs ordered). Costs were ordered in 122 out of 186 files closed in 2023.

### Long-term trends

Figures 31 to 34 show some of the statistics tracked since 2014. These include files opened and closed, reasons published, adjudicator hours and the number of pre-hearing conferences held.

# LAW SOCIETY TRIBUNAL

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## 2023 ANNUAL STATISTICS

January 1, 2023 to December 31, 2023

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## Introduction

The Law Society Tribunal is an independent adjudicative tribunal within the Law Society of Ontario. The Tribunal processes, hears and decides regulatory cases between the Law Society and Ontario lawyers and paralegals in a manner that is fair, just and in the public interest.

Statistics are an important part of understanding the work of the Law Society Tribunal. By recording, analyzing and sharing data, we are able to 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.

## Volume

### Total Files Opened and Closed

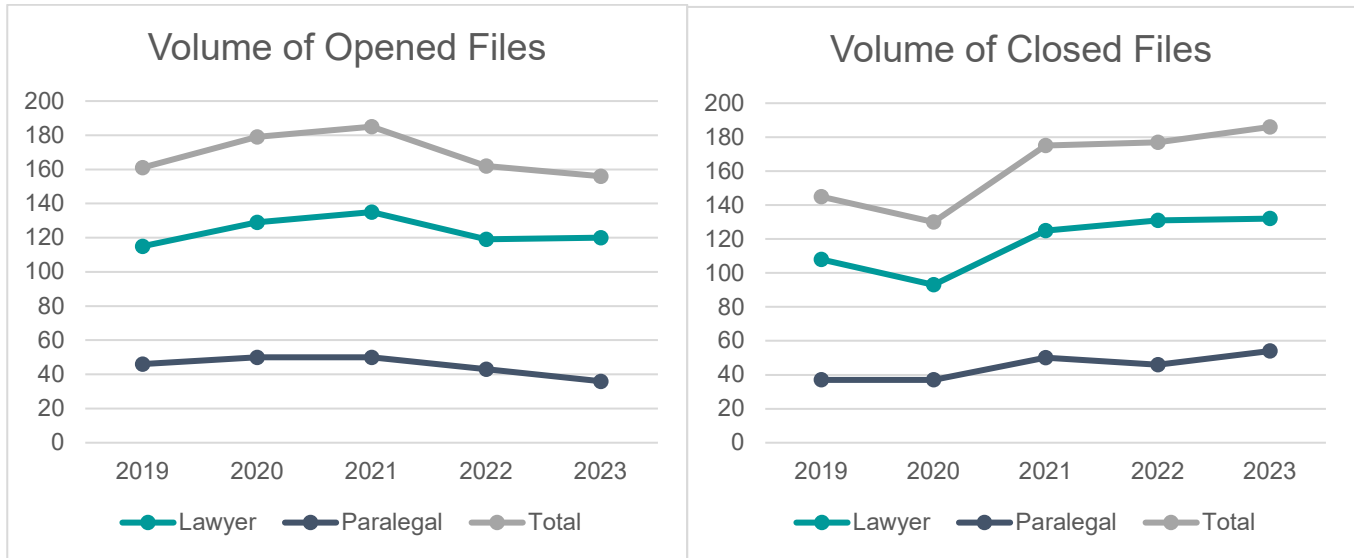
A Tribunal file is opened when an applicant files a notice of application, notice of referral for hearing, notice of motion to vary or cancel an interlocutory suspension or restriction or notice of appeal with the Tribunal.

The Tribunal closes a file after the final order and/or final reasons are released, or if the matter is withdrawn or deemed withdrawn. Where a final order has been issued in a matter with reasons to follow, the Tribunal file will not be closed until the reasons are released.

In 2023, the Tribunal closed 186 files, the most of any year in the past five years.

**Figure 1: Number of files opened and closed from 2019 to 2023**

	Licence Type	2019	2020	2021	2022	2023
<b>Total # of Files Opened</b>	Lawyer	115	129	135	119	120
	Paralegal	46	50	50	43	36
	<b>Total</b>	<b>161</b>	<b>179</b>	<b>185</b>	<b>162</b>	<b>156</b>
<b>Total # of Files Closed</b>	Lawyer	108	93	125	131	132
	Paralegal	37	37	50	46	54
	<b>Total</b>	<b>145</b>	<b>130</b>	<b>175</b>	<b>177</b>	<b>186</b>

**Figure 2: Number of files opened and closed from 2019 to 2023**


In 2023, 156 cases were opened, which was the fewest compared to recent years. In contrast, the Tribunal closed 186 files in 2023, which was the highest compared to past years. Trends show that the Tribunal has returned to pre-pandemic levels, having worked through COVID-19’s impact starting in 2020.

## Proceeding Types

The Law Society Tribunal is comprised of a Hearing Division and an Appeal Division; the Hearing Division hears a variety of types of proceedings, while the Appeal Division hears appeals of Hearing Division decisions and of administrative suspension orders.

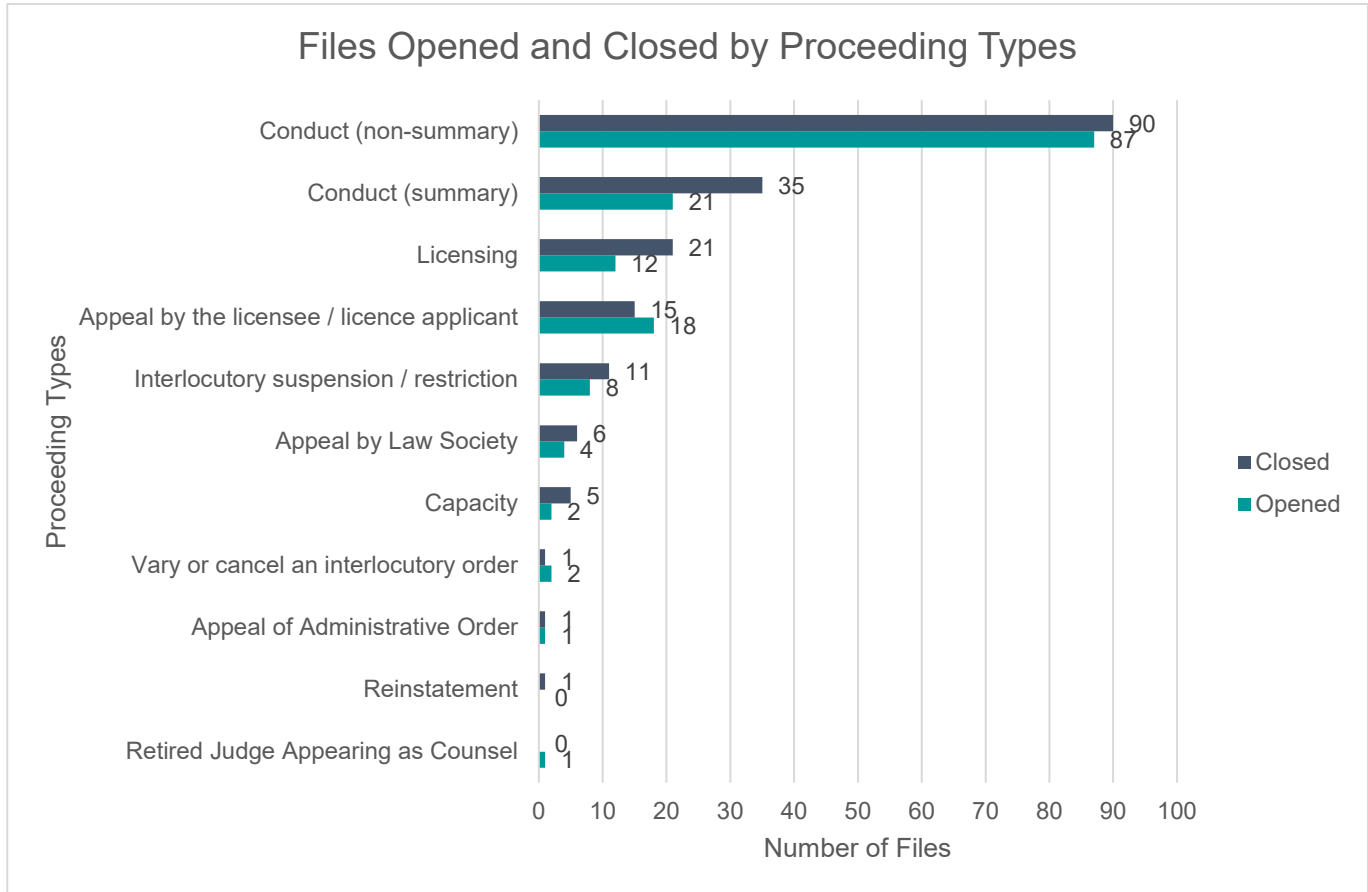
**Figure 3: Number of files opened and closed in 2023 by proceeding type**

Proceeding type	Lawyer files opened	Paralegal files opened	Total files opened	Lawyer files closed	Paralegal files closed	Total files closed
Appeal by the licensee / licence applicant	13	5	18	13	4	17
Appeal by Law Society	2	2	4	2	2	4
Appeal of Administrative Order	1	0	1	1	0	1
Capacity	1	1	2	3	2	5
Conduct (summary)	14	7	21	25	10	35
Conduct (non-summary)	70	17	87	67	23	90
Interlocutory suspension / restriction	7	1	8	9	2	11
Vary or cancel an interlocutory order	2	0	2	1	0	1
Licensing	9	3	12	10	11	21
Non-Compliance	0	0	0	0	0	0
Retired Judge Appearing as Counsel	1	0	1	0	0	0
Reinstatement	0	0	0	1	0	1
<b>All proceeding types</b>	<b>120</b>	<b>36</b>	<b>156</b>	<b>132</b>	<b>54</b>	<b>186</b>



The greatest number of files closed in 2023 were non-summary conduct files; 51% of all lawyer files and 43% of all paralegal files closed were non-summary conduct files. In all files closed in 2023, licensing made up 11% and appeals made up 8%.

**Figure 4: Files opened and closed by proceeding type in 2023**



## Subject Areas

The Tribunal tracks subject areas of conduct files so that we can better understand the kind of cases that come before it. A single file can encompass more than one subject area. The majority of Tribunal files are in the subject area “Responsibility to the Law Society”. Most files in this subject area involve allegations of failure to co-operate with Law Society investigations.

### Rule 21 – Failure to Co-operate Applications

In May 2022, the Tribunal introduced Rule 21 to deal with allegations of failure to co-operate.

