



LSBC TRIBUNAL

**ANNUAL REPORT
2021-2022**





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Message from the Tribunal Chair

Welcome to the combined 2021-2022 Annual Report which I hope you will find interesting and informative.

You will read within the report the full range of activity with which the LSBC Tribunal has been involved in 2021-2022 as well as some of the innovated steps we have taken in 2022.

New Tribunal Office and Tribunal Chair

2021-2022 were transition years. We worked on setting up the new Tribunal Office that, as of January 1, 2022, has been overseen by me, as the first Tribunal Chair, and Alison L Kirby, our new Tribunal Counsel.



**Christopher McPherson, KC
President's Designate 2021
Tribunal Chair 2022**

Covid and Virtual Hearings

We dealt with the continued effects of the global pandemic on the LSBC Tribunal's ability to adjudicate in a fair and timely manner.

I am pleased and proud at the speed and efficiency with which the LSBC Tribunal adapted to accommodate remote hearings. We managed not only to keep on top of the pending cases but to move seamlessly to offer remote delivery on a permanent basis.

As of July 2022, all prehearings, hearings and reviews are presumptively scheduled as virtual hearings. To accommodate hybrid hearings, we updated the technology in both of our hearing rooms.

Case Management and Tribunal Directions

In our continuing efforts to improve access to justice for British Columbians, we undertook some major initiatives in 2021-2022, including implementing a new case management system and issuing new practice directions, hearing forms, instructions and guides to make our hearing processes more efficient and transparent.

LSBCTribunal.ca

We also began work on our new LSBC Tribunal website to improve transparency and public access to information about the Tribunal and the hearings it conducts. I am proud to say that we successfully launched that website in July 2022.

TribunalRegistry@lsbc.org

We modernized the Tribunal registry system, allowing electronic filing of documents. We also reconciled the Law Society regulatory decision database with CanLII to ensure that going forward all Tribunal decisions would be available on CanLII in a free and easily searchable format.

New Adjudicators and Continuing Adjudicator Education

2021-2022 also saw the recruitment of new public and non-bencher lawyer adjudicators who began training in administrative justice, decision writing and hearing skills.

As part of our commitment to continuously improve our adjudicators' skill and knowledge, in 2022, all adjudicators were required to attend two mandatory continuing education sessions. In addition, non-lawyer adjudicators were given the same access to the Indigenous Intercultural Course which all practicing lawyer adjudicators are required to complete.

Indigenous Taskforce

As part of our commitment to address underrepresentation of Indigenous complainants accessing the Tribunal, I co-chaired the Indigenous Engagement in Regulatory Matters Task Force and look forward to the implementation of the recommendations relating to the LSBC Tribunal in 2023.

It has been an honour to have acted as the President's designate in 2021 and then the first Tribunal Chair in 2022 as we guide the LSBC Tribunal towards true independence.

I want to thank all the adjudicators and staff for their continued work and support. You have continued to strive for excellence and have responded splendidly to the global crisis enabling the LSBC Tribunal to fulfill its mandate of adjudicating in a manner that is fair, respectful, transparent and in the public interest.

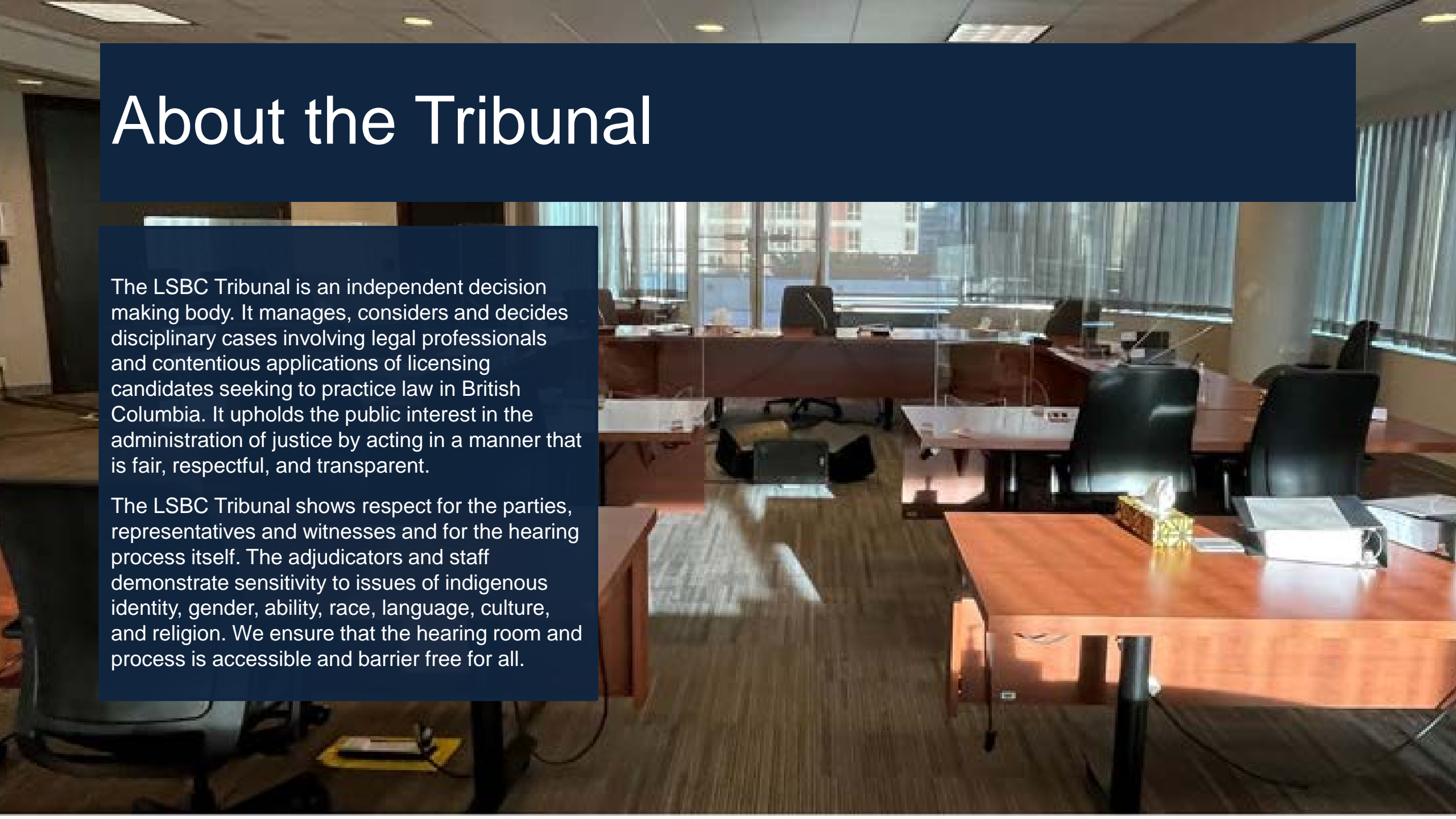


Christopher McPherson, KC
Tribunal Chair

About the Tribunal

The LSBC Tribunal is an independent decision making body. It manages, considers and decides disciplinary cases involving legal professionals and contentious applications of licensing candidates seeking to practice law in British Columbia. It upholds the public interest in the administration of justice by acting in a manner that is fair, respectful, and transparent.

The LSBC Tribunal shows respect for the parties, representatives and witnesses and for the hearing process itself. The adjudicators and staff demonstrate sensitivity to issues of indigenous identity, gender, ability, race, language, culture, and religion. We ensure that the hearing room and process is accessible and barrier free for all.



Indigenous Engagement in Regulatory Matters

The LSBC Tribunal recognizes that First Nations, Inuit and Métis people have been historically harmed by colonial institutions, the legal system and legal professionals and that, as a result, they may not have confidence in the LSBC Tribunal's hearing processes.

