



LSBC TRIBUNAL

**ANNUAL REPORT
2023**



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Message from the Tribunal Chair

Reflecting on our achievements in 2023, I'm pleased to outline significant changes made by the Tribunal to foster a more inclusive, fair, and supportive environment for all stakeholders:

Our commitment to cultivating a culturally sensitive space for Indigenous hearing participants led to the development of the "Indigenous Engagement with the LSBC Tribunal" guide.

This guide emphasizes the Tribunal's dedication to adopting adaptable hearing processes tailored to accommodate the diverse nuances of Indigenous cultures, laws, and specific needs. In 2023, all our adjudicators completed the Indigenous Intercultural Course, and in 2024, we anticipate further collaboration with the Law Society's new Indigenous Navigator to enhance our processes for Indigenous participants.



Herman Van Ommen, KC
Tribunal Chair

The LSBC Tribunal strongly believes in ensuring equal opportunities for all individuals to participate in our hearing processes. Our updated guide on "Information for Witnesses including Witness Accommodation" reinforces our commitment to fairness and accessibility.

In collaboration with the Law Society's Credentials and Licensing Group, we introduced updated Hearing Forms to enhance the efficiency and clarity of the licensing hearing process for licensee applicants. Concurrently, we bolstered this effort with an enriched "Overview of the Licensing Hearing Process".

We solidified and refined our Practice Directions after careful consideration of feedback from adjudicators, the Chair’s Roundtable members, and hearing participants. Notably, based on feedback concerning video-conferenced hearings, we decided to continue this practice for hearings lasting less than 5 days. However, for longer and more complex matters, we will revert to in-person or hybrid hearings. In all cases, the parties continue to be entitled by agreement or by order of the Tribunal to change the presumptive method of hearing whenever it is fair or in the interests of justice to do so. These changes reflect our commitment to ensuring a cost-effective, fair, and efficient hearing process.

In 2023, we recruited new adjudicators and conducted training sessions in Administrative Justice and Decision Writing, alongside our annual education course for existing adjudicators, underscoring our dedication to continuous learning.

Improving decision-making timeliness was a priority in 2023. While progress was made, with 77% of decisions issued within 90 days, the Tribunal will continue efforts to shorten decision writing and citation resolution timelines in 2024.

It was an honor to serve as Tribunal Chair in 2023, and I look forward to continuing to guide the Tribunal in the upcoming year with the support of the adjudicators and staff.

Herman Van Ommen, 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.

The LSBC Tribunal's mission is to hear and decide regulatory cases in a manner that is fair, respectful and transparent. Our decisions, rules, processes and policies are available to lawyers and the public in an easily accessible and understandable format. We approach every hearing with an open mind with respect to every issue and make each decision on the true merits and justice of the case, based on the law and the evidence.

We show respect for the parties, representatives and witnesses and for the hearing process itself. We 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.

Website: LSBCTribunal.ca

Information about the LSBC Tribunal – from the principles that guide us to our processes and the cases that we adjudicate is available on our website.

Tribunal Directions and Hearing Forms

To ensure that the Tribunal's processes are clear and understandable, we publish updated comprehensive Practice Directions 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 hearings.

About our Adjudicators

2023 saw the recruitment of new public and non-bencher lawyer adjudicators whose term began in January 2024.

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 in December 2023 and a decision writing course in January 2024.

We welcome Alykhan Alladina, Gregory Cran, Robert Deane, Susan Kootnekoff, Harinder Mahil, Julie Mantini, Diane McRae, Erwin Nest, Sean Rowell, Jason Twa, and Robert Wickett KC, to the LSBC Tribunal.

With the addition of the new adjudicators, the LSBC Tribunal now has 17 non-bencher lawyers and 18 public adjudicators who, together with eligible benchers, are 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 2023: Gillian Dougans, John Lane, Bruce LeRose, KC, Andrew Mayes, Laura Nashman, Thelma Siglos, Sandra Weafer, William Younie KC.

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

2023 Adjudicators

25 lawyers and 15 public representatives

2023 Motions Adjudicators

Motions Adjudicators in 2023

Motion adjudicators are appointed by the Tribunal Chair to aid in case management and to decide preliminary applications, facilitating fair and efficient resolution of matters.

In addition to the Tribunal Chair, Herman Van Ommen, KC, the following benchers served as motions adjudicators in 2023: Lindsay LeBlanc, KC, Thomas L. Spraggs, Michael F. Welsh, KC and Sarah Westwood, KC.