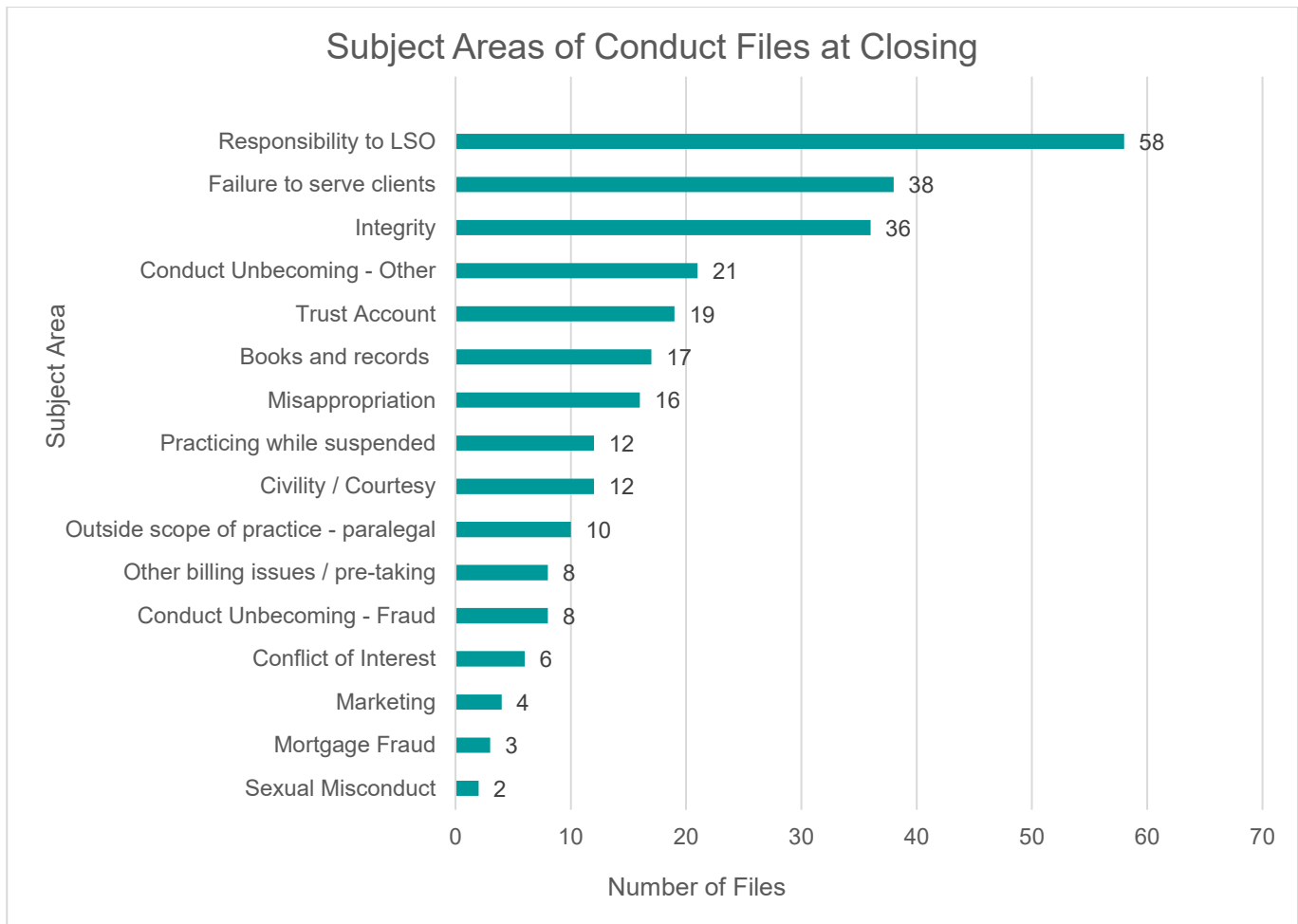
Licensees are required to respond promptly and completely to investigative requests from the Law Society. However, whether a response is prompt may depend on the circumstances, and in some cases, it may not be possible to provide requested information and documents. Rule 21 provides a process for oral hearings where there are factual and legal issues to address while triaging cases that do not require oral hearings by converting them into written hearings.

In 2023, 27 of 35 summary hearing cases dealt with failure to co-operate applications. Of those 27 failure to co-operate applications:

- 13 (52%) applications resulted in written hearings.
  - Penalties included definite suspensions with some coupled indefinite suspensions.
  - Costs awards were \$1,500 in 100% of cases.
  - Average days from date filed to closure was about 66 days.
  
- 14 (56%) applications were heard orally.
  - Penalties included 3 reprimands and 11 definite suspensions coupled with indefinite suspensions.
  - Costs awards ranged from \$2,000 to \$15,000.
  - Average days from date filed to closure was about 113 days.

Triaged matters that were heard in writing allowed the Tribunal to render quicker decisions without parties, adjudicators, court reporters and Tribunal coordinators having to attend a hearing. This resulted in reduced operational costs to the Tribunal as well as reduced costs ordered against licensees to the Law Society.

**Figure 5: Subject areas of conduct files in 2023**

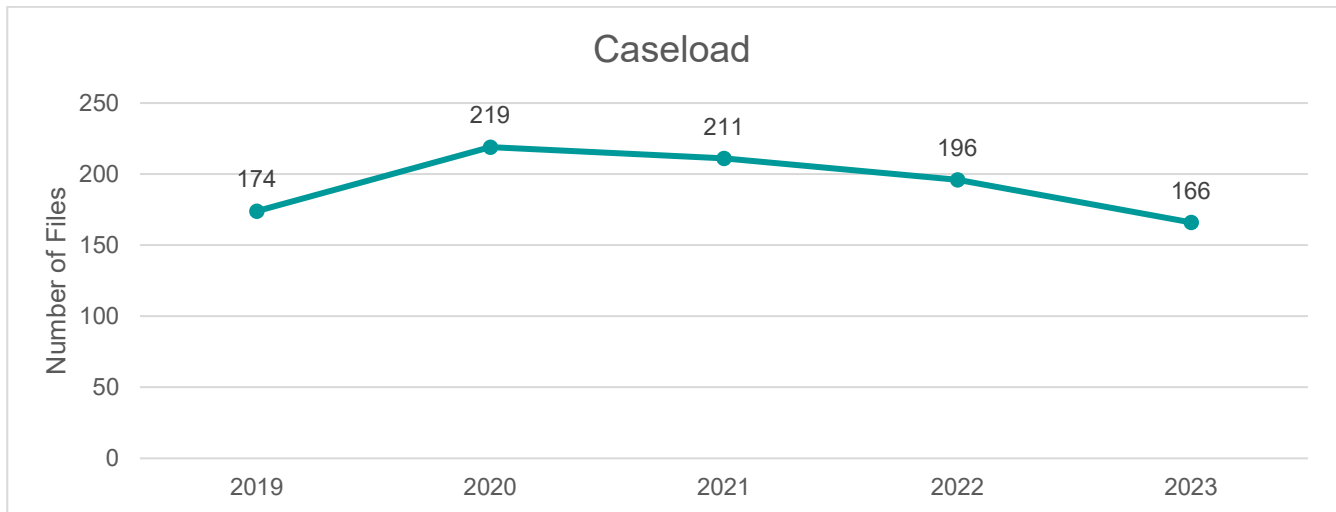


## Caseload

There are several ways to get a picture of the work accomplished by the Tribunal over the year, one of which is to measure how many files are open at the end of each year.

By the end of 2023, 166 files remained active. This has been the lowest in the past 5 years.

**Figure 6: Caseload from 2019 to 2023**



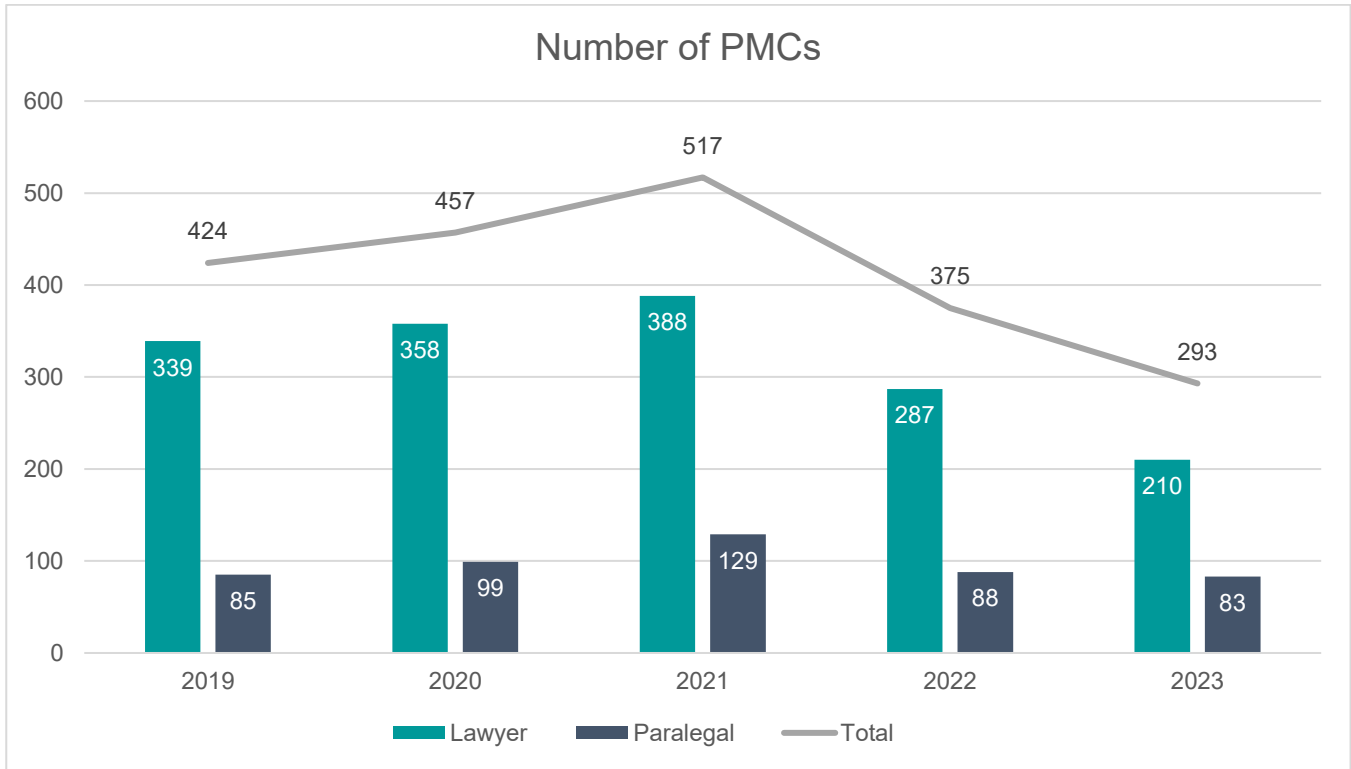
## Types of Appearances

In addition to hearings, the Tribunal holds proceeding management conferences (PMCs) and pre-hearing conferences (PHCs). A PMC is often set at the commencement of a matter and can be used to determine a pre-hearing conference date, conduct case management, and deal with any other preliminary issues.