The LSBC Tribunal recognizes that it needs to adapt its own processes to incorporate culturally relevant and trauma informed practices that would better support Indigenous hearing participants.

The Tribunal Office looks forward to receiving and implementing the recommendations of the Indigenous Task Force on Regulatory Matters in 2023. In the interim, if you self-identify as First Nations, Inuit or Métis and you are a complainant, witness, respondent or license applicant at one of our hearings, we invite you to contact Tribunal Counsel at Tribunals@lsbc.org. We would like to learn more about your culture and work with you on how we can best support you as an Indigenous person through the hearing process.

Website: [LSBCTribunal.ca](https://lsbctribunal.ca)

In our continuing efforts to improve access to justice for British Columbians, in July 2022 we launched a new website to provide, lawyers, licensee applicants and the public with information about the LSBC Tribunal – from the principles that guide us, our processes and our cases that we adjudicate.

Tribunal Directions and Hearing Forms

To ensure that the Tribunal's processes are clear and understandable, we published on the new website comprehensive directions on practice and procedure before the LSBC Tribunal together with applicable Hearing Forms.

Instructions Guides and Booklets

We also published Instructions Guides and Booklets to assist lawyers, licensee applicants and the public in navigating our hearing processes, using our electronic document platform and participating or attending our virtual hearings.

About our Adjudicators

Our adjudicators have diverse professional backgrounds.

Our Public adjudicators have backgrounds in

- Accounting
- Medicine
- Health
- Education
- Criminal Justice
- Family Mediation

Our lawyer adjudicators practice in the areas of:

- Personal injury litigation
- Commercial litigation
- Criminal law
- constitutional, administrative, Indigenous and commercial litigation
- Family law
- Employment law
- Securities law
- Child protection
- Civil litigation

Adjudicators

2021 saw the recruitment of new public and non-bencher lawyer adjudicators whose term began in January 2022.

These adjudicators were selected by a Tribunal Appointment Working Group in conjunction with the consulting firm Boyden from over 100 excellent candidates.

In anticipation of their January appointments, we worked with the BC Council of Administrative Tribunals to prepare and hold an educational session on administrative justice on December 2 to 4, 2021 and a decision writing course on January 7 and 8, 2022.

We welcome Karen Ameyaw, Jereme Brooks, Nicole Byres KC, Cindy Cheuk, Warren H. Funt, Mark Gervin, Kris Gustavson, Kate Saunders, Krista Simon and Maia Tsurumi, to the LSBC Tribunal.

With the addition of the new adjudicators, the LSBC Tribunal now has 54 adjudicators available to decide cases at the pre-hearing, hearing and review level.

The new adjudicators replaced the following adjudicators who resigned or whose term ended in 2021-2022: Ralston Alexander, KC; Nan Bennett; Carol Gibson; Gavin Hume, KC; David Layton, KC; Lance Ollenberger; Nina Purewal, KC; Mark Rushton; Shannon Salter; Robert Smith and John Waddell, KC.

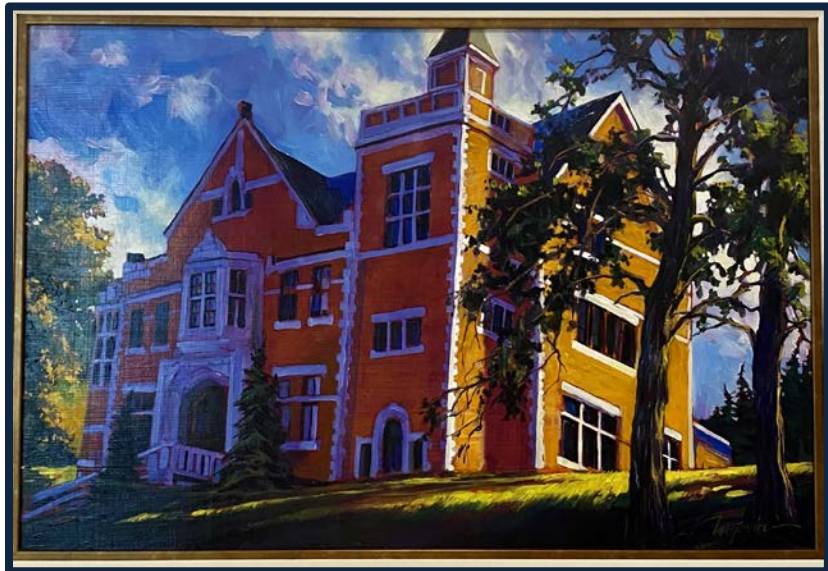
I would like to thank them for their many years of service to the Tribunal. Their contribution has been invaluable.

54 Adjudicators

37 lawyers and 17 public representatives


Adjudicator Education

The pandemic caused a slight delay in our offering the 2021 annual adjudicator education course to all adjudicators. Rather than the hoped for in-person session, we finally convened a zoom conference in March 2022. The session was presented by Christopher McPherson, KC, Tribunal Chair and Alison L. Kirby, Tribunal Counsel.



The March session covered

- important professional regulatory cases of 2021 on the duty to cooperate, interim proceedings, joint submissions, and anonymous publication of citations;
- investigative and prosecutorial delay;
- witness accommodation;
- navigating a zoom hearing; and
- recent changes to the LSBC Tribunal processes.



Adjudicator Education

In November 2022, we held our first in-person education session since the start of the pandemic.

Our keynote speaker was Dr. Lori Haskell, an expert on trauma informed adjudication.

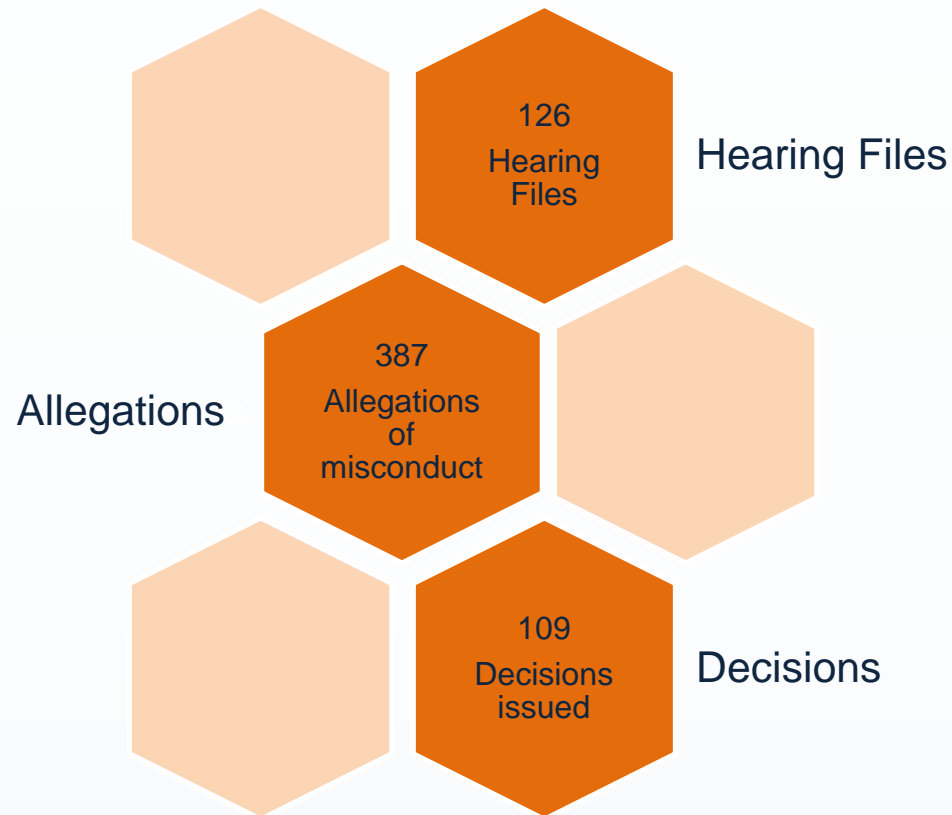
The November session covered

- trauma informed adjudication;
- important professional regulatory cases of 2022;
- changes to the practice and procedure before the LSBC Tribunal.