2023 Adjudicators



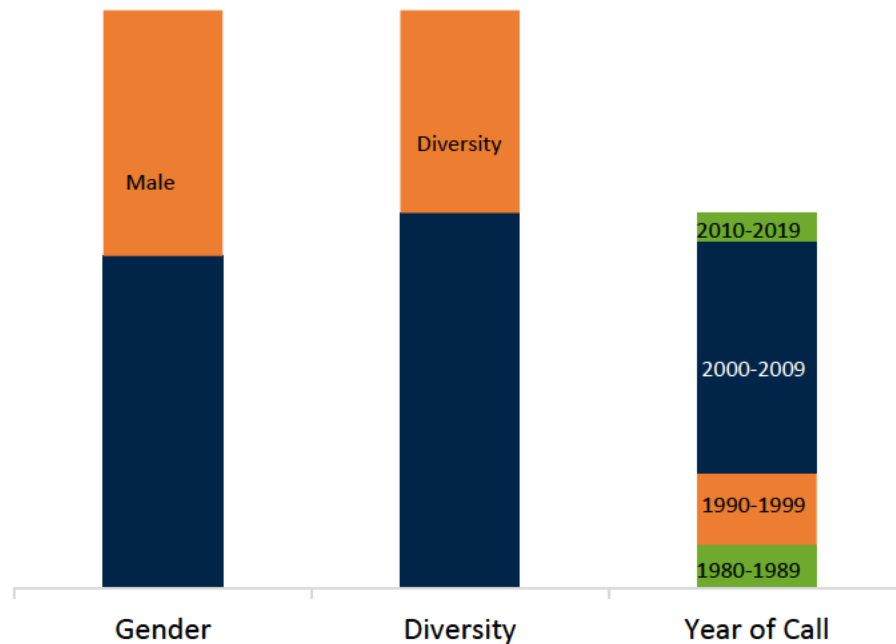
Adjudicators in 2023

Adjudicators preside over regulatory proceedings involving lawyers and contentious applications of licensing candidates seeking to practice law in British Columbia. They interpret relevant legislation and rules, assess evidence, and deliver impartial judgments in the public interest. In 2023, the following individuals acted as adjudicators:

Karen Ameyaw; Paul Barnett; Linda Berg; Clarence Bolt; Nicole Byres, KC; Kim Carter; Tanya Chamberlain; Jennifer Chow, KC; Cindy Cheuk; Douglas Chiu; Catherine Chow; Timothy Delaney; David Dewhirst; Gillian Dougans; Cheryl D'Sa, KC; Michael Dungey; Brian Dybwad; Warren Funt; Eric Gottardi, KC; Kris Gustavson; Darlene Hammell; Katrina Harry; Kimberly Henders Miller; Karen Kesteloo; Cyril Kesten; John Lane; Lindsay LeBlanc KC; Bruce LeRose, KC; Jan Lindsay; Brendan Matthews; Andrew Mayes; Geoffrey McDonald; Steven McKoen, KC; Jacqueline McQueen, KC; Laura Nashman; Paul Pearson; Monique Pongracic-Speier, KC; Georges Rivard; Michele Ross; Paul Ruffell; Kelly Harvey Russ; Gurminder Sandhu, KC; Kate Saunders; Thelma Siglos; Krista Simon; Thomas L. Spraggs; Barbara Stanley, KC; Natasha Tony; Maia Tsurumi; Sandra Weafer; Michael Welsh, KC; Kevin Westell; Sarah Westwood, KC; Ruth Wittenberg; Gaynor Yeung; Guangbin Yan; and William Younie, KC.

Adjudicator Demographics

Adjudicators



The Tribunal actively encourages individuals from Indigenous, racialized, 2SLGBTQI+, or disabled communities, including both lawyers and members of the public, to apply for adjudicator positions. Our aim is to ensure that our adjudicators mirror the diversity of the legal profession, which, in turn, should reflect the demographic makeup of British Columbia's population.

In 2023, there were a total of 40 adjudicators available for appointment to hearing panels and review boards, comprising 25 lawyers and 15 non-lawyers.

Among these adjudicators, 57% identified as female, while 35% identified as Indigenous or belonging to a visible minority group. 84% of the lawyer adjudicators had practiced law for between 14 and 33 years.

Adjudicator Education

In addition to the training of new adjudicators, the LSBC Tribunal is committed to enhancing adjudicator awareness and competency through continuous mandatory education. As part of this commitment, our annual adjudicator education course in 2023 centered around the crucial skill of decision writing.

Caroline Mandell, a seasoned legal