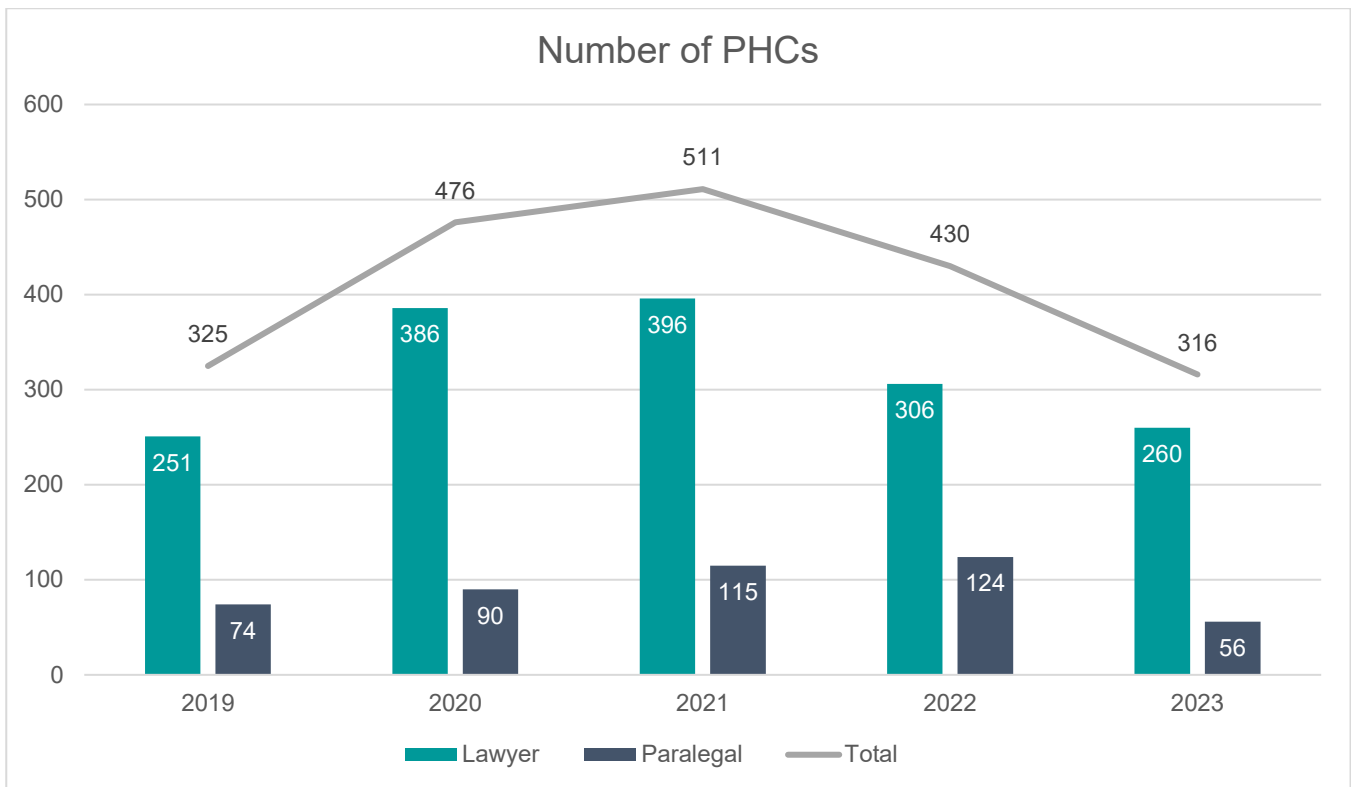
The matter may then proceed to a PHC, which is used to identify, limit, simplify, and attempt to settle some or all of the issues of the case. PHCs can be held at any time before the completion of the hearing on the merits of the case.

In 2023, the Tribunal used the lowest number of PMCs and PHCs in the last 5 years.

**Figure 7: Number of PMCs for each licence type**



**Figure 8: Number of PHCs for each licence type**

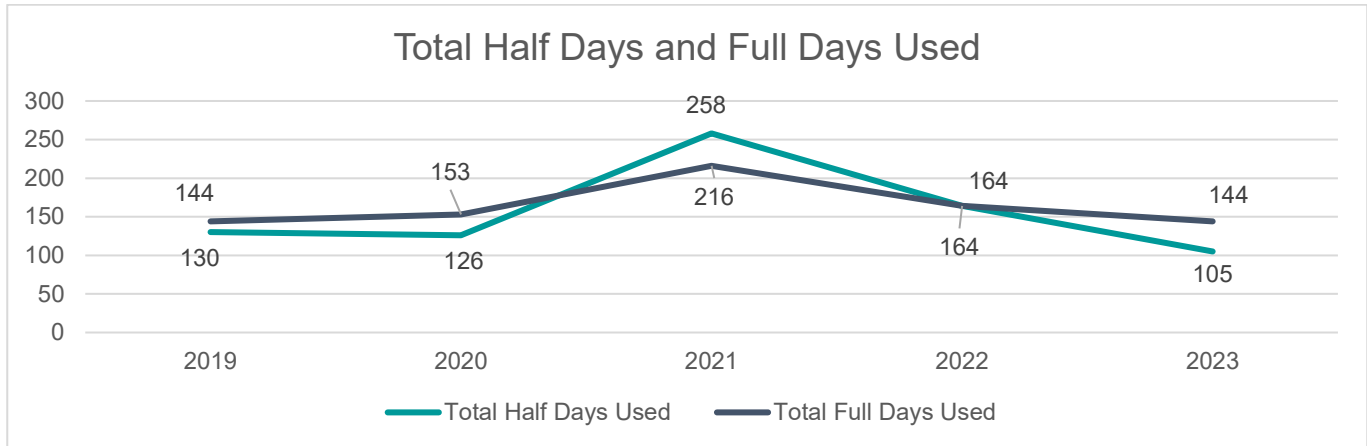


## Timeliness and Length

### Hearings

All hearings at the Tribunal are either oral or written. Oral hearings (either in-person or electronic) that are more than three hours are considered full-day hearings, and those that conclude within three hours are considered half-day hearings.

**Figure 9: Number of half days and full days used for hearings**



In 2023, the Tribunal used less hearing time to resolve matters. The total number of half days and full days used decreased by 24% when compared to 2022.

Written hearings are conducted by written submissions, with the panel making its decision based on documents without an in-person or electronic hearing. There were 42 written hearings in 2023 compared with 72 in 2022.

### Vacated Hearings

Hearing days can be cancelled, or ‘vacated’ for a variety of reasons in advance of the hearing; this can occur during a PMC, a PHC, at a hearing or by a notice of withdrawal.

**Figure 10: Number of full days and half days vacated in 2023**

Number of days before the scheduled hearing	Full days vacated	Half days vacated
Within 7 days	52	16
From 8 to 29 days	60	4
From 30 to 59 days	19	1
60 or more days	6	0
<b>Total</b>	<b>137</b>	<b>21</b>

In 2023, 137 full-day hearing days and 21 half-day hearing days were vacated compared to 157 full-days and 14 half-days vacated in 2022.

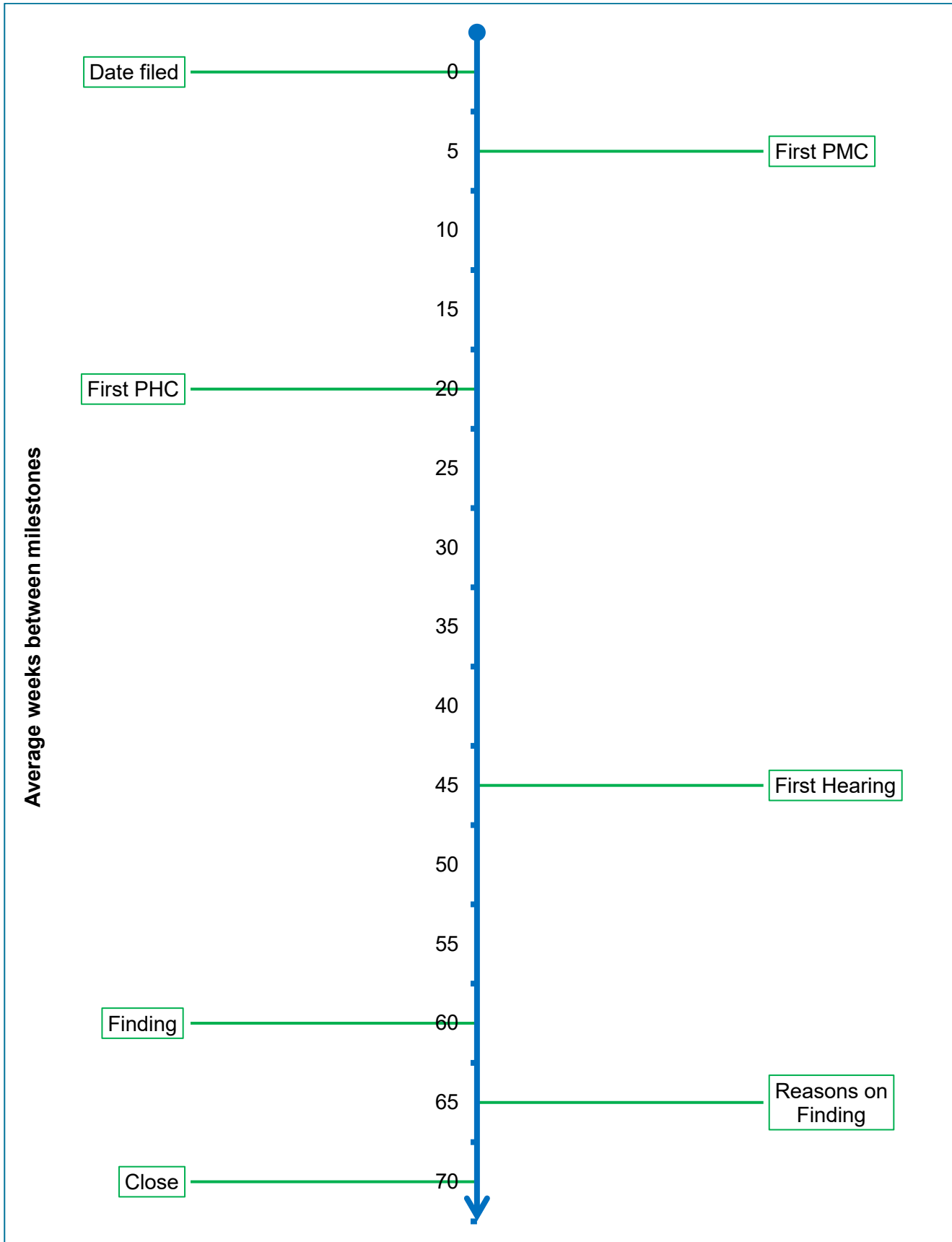
## Proceeding Milestones

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 milestones.