Selected Hearing Statistics



Selected Statistics: Hearing Files



2021-2022

In 2021-2022, the LSBC Tribunal handled 126 disciplinary, licensing and review files relating to 86 individuals with over 387 allegations of misconduct.

January - December 2021

- 55 written decisions were issued in 2021
- 29 new citations or reviews were issued or commenced in 2021

January - December 2022

- 54 written decisions were issued
- 22 new credentials, disciplinary or review files were opened in 2022

Selected Statistics: Length of Hearings



2021 Hearings

There were 40 hearings held in writing, virtually or in-person in 2021 over the course of 80+ days*.

- 2 Hearings covering both Facts and Determination and Disciplinary Action
- 20 Facts and Determination hearings,
- 10 Disciplinary Action hearings,
- 6 hearings that proceed in writing,
- 1 credentials hearing, and
- 1 review.

* Hearings in writing are deemed to take one day regardless of degree of complexity or number of days actually incurred.

Selected Statistics: Length of Hearings



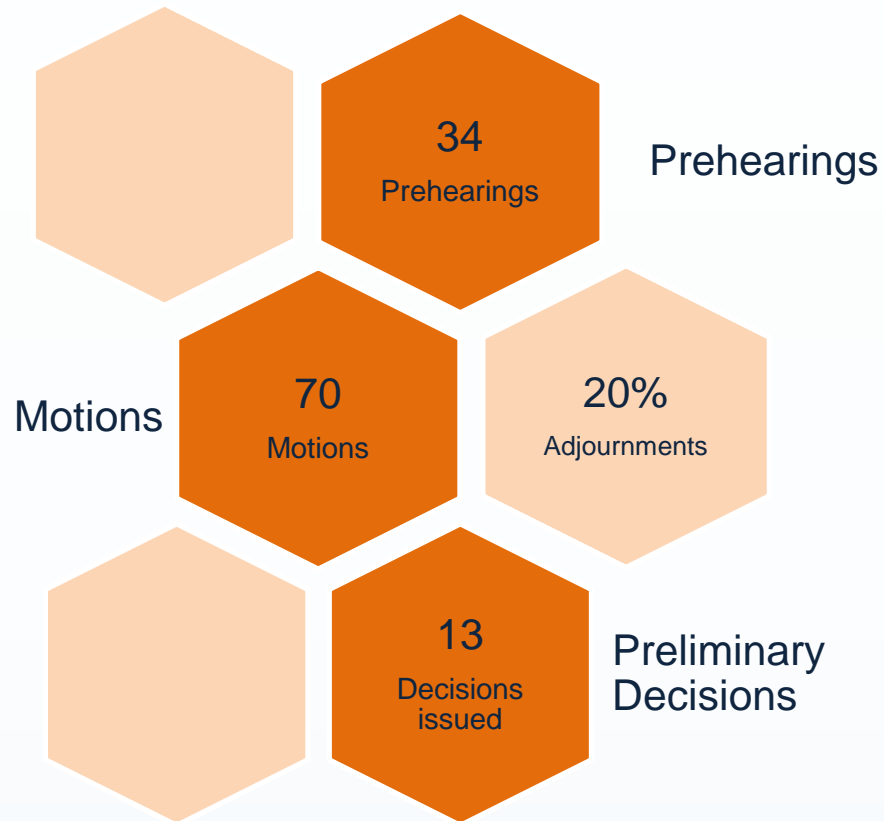
2022 Hearings

There were 40 hearings held in writing, virtually or in-person in 2022 over the course of 96+ days*.

- 3 hearings covering both Facts and Determination and Disciplinary Action
- 19 facts and determination hearings,
- 10 disciplinary action hearings,
- 3 hearings in writing,
- 4 reviews, and
- 1 credential hearing

* Hearings in writing are deemed to take one day regardless of degree of complexity or number of days actually incurred.

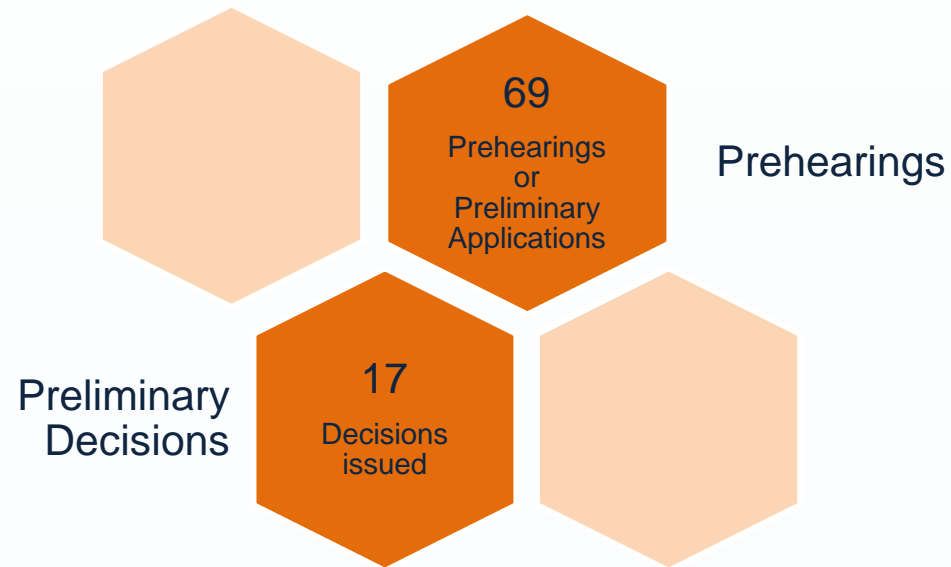
Selected Statistics: Prehearings 2021



2021 Pre-hearings and Preliminary Applications

- There were a total of 34 prehearing conferences, case conferences or pre-review conferences held in 2021.
- There were 70 preliminary motions or applications brought at the prehearing or hearing stage.
- 20% of the prehearing conferences or preliminary motions resulted in an adjournment
- 13 of the 55 decisions issued in 2021 related to preliminary applications.

Selected Statistics: Prehearings 2022

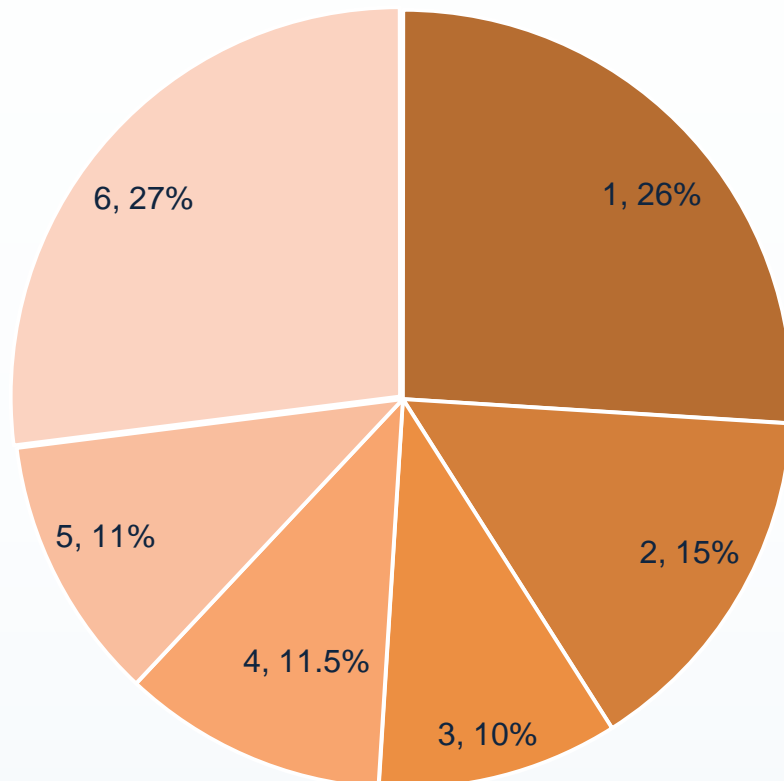


2022 Pre-hearings and Preliminary Applications

- There were a total of 68 prehearing conferences, case conferences, comprehensive prehearing conferences or pre-review conferences held in 2022.
- 17 of the 54 decisions issued in 2021 related to preliminary applications.