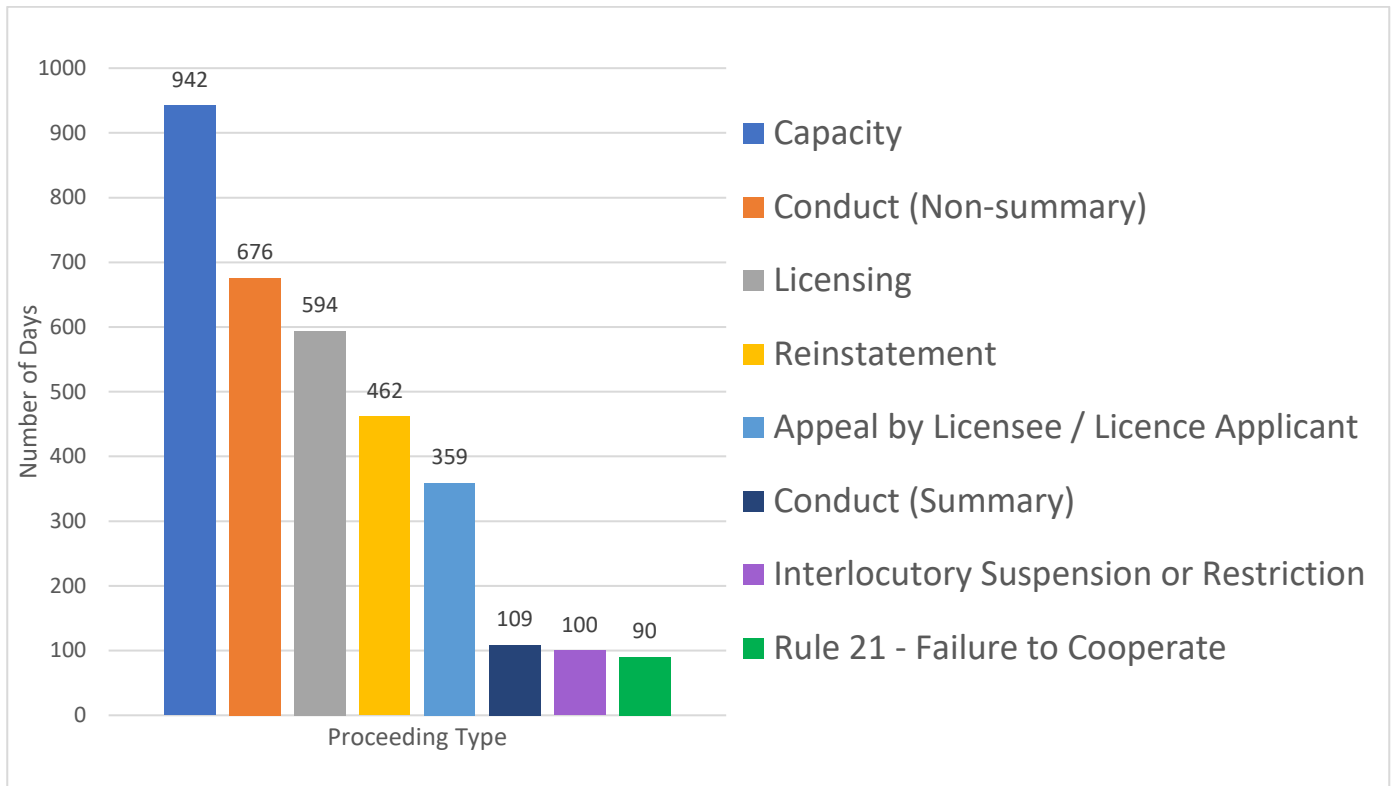
**Figure 11: Average days from date filed to significant milestones for files closed in 2023**

Milestone	Lawyer files	Paralegal files	All files
First PMC	39	42	40
First PHC	136	133	135
First hearing	343	306	332
Decision on finding / determination	436	348	411
Last hearing / submissions	457	357	429
Decision on penalty (conduct matters only)	499	284	442
Reasons on finding / determination	490	409	467
Reasons on penalty (conduct matters only)	553	334	496
File closed	517	409	486

Figure 12: Approximate average weeks between milestones for files closed in 2023



**Figure 13: Average days from date filed to date closed for files closed in 2023**



There were five capacity files closed in 2023. Three of those files took more than 1,000 days to close. Because this kind of file deals mostly with mental health matters, a variety of issues can arise that lengthen the proceedings. Often when this is the case, there is an undertaking not to practice or a suspension in place to protect the public while the proceedings continue.

Though interlocutory suspension/restriction files average 100 days to close, in many cases the licensee’s licence has been suspended or restricted well before the closing date, either because the panel made an order with reasons to follow or because an interim interlocutory suspension/restriction order was made.

**National Discipline Standards**

The National Discipline Standards (NDS) of the Federation of Law Societies of Canada are aspirational benchmarks designed to promote high performance standards for law societies. One of the National Discipline Standards is that 75% of all hearings commence within nine months of authorization and that 90% of all hearings commence within 12 months of authorization. In 2023, 49 of 99 (49%) first hearings commenced within nine months of the file being authorized and 57 of 100 (57%) first hearings commenced within 12 months of authorization.

A hearing commences when the adjudicative body first convenes to hear evidence or preliminary motions. The Law Society Tribunal continues to emphasize pre-hearing steps to assist in narrowing issues, concluding agreed statements of fact, and so on, with the goal of having shorter, less contentious hearings. These pre-hearing steps, although essential to the Tribunal’s process, are not considered first hearings (i.e. PMCs, PHCs). The Tribunal’s average for first appearances to commence in 2023 was 40 days.

There may also be a delay between the date of authorization and the date of filing at the Tribunal.

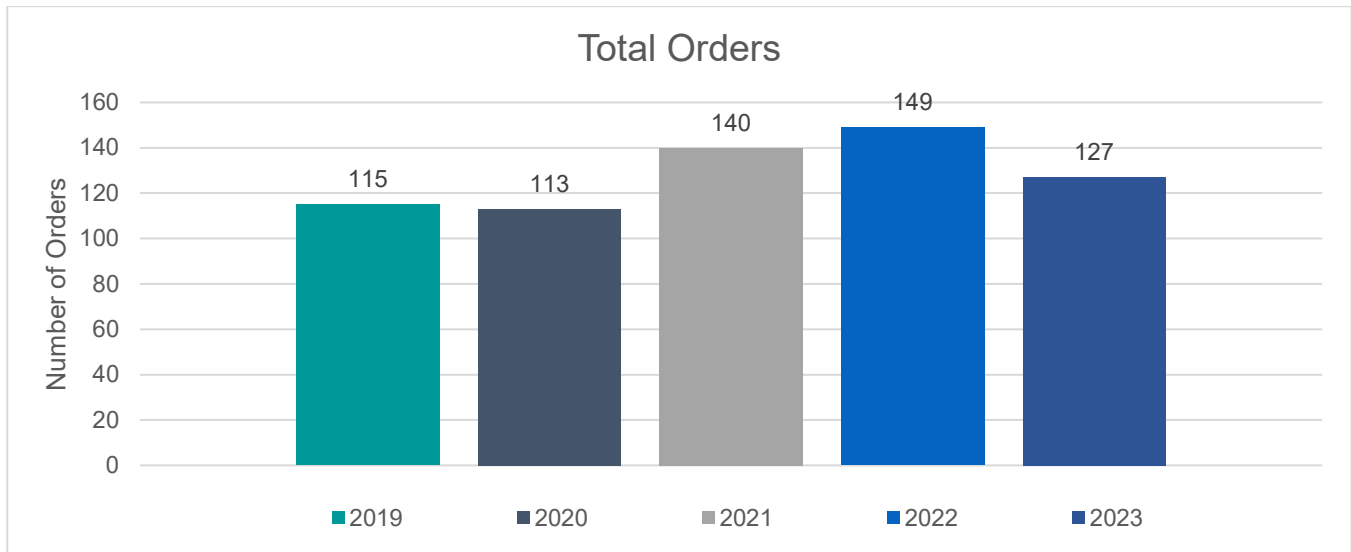


## Orders and Reasons

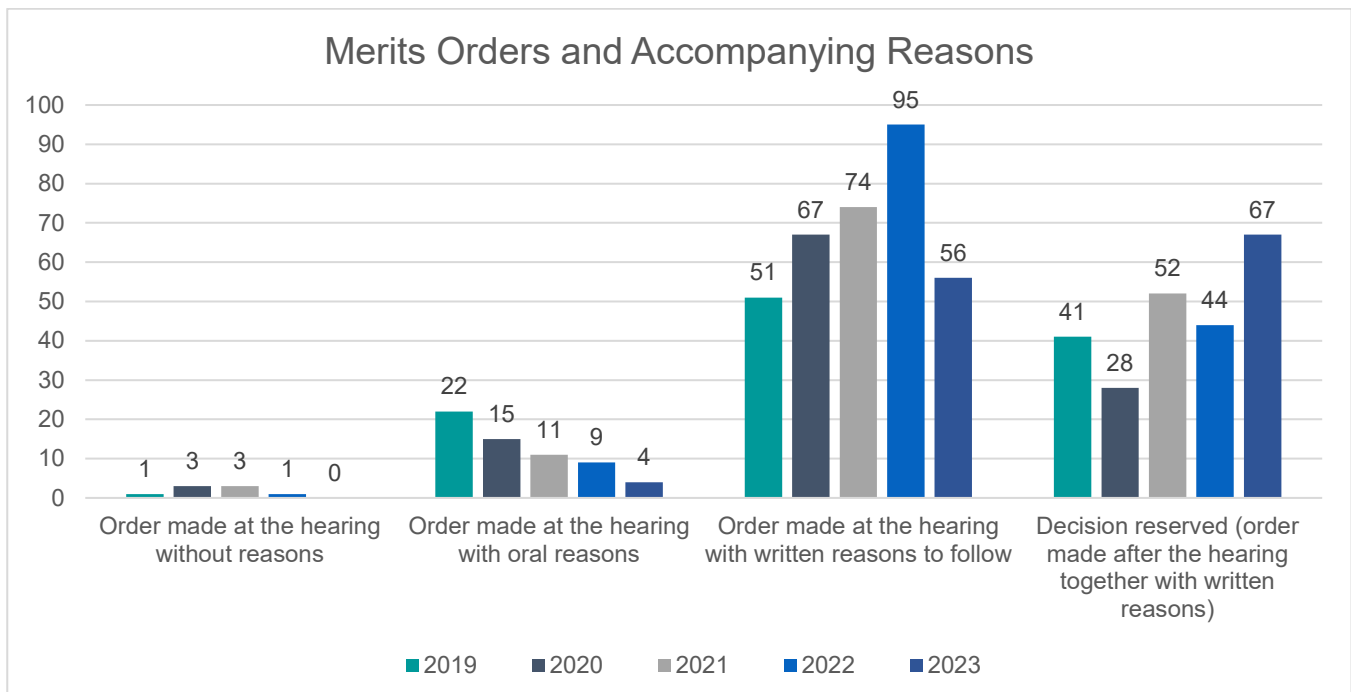
The Tribunal may make many types of orders during the course of a proceeding. Merits orders decide the central issue in the application--for example, whether an interlocutory suspension is granted, or whether a licensee engaged in misconduct and will be subject to a penalty. They are usually accompanied 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 14: Merits orders and accompanying reasons issued in 2023**



**Figure 15: Merits orders and accompanying reasons issued in 2023**



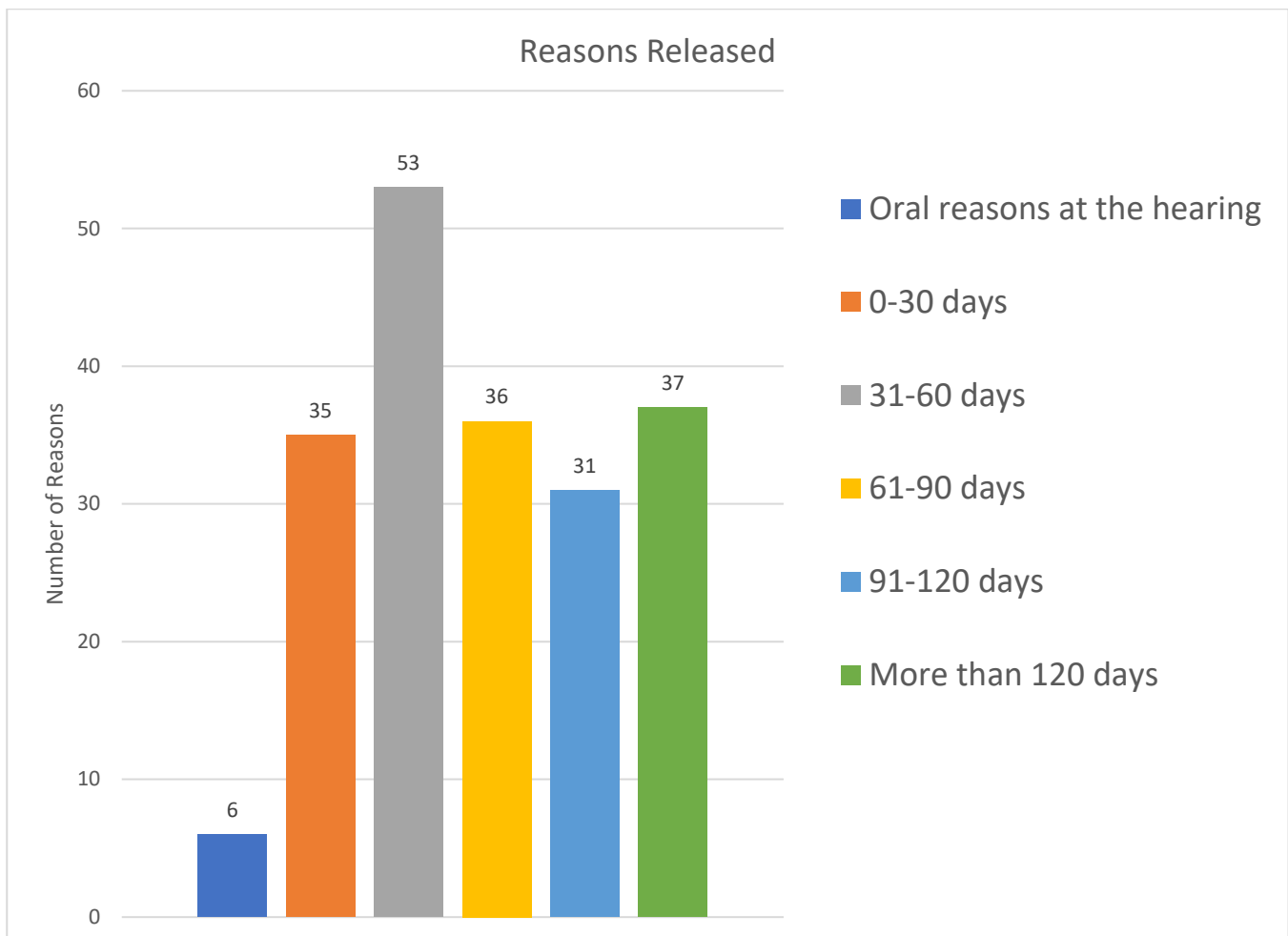
Over the past five years (leaving aside 2022), there has been a downwards trend in orders made at the hearing along with oral reasons, and an increasing number of orders made at the hearing with written reasons to follow. The Tribunal is also seeing increasing numbers of reserved decisions, in which neither order nor reasons are made at the hearing but are both released later in writing.

## Reasons

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

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

**Figure 16: Number of reasons released in 2023 and the time taken to release them**



The Tribunal issued 198 reasons averaging 81 days to complete. In 2023, 65% of written reasons were released within 90 days.

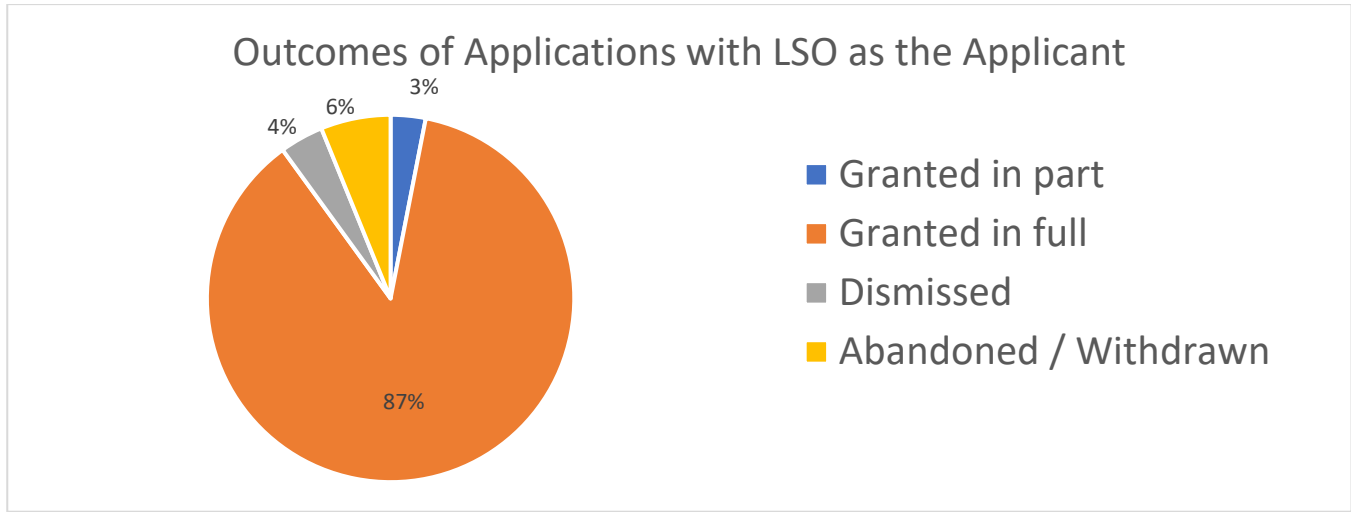
There were 10 reasons outstanding with 4 reasons outstanding for more than 90 days at the end of 2023.

## Outcomes

### Applications with the Law Society as Applicant

Most of the 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. The figures below exclude interlocutory suspension matters, which are expressed in a subsequent section.

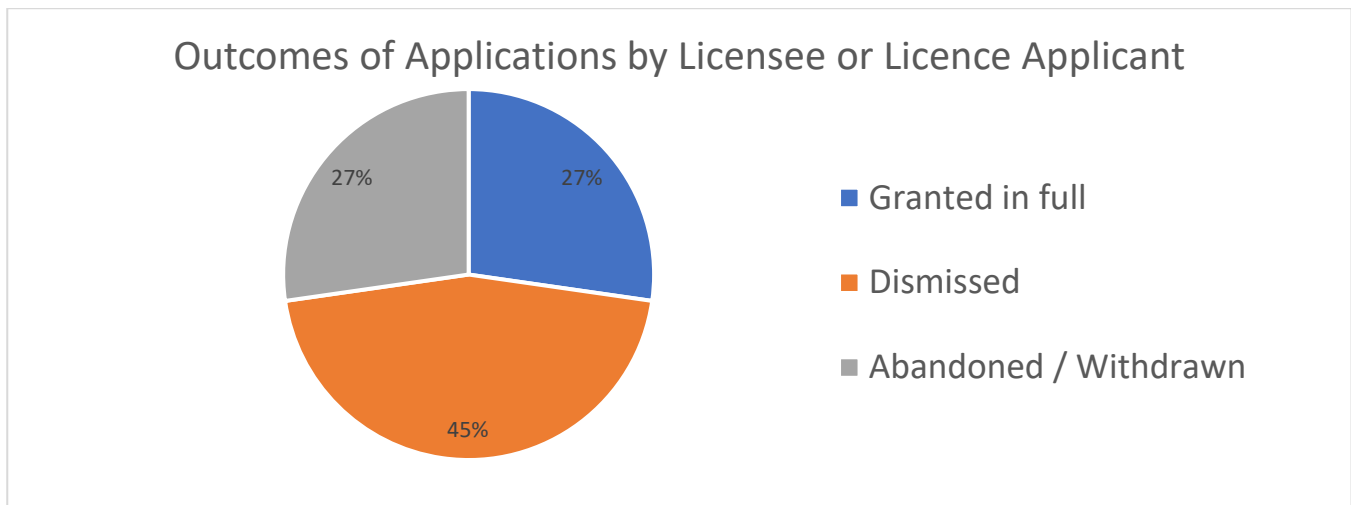
**Figure 17: Results of the 130 applications by the Law Society that were closed in 2023**



### Applications by the Licensee or Licence Applicant

Some types of matters, such as licensing hearings or reinstatements, are initiated by the licensee or licence applicant, with the Law Society as the respondent.

**Figure 18: Results of the 22 matters initiated by the licensee or licence applicant that were closed in 2023**



## Interlocutory Suspension or Restriction Motion

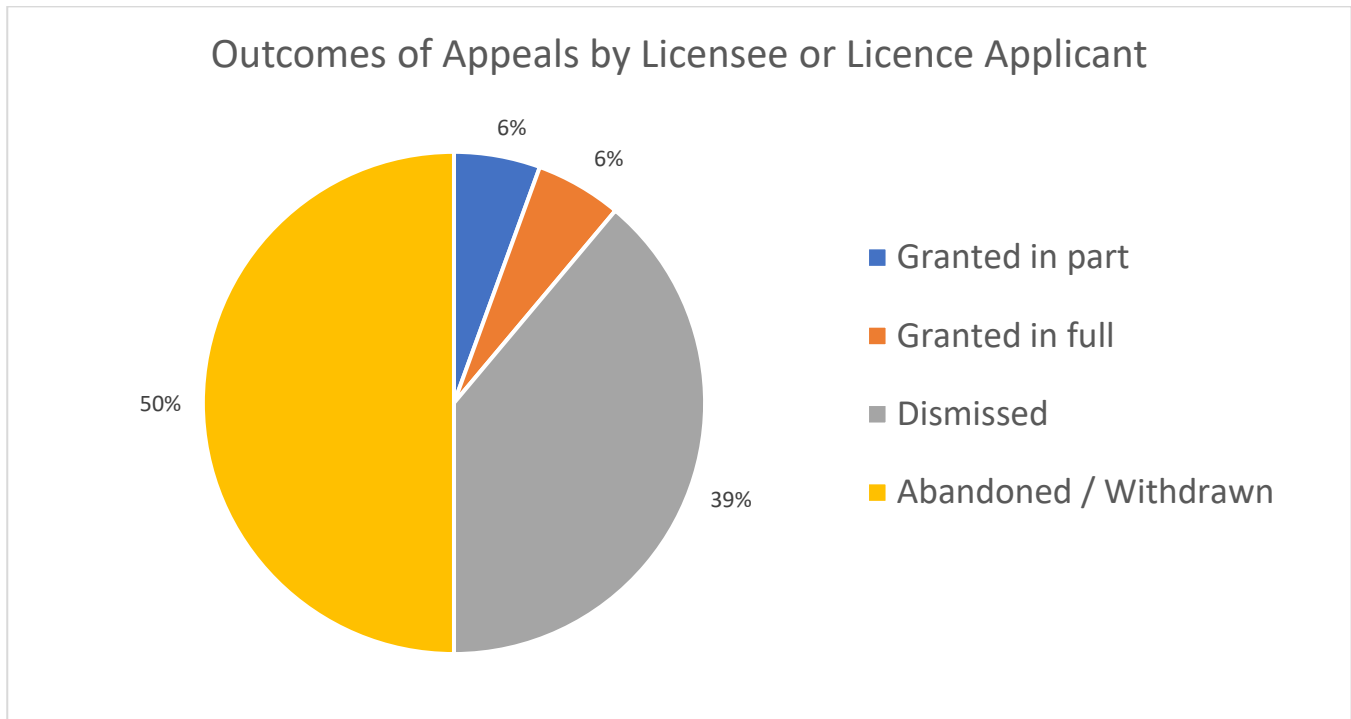
An interlocutory suspension or restriction is an interim measure that the Law Society may request before the hearing on the merits of the case. The Tribunal may order an interlocutory suspension or restriction when significant risk to the public or to the public interest in the administration of justice has been demonstrated.