Selected Statistics: Types of Allegations

Types of Allegations



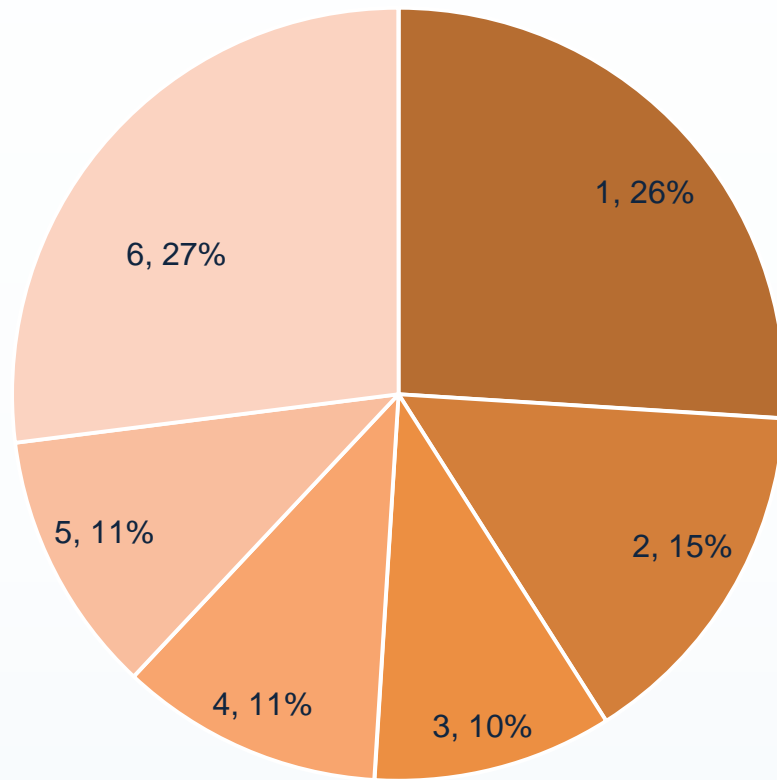
Types of Misconduct

Of the 387 allegations of misconduct contained in the disciplinary files before the LSBC Tribunal in 2021-2022

- 26% of the allegations related to the mishandling of clients funds including allegations of misappropriation or improper handling of client trust funds or breaches of the Law Society accounting rules or billing /fee agreement issues.
- 15% of the allegations related to misleading or making false representations to a client, an opposing party or the Law Society investigator
- 10% of the allegations involved conflicts of interest which could include improperly borrowing from or lending money to client; doing business with a client; preferring the interests of one client over another; or acting against a former client

Selected Statistics: Types of Allegations

Types of Allegations

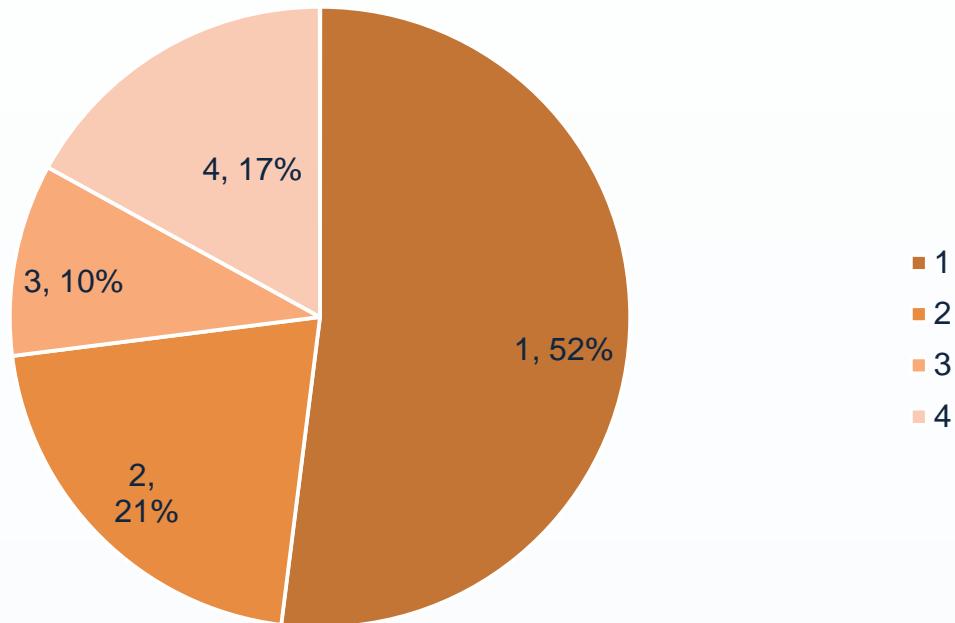


Types of Misconduct

- 11% of the allegations related to AML or CIV or Unlawful Conduct concerns including permitting use of trust account without rendering legal services or making the proper inquiries about the nature of the client's business or source of funds or failing to collect or maintain correct client identification information
- 11% of the allegations related to breaches of obligations owed to the Law Society as regulator including failing to cooperate with an ongoing investigation, failure to comply with an undertaking given to the Law Society or failure to comply with a Law Society Order
- The balance of the allegations covered a variety of misconduct including breaches of duties owed to clients, residential school claims concerns, sexual misconduct, criminal or quasi-criminal conduct, improper communications and breaches of obligations to the court.

Selected Statistics: Sanctions 2021

Sanction Imposed



Sanction Imposed

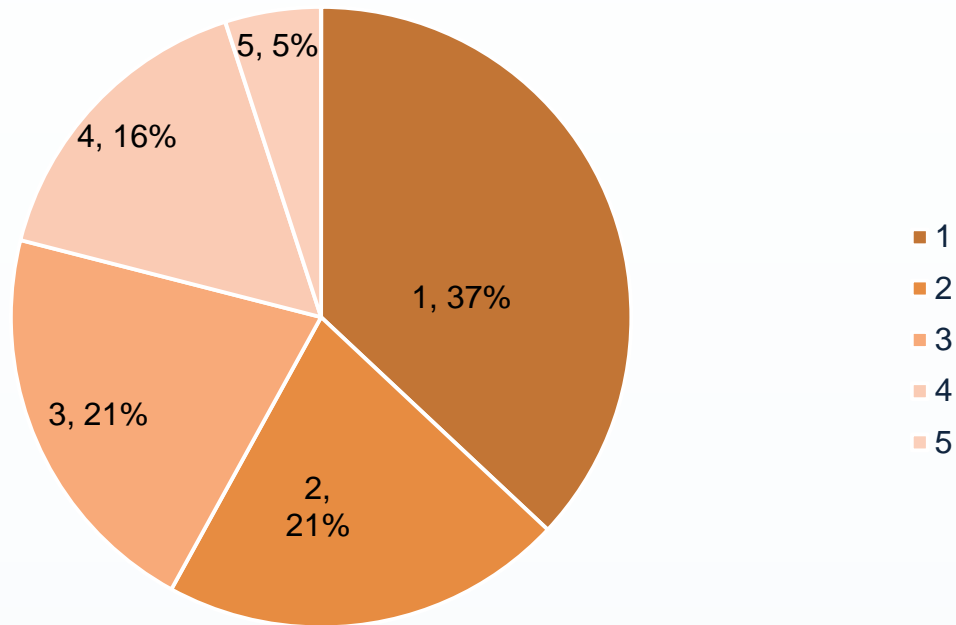
In 2021, the following disciplinary actions were imposed in connection with 29 citations:

- Six Fines;
- Fifteen Suspensions;
- Five suspensions with conditions on the lawyer's return to practice; and
- Three disbarments.