Out of the 12 interlocutory suspension or restriction motions, 11 were granted in full and 1 was withdrawn.

## Appeals

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

**Figure 19: Results of the 18 appeals by the licensee or licence applicant that were closed in 2023**

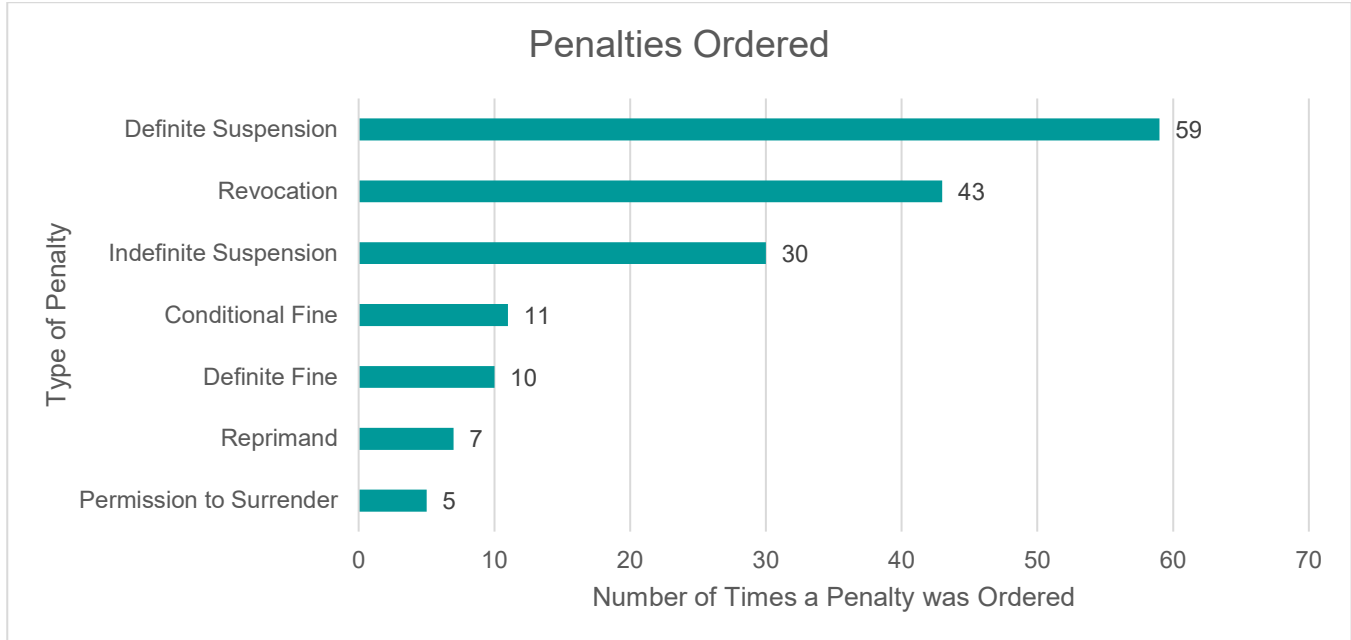


There were four appeals made by the LSO. Three were dismissed and one was found to be moot, as it appeared that the respondent's licence to practise had been suspended due to non-compliance with trust records.

## Penalties

Penalties may be imposed in conduct matters. The panel may order multiple penalties in a given matter, for example, both a fine and a suspension.

**Figure 20: Penalties ordered for paralegal and lawyer conduct files closed in 2023**



## Agreement Between Parties in Conduct Matters

Pre-hearing conferences (PHCs) can be used to attempt to settle some or all of the issues of the case, greatly reducing hearing time and expense.

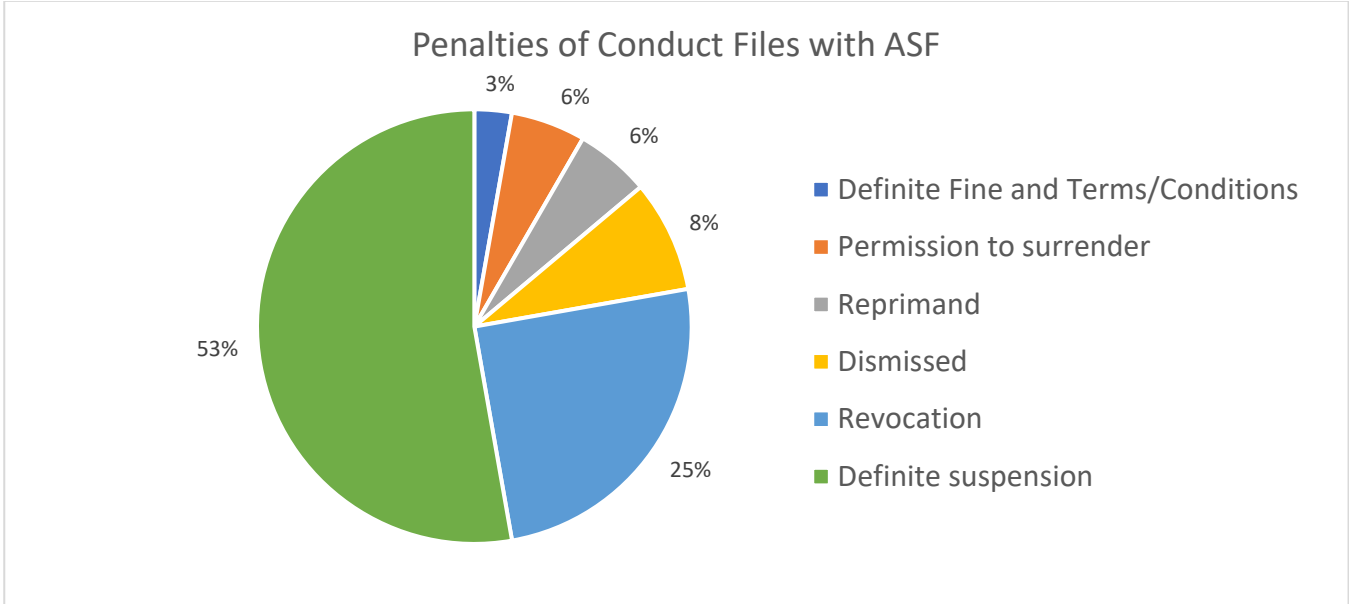
**Figure 21: Closed conduct files and types of agreements in relation to the number of PHCs**

Type of agreement	Files with at least one PHC	Files without a PHC	Average PHCs (in files that had at least one PHC)
Agreed statement of facts (ASF)	36	1	5
No agreed statement of facts (ASF)	43	45	7
Admission of misconduct	37	4	5
No admission of misconduct	34	25	7
Joint submission on penalty	33	3	5
No joint submission on penalty	39	33	7

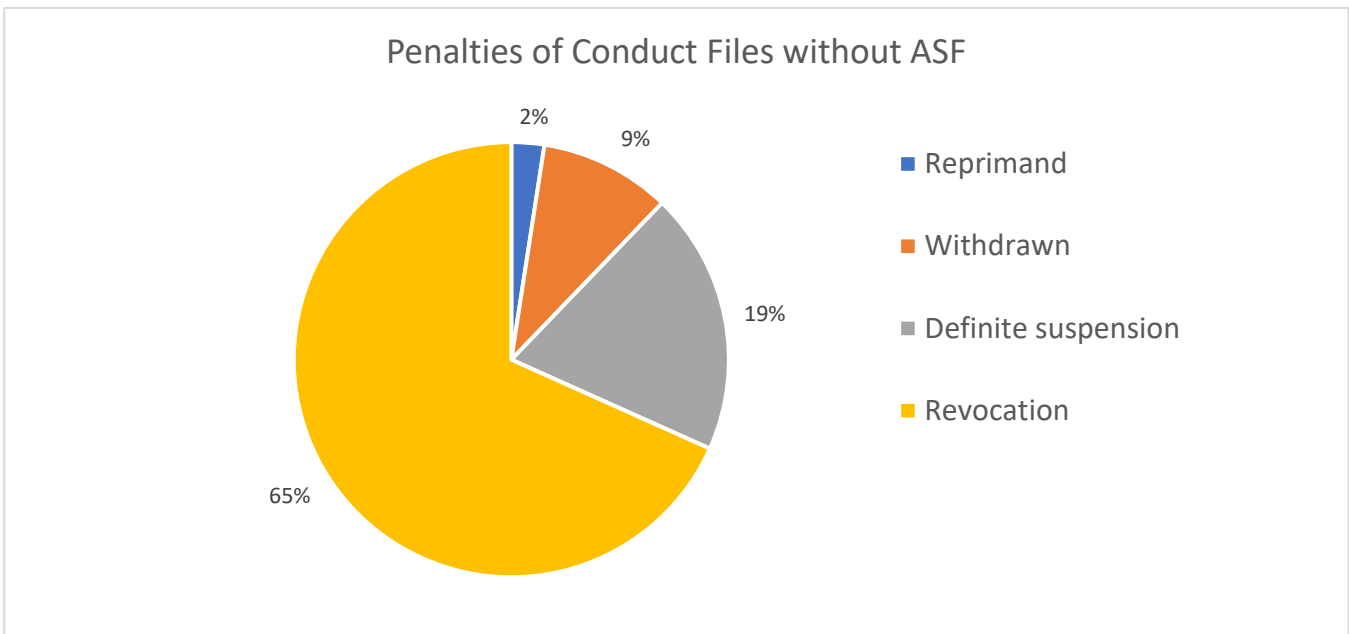
In 2023, of the 125 conduct files closed, 79 of those files had at least one PHC. Of those conduct files with at least one PHC:

- 36 (46%) had either a partial or complete Agreed Statement of Fact (ASF), while 27 (75%) had complete joint submissions.
  - Majority of the penalties ordered resulted in a definite suspension.
  