A further three citations were resolved without going to a disciplinary action hearing.

Selected Statistics: Sanctions 2022

Sanction Imposed



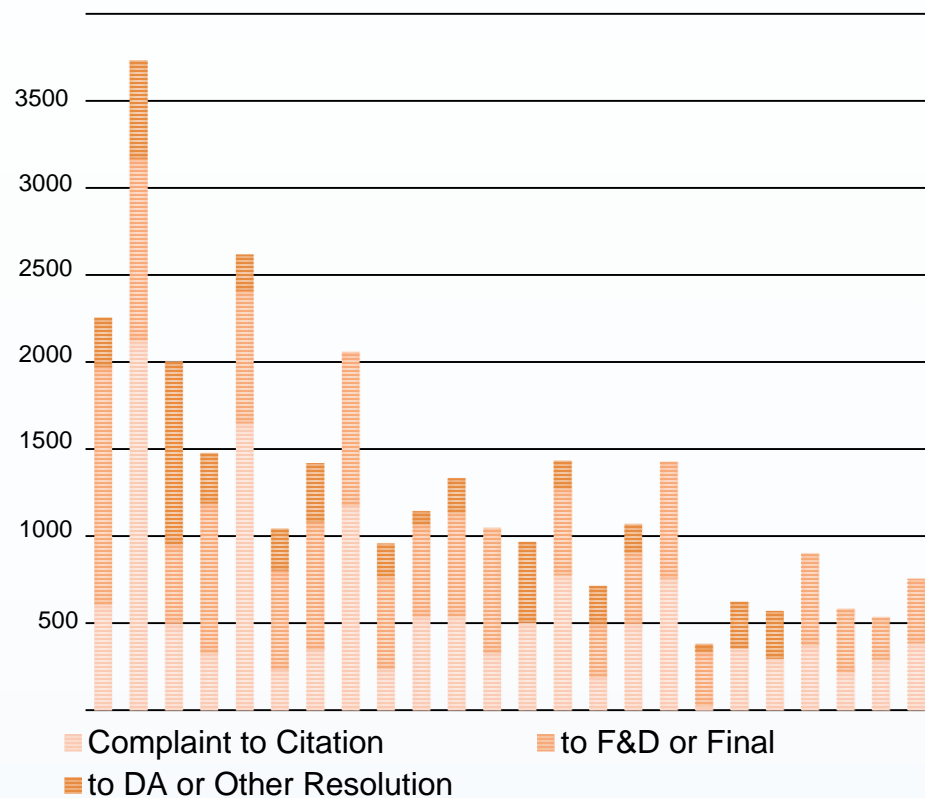
Sanction Imposed

In 2022, the following disciplinary actions were imposed in connection with 19 citations:

- 1 reprimand
- 4 fines;
- 7 suspensions;
- 3 suspensions with conditions on the lawyer's return to practice; and
- 4 disbarments.

A further five citation files were resolved without going to hearing.

Selected Statistics: Completed Files 2022



Start to Finish

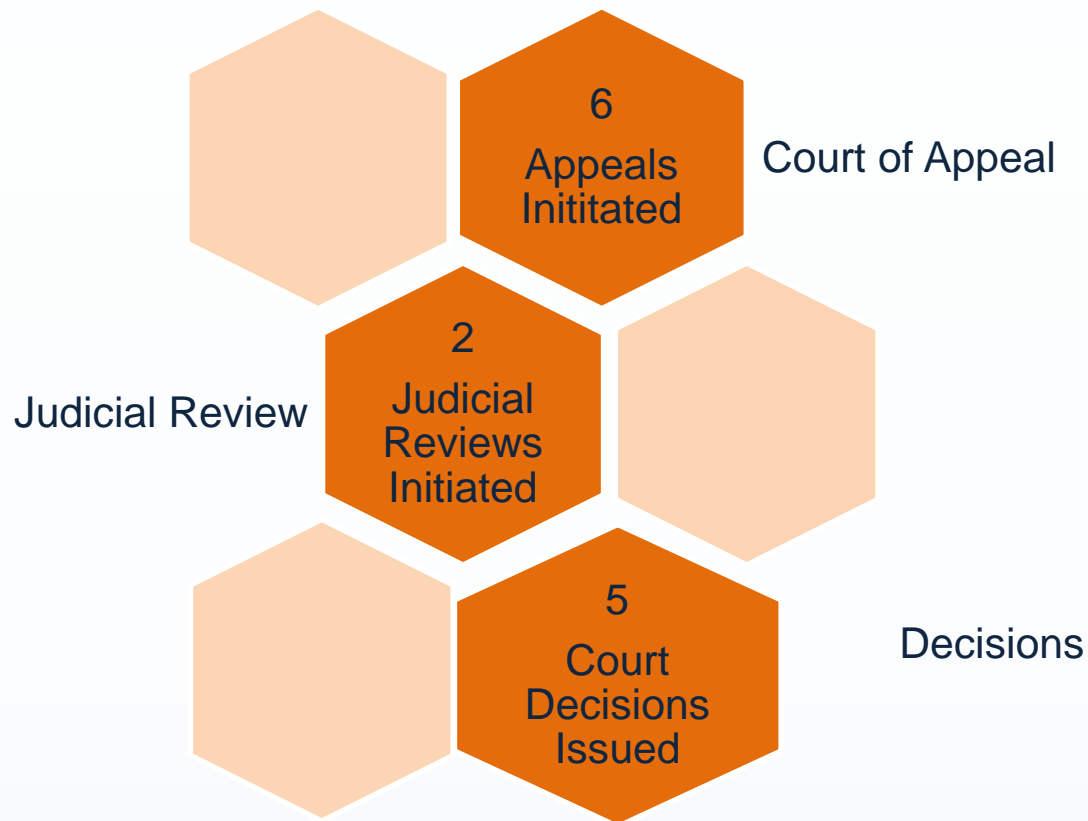
In 2022, 24 disciplinary hearing files were closed: 19 of which resulted in disciplinary action and five of which were rescinded or otherwise resolved without a sanction hearing.

The number of days taken from (1) the complaint being made to a citation being issued (2) the citation being issued to the facts and determination or final decision being issued and (3) the facts and determination being issued to the disciplinary action decision being issued or the matter being otherwise resolved, is set out in the accompanying graph.

On average, it took 1.4 years between the issuance of a citation and the facts and determination decision and it took a further 7 months to impose a sanction.

Of the four files that took more than 800 days from citation to facts and determination decision, one required a new hearing and three were stayed pending parallel court proceedings.