- 43 (54%) did not have an ASF.
  - Majority of the penalties ordered resulted in revocation.

**Figure 22: Penalties of Conduct Files with ASF**



**Figure 23: Penalties of Conduct Files without ASF**



## Suspensions

When a definite suspension was ordered, the average suspension was three months. The maximum was 12 months. In over 80% of the suspensions ordered, the suspension was between one and four months.

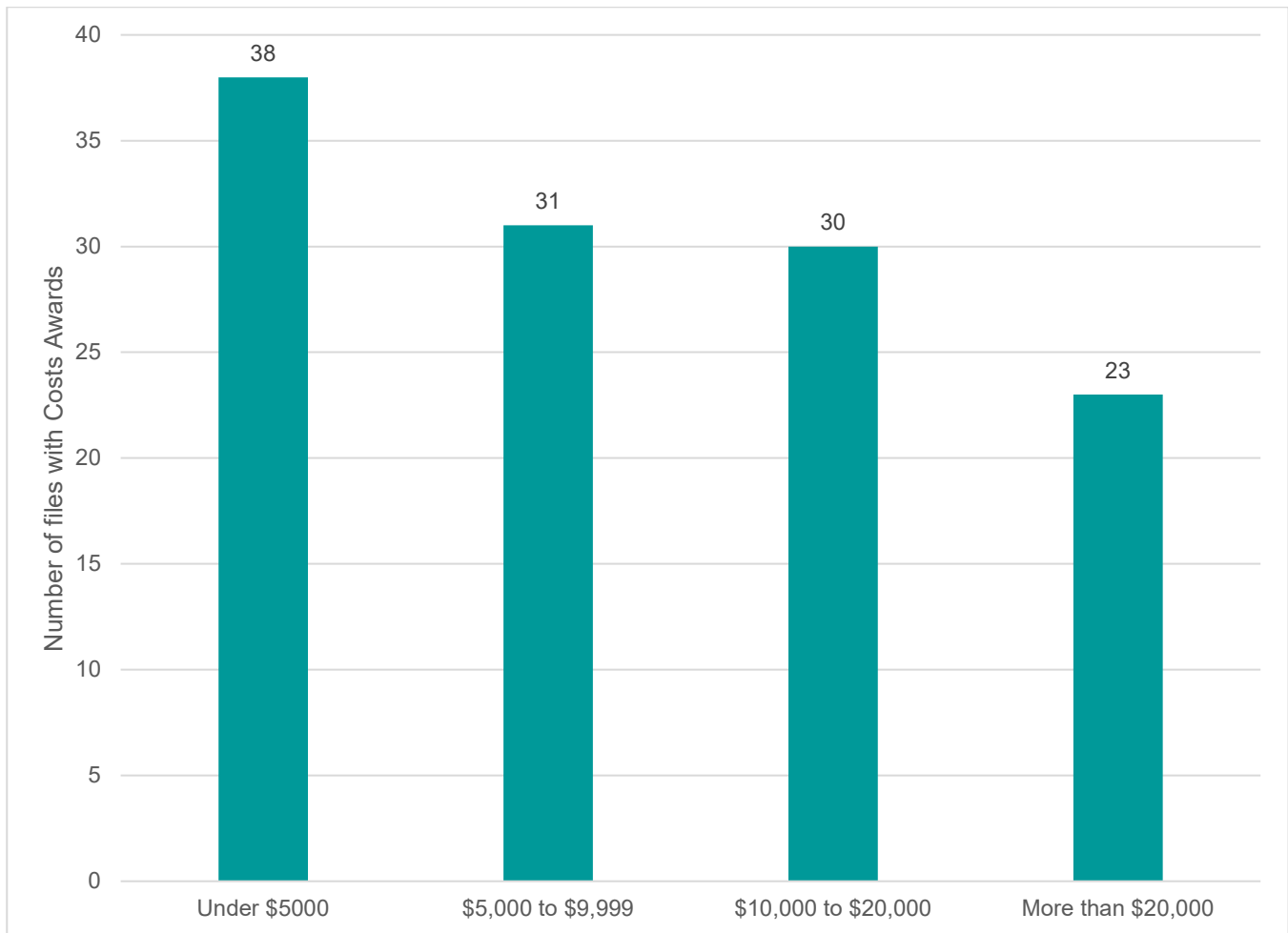
## Fines

For files closed in 2023, 70% of definite fines and 82% of conditional fines ordered were between \$2,000 to \$2,500.

## Costs

Costs can be awarded in any type of proceeding before the Tribunal. Costs were awarded in 122 out of 186 files closed in 2023.

**Figure 24: Range of costs awarded in files closed in 2023**



## Panels

### Adjudicator Hours and Tribunal Composition

Adjudicators are elected benchers, appointed lay benchers, ex-officio benchers, former treasurers, and other appointees. Adjudicators can be lawyers, paralegals or lay (public) members. They may reside anywhere in Ontario.

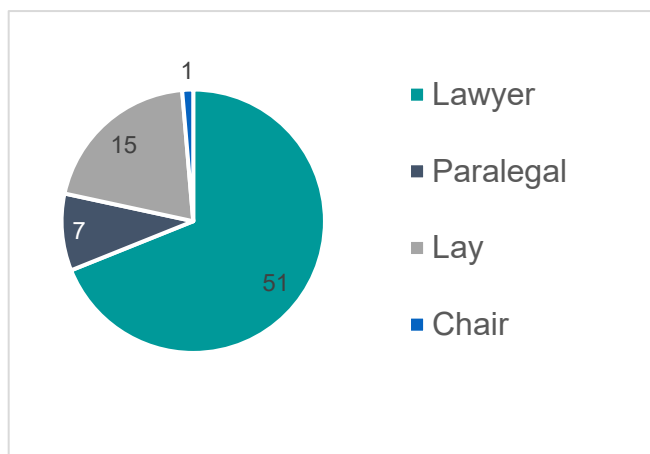
**Figure 25: Hours in 2023 by adjudicator type**

Adjudicator type	Hours including PMCs and PHCs	Hours excluding PMCs and PHCs
Lawyer	1874	1,563
Paralegal	232	232
Lay	813	813
Chair	186	114
<b>Total hours</b>	<b>3,105</b>	<b>2,722</b>

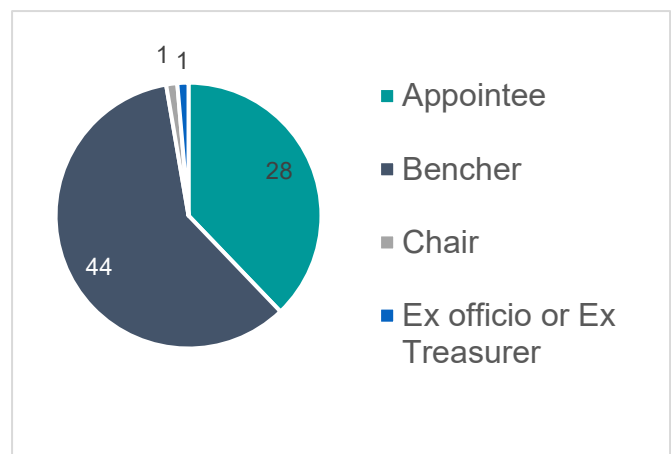
**Figure 26: Hours in 2023 by adjudicator category**

Adjudicator category	Hours including PMCs and PHCs	Hours excluding PMCs and PHCs
Appointee	1954	1674
Bencher (elected / appointed)	959	928
Ex officio / Former Treasurer	6	6
Chair	186	114
<b>Total hours</b>	<b>3105</b>	<b>2722</b>

**Figure 27: Tribunal composition by adjudicator type**



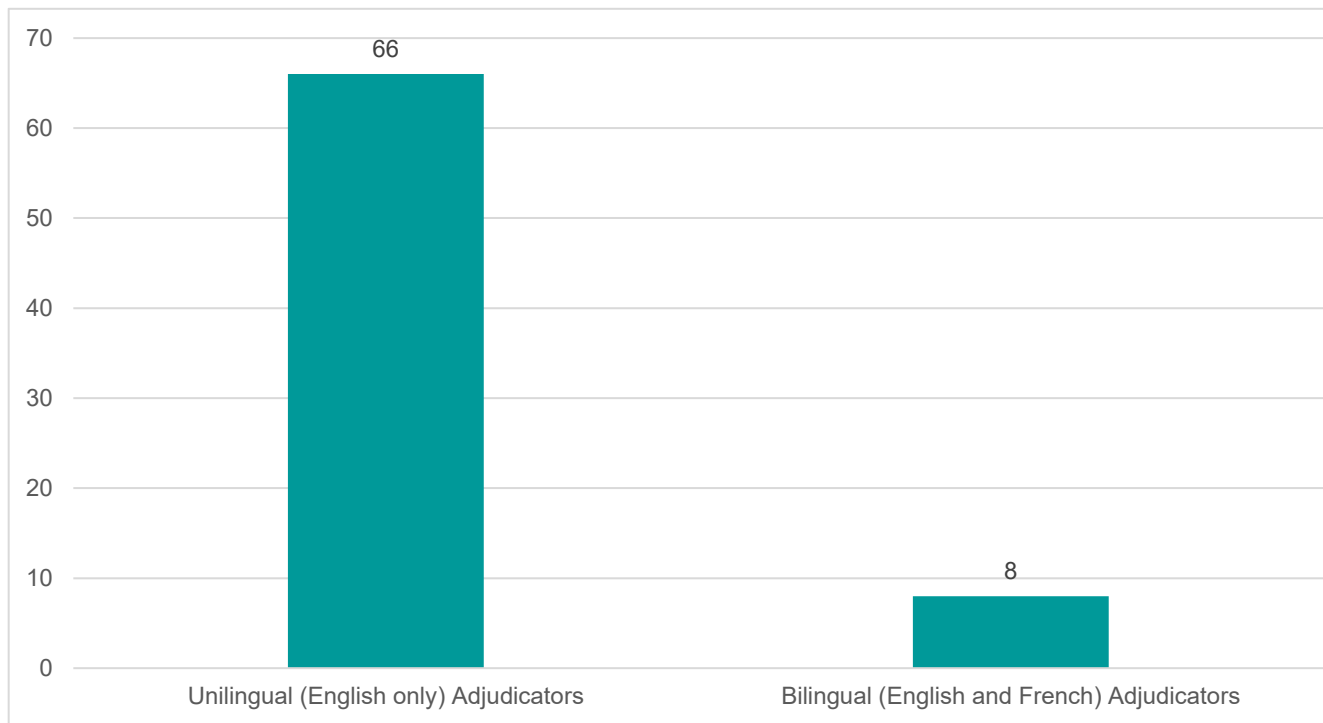
**Figure 28: Tribunal composition by adjudicator category**



The Bencher election took place in April 2023, as such the above figures include both benchers who were replaced and new benchers to Convocation.



**Figure 29: Tribunal composition by adjudicator language**



### Panel Composition

A panel may be composed of a single adjudicator, a three-member panel or, if the matter is an appeal, a five-member panel.

**Figure 30: Merits hearing panels for files closed in 2019 to 2023**

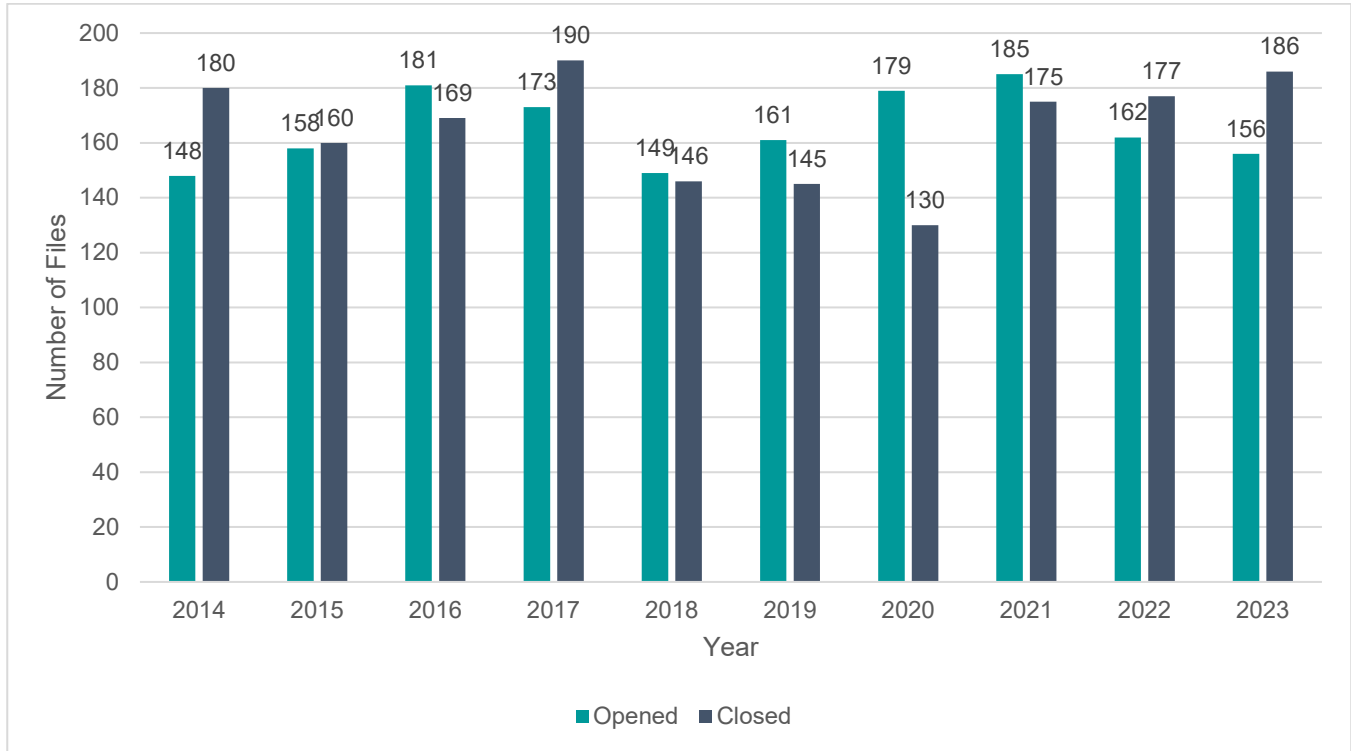
Panel size	2019	2020	2021	2022	2023
One-member panels	42	59	63	50	38
Three-member panels	83	64	75	94	114
Five-member panels	7	5	8	9	11
<b>All sizes</b>	<b>132</b>	<b>128</b>	<b>146</b>	<b>153</b>	<b>163</b>

Not all matters that were closed in 2023 proceeded to a merits hearing, e.g. those that were abandoned or withdrawn.

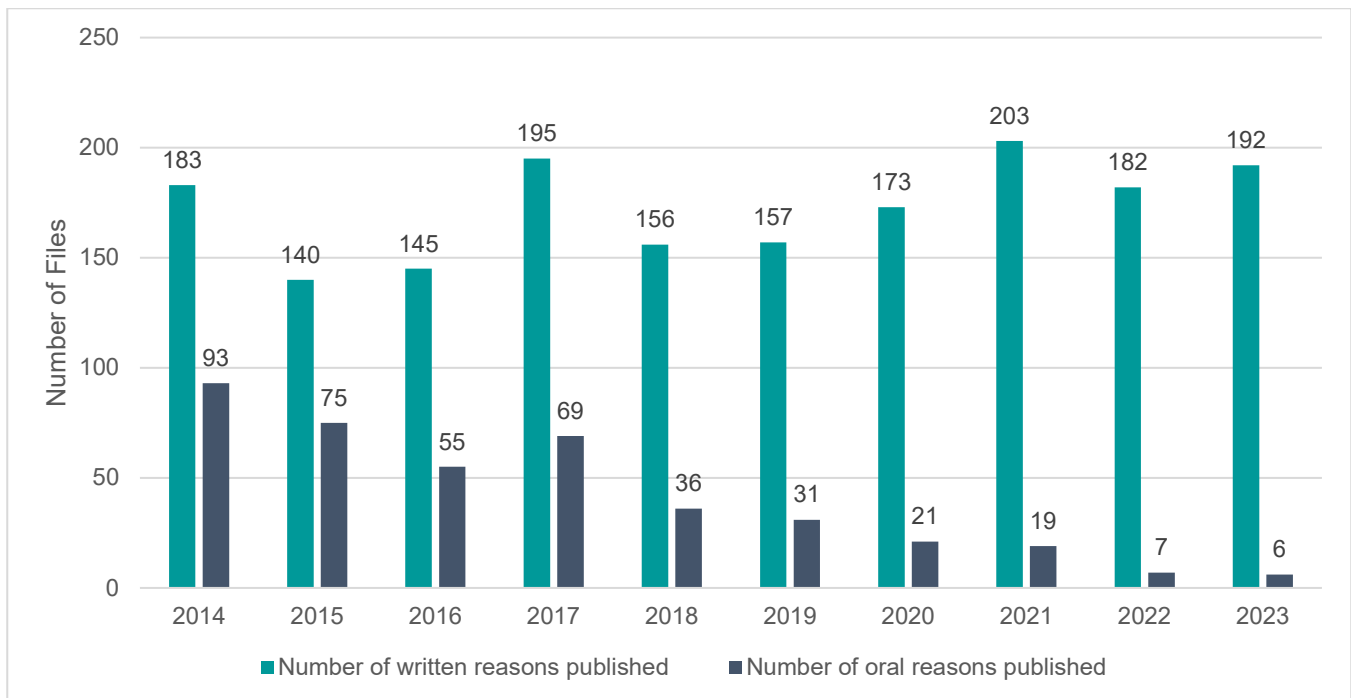
## Year-to-Year

The Tribunal has tracked some numbers since its beginning in 2014. These statistics can be useful in identifying long-term trends.

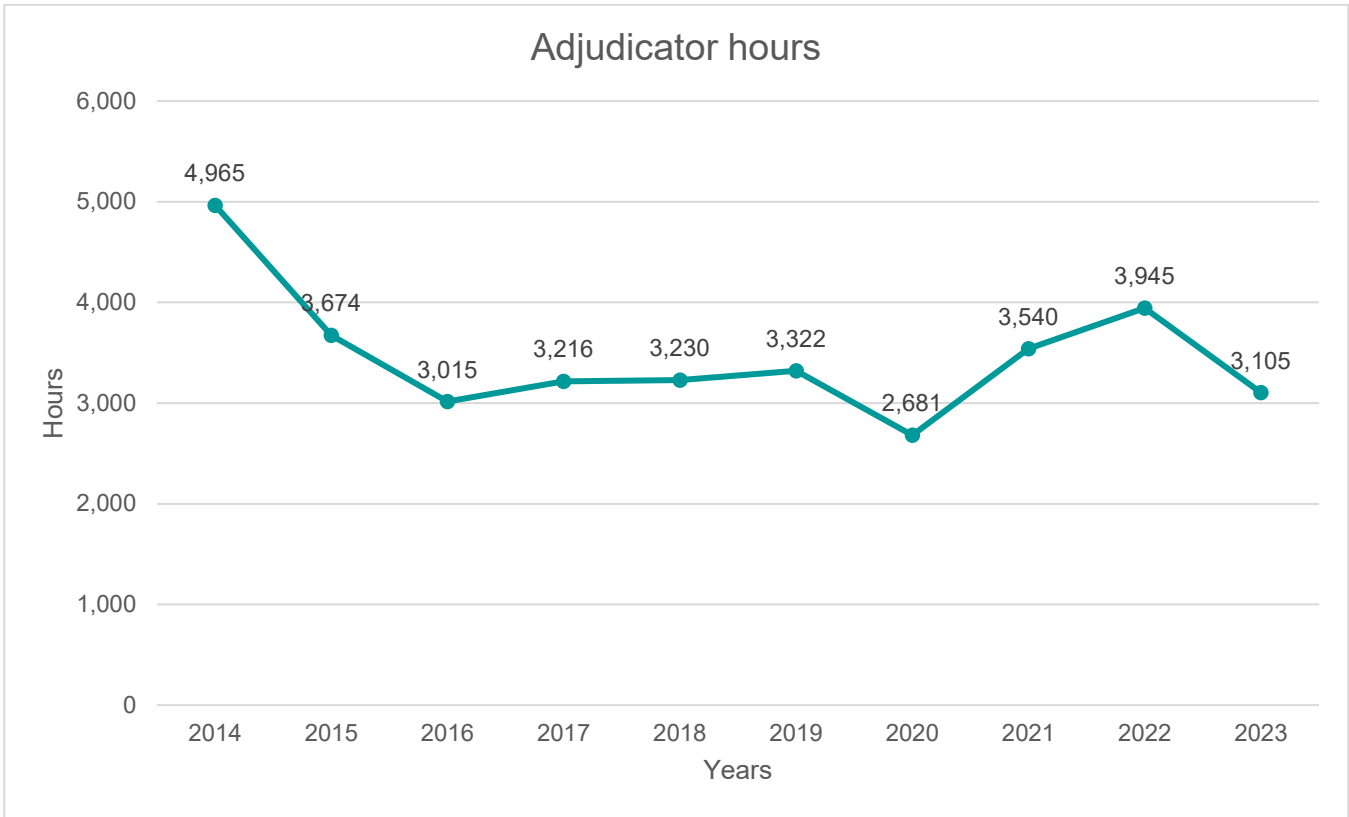
**Figure 31: Files opened and closed for 2014-2023**



**Figure 32: Number of reasons published 2014-2023**



**Figure 33: Adjudicator hours (including PHCs and PMCs) 2014-2023**



**Figure 34: Number of pre-hearing conferences (PHCs) 2014-2023**