Selected Statistics: Court Actions 2021



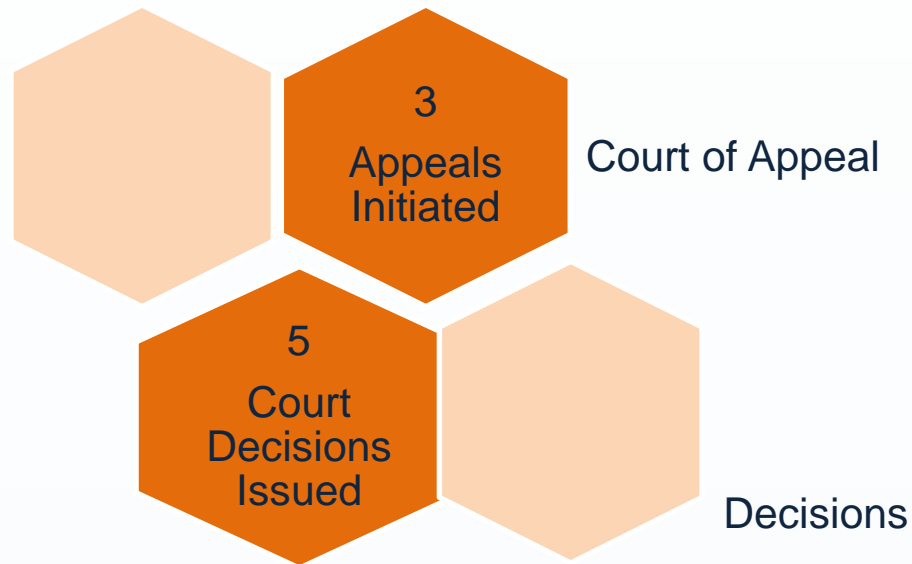
Court Cases initiated in 2021

- In 2021, six appeals of facts and determination decisions were initiated in the Court of Appeal
- In addition, two applications for judicial review were commenced in the BC Supreme Court.

Court Decisions Rendered in 2021 with respect to Tribunal Matters

- *A Lawyer v. The Law Society of British Columbia, 2021 BCCA 437*
- *McLeod v. Law Society of British Columbia, 2021 BCCA 299*
- *A Lawyer v. The Law Society of British Columbia, 2021 BCCA 284*
- *Party A v. The Law Society of British Columbia, 2021 BCCA 130*
- *Dhillon v. Law Society of British Columbia, 2021 BCSC 806*

Selected Statistics: Court Actions 2022



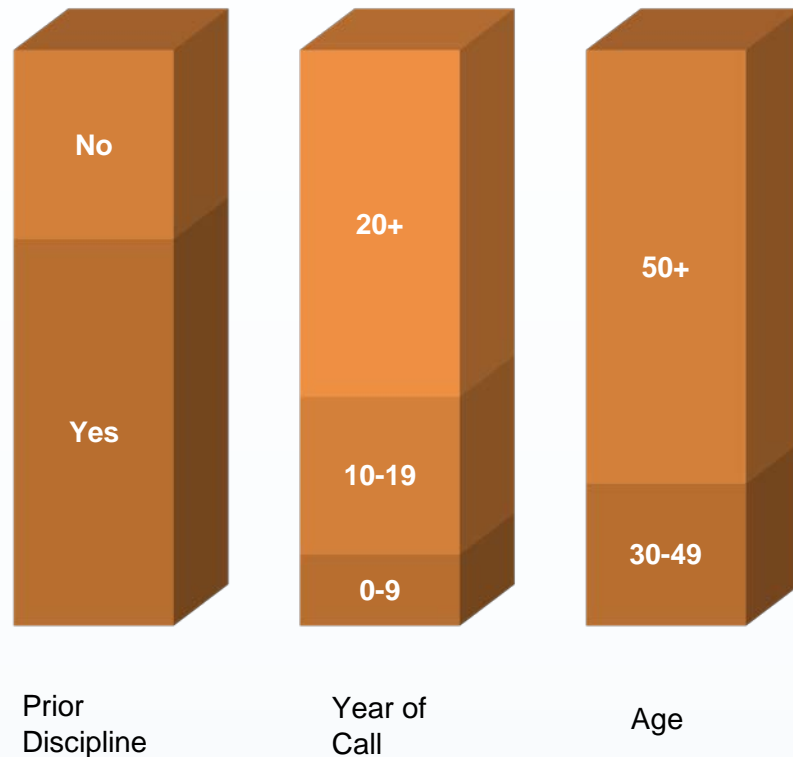
Court Cases initiated in 2022

- In 2022, three appeals relating to decisions rendered by the Tribunal were initiated in the Court of Appeal

Court Decisions Rendered in 2022 with respect to Tribunal Matters

- *Law Society of British Columbia v. Cole*, 2022 BCCA 55
- *Law Society of British Columbia v. Guo*, 2022 BCCA 154
- *Law Society of British Columbia v. Harding*, 2022 BCCA 229
- *McLeod v. Law Society of British Columbia*, 2022 BCCA 280
- *Hemminger v. Law Society of British Columbia*, 2022 BCSC 30

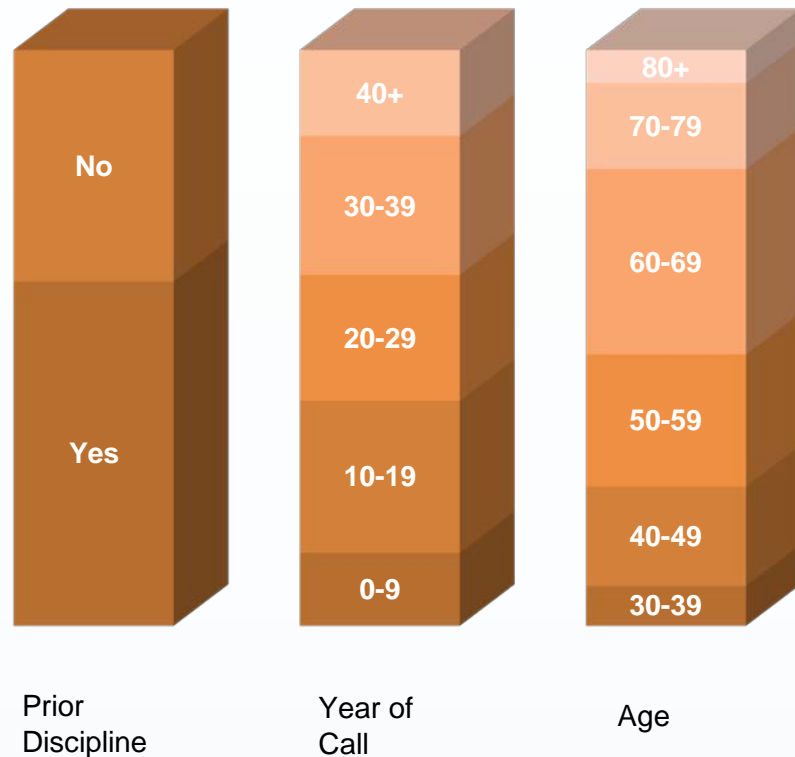
Selected Statistics: Demographics 2021



Respondent or Applicant Characteristics

- Of the 73 respondents or applicants before the Tribunal in 2021:
 - 67% had a prior discipline history.
 - 60% had 20 or more years of practice and 88% had 10 or more years of practice
 - 75% were over 50 years old

Selected Statistics: Demographics 2022



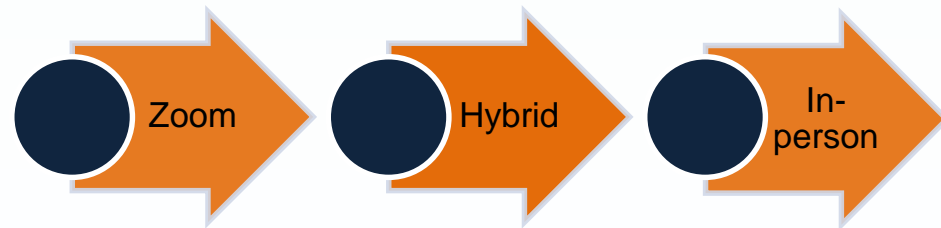
Respondent or Applicant Characteristics

- Of the 87 respondents or applicants before the Tribunal in 2022:
 - 60% had a prior discipline history.
 - 61% had 20 or more years of practice and 87% had 10 or more years of practice
 - 76% were over 50 years old

Highlights of new Directions on Practice



Presumptive Virtual Hearings



In order to improve accessibility and lower attendance costs to the public and participants, as of July 2022, all hearings are presumptively to be held by way of a video conference.

The parties may however by agreement or by order of the Tribunal continue to hold in-person hearings whenever it is fair or in the interests of justice to do so.

The Tribunal hearing rooms have been technologically updated so that the Tribunal is now also able to offer hybrid hearings that permit some of the hearing participants to attend remotely.

The Tribunal hopes in the future to stream all hearings on-line regardless of whether the hearing is in-person or virtual.

Active Case Management

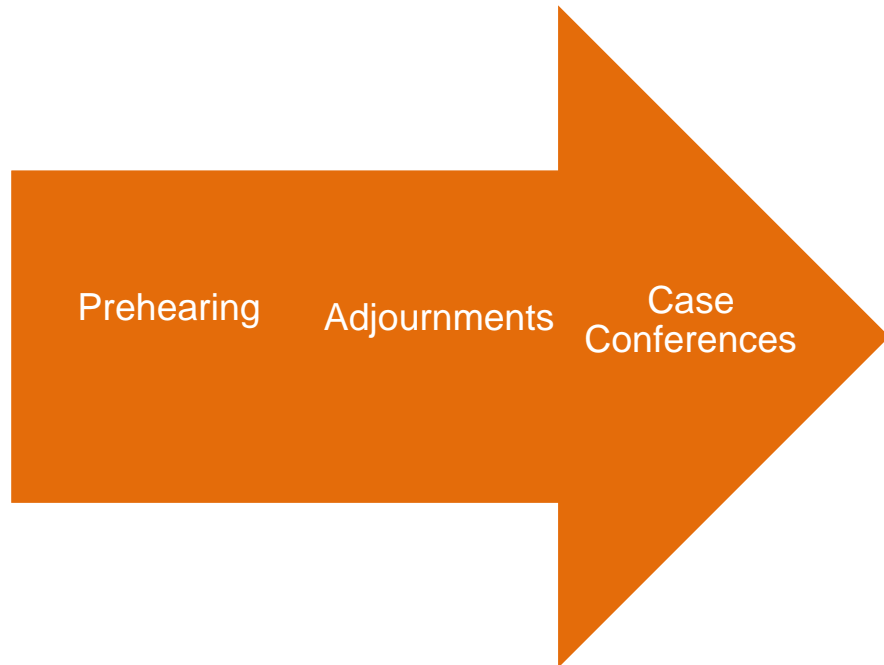


Under the Tribunal's new case management system, all matters are scheduled for a mandatory pre-hearing or pre-review conference within 4 months of the commencement of the proceeding, if the parties have not set the matter down for hearing.

If the matter is still not scheduled within 7 months or if the scheduled hearing is anticipated to take more than 5 days, the matter will be automatically scheduled for a comprehensive prehearing conference.

In order to improve efficiency, as of January 2022, Thursday was designated as a regularly scheduled date to which one of six appointed motions adjudicator were assigned to hear any scheduled prehearing, preliminary motions, comprehensive prehearing or pre-review conference matters.

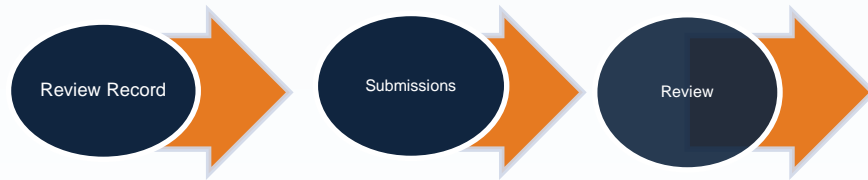
Stricter Timelines



The Tribunal Directions contain new and stricter timelines such as:

- Prehearings within 4 months if matters not set for hearing
- Comprehensive prehearing within 7 months if matter still not set for hearing or hearing scheduled for more than 5 days
- No adjournments on consent for greater than 30 days
- Case conference within 2 months of facts and determination decision being issued if disciplinary action hearing not scheduled
- Exchange of witness statements and document books no later than 3 weeks prior to hearing

Speedier Reviews

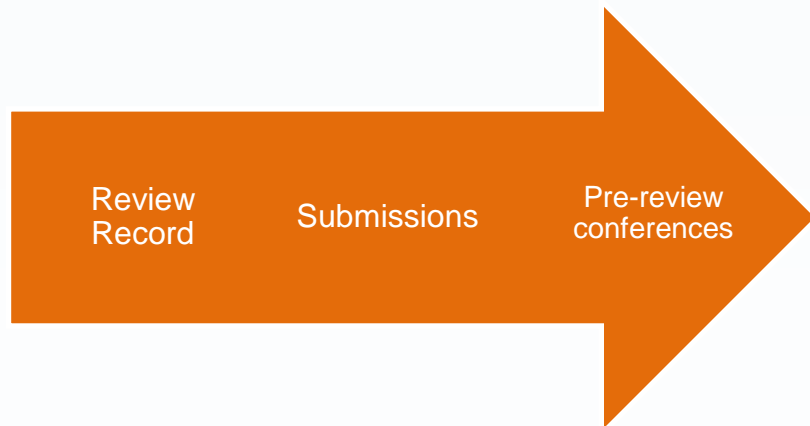


The review record must still be filed within 60 days on filing the Notice of Review (which in turn must have been filed within 30 days of delivery of the decision on disciplinary action) but now there are new deadlines for filing the parties legal arguments on review:

- 30 days from date of filing review record for the moving party (with the filing of the review record and/or submissions only extended on consent for a total of 30 days);
- 30 days to file a response; and
- 15 days to file a Reply.

This means that in the normal course, a review hearing can be held within 5-6 months of the disciplinary action hearing being released.

Easily Accessible Hearing Forms



In order to improve transparency and efficiency, the Tribunal has updated and posted on its website many of the standard forms used in its hearing proceedings such as:

Notices to Admit and Responses to Notice to Admit

Notices of Motion and Responses

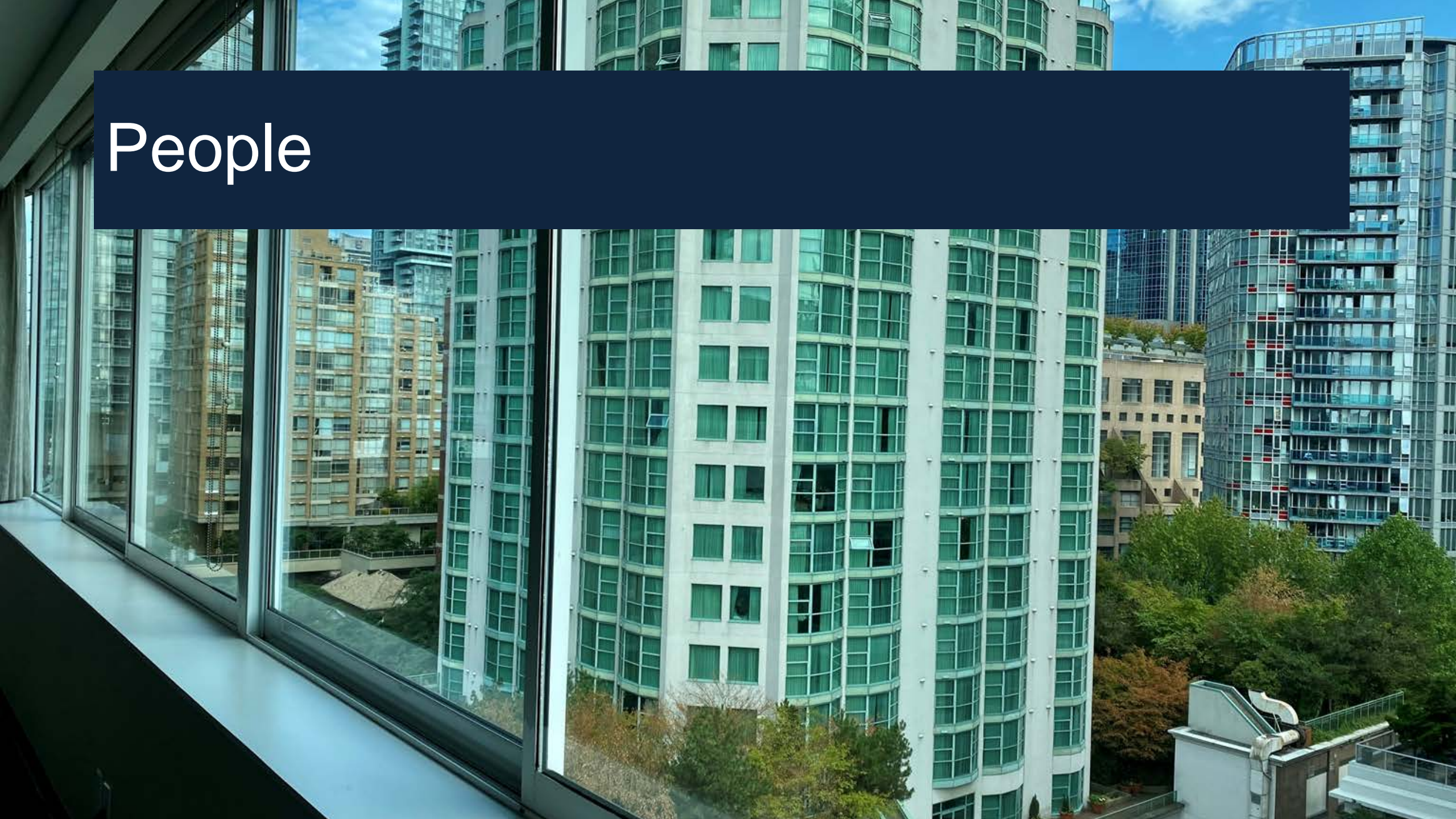
Notice of Hearing

Draft Bill of Costs

Notices of Review

Review Record

People



People



Facing South by Patricia Service

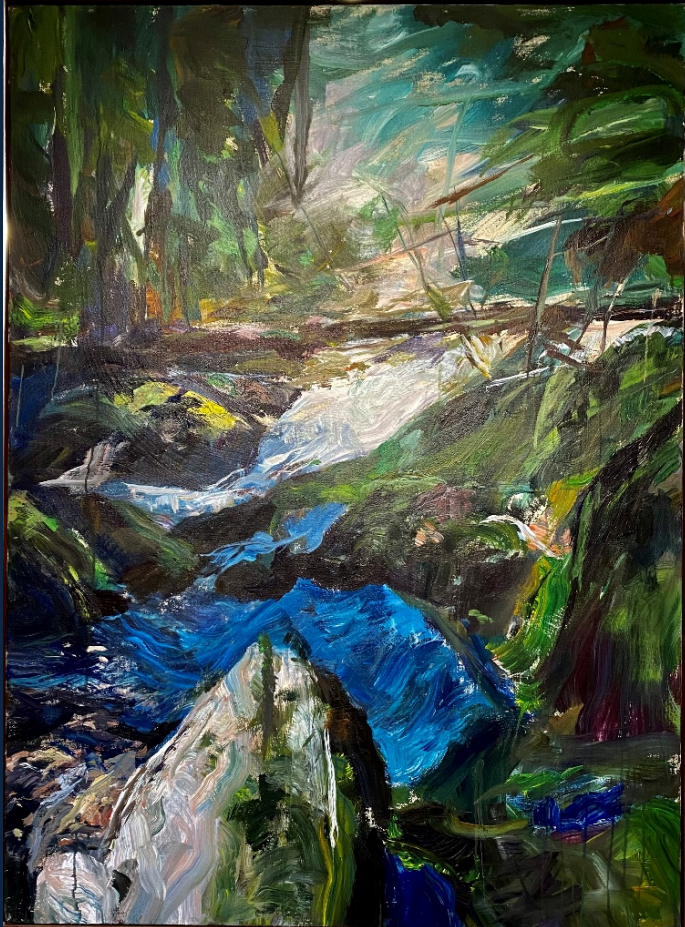
Motions Adjudicators

Lindsay LeBlanc, Christopher McPherson, KC, Steven McKoen, KC,
Thomas L. Spraggs, Michael F. Welsh, KC and Sarah Westwood



People

Adjudicators 2021-2022



Forest Creek, Gambier Island by Gordon Smith

Adjudicators 2021-2022

Christopher McPerson, KC (Chair), Ralston Alexander, KC; Karen Ameyaw; Paul Barnett; Nan Bennett; Linda Berg; Clarence Bolt; Jereme Brooks; Nicole Byres, KC; Kim Carter; Tanya Chamberlain; Jennifer Chow, KC; Cindy Cheuk; Douglas Chiu; Catherine Chow; Barbara Cromarty; David Dewhirst; Jeevyn Dhaliwal KC; Gillian Dougans; Cheryl D'Sa; Lisa Dumbrell; Michael Dungey; Brian Dybwad; Warren Funt; Carol Gibson; Mark Gervin; Eric Gottardi, KC; Brook Greenberg, KC; Kris Gustavson; Lisa Hamilton KC; Darlene Hammell; Katrina Harry; Kimberly Henders Miller; Gavin Hume, KC; Karen Kesteloo; Cyril Kesten; John Lane; David Layton, KC; Lindsay LeBlanc; Bruce LeRose, KC; Jan Lindsay; Brendan Matthews; Andrew Mayes; Geoffrey McDonald; Steven McKoen, KC; Jacqueline McQueen, KC; Laura Nashman; Lance Ollenberger; Paul Pearson; Monique Pongracic-Speier, KC; Nina Purewal, KC; Georges Rivard; Michele Ross; Paul Ruffell; Mark Rushton; Kelly Harvey Russ; Shannon Salter; Gurminder Sandhu; Kate Saunders; Thelma Siglos; Krista Simon; Robert Smith; Thomas L. Spraggs; Natasha Tony; Maia Tsurumi; Sandra Weafer; John Waddell, KC; Michael Welsh, KC; Kevin Westell; Sarah Westwood; Ruth Wittenberg; Gaynor Yeung; Guangbin Yan; William Younie, KC.



Adjudicators



People

Tribunal Office

Tribunal Office 2021-2022

We could not have achieved all that we did in 2021-2022 without the significant contribution of the Tribunal staff.

Christopher McPerson, KC (Chair), Jeff Hoskins KC, (Tribunal Counsel), Alison L. Kirby (Tribunal Counsel), Michelle Robertson (Hearing Administrator); Sharen Wesnoski (Hearing Clerk); Madison LeBlancq (Hearing Clerk); Amanda Kerr (Hearing Clerk and legal assistant); Cary Ann Moore (paralegal); Caitlin Chong (summer student) and Haly Wiczorek (summer student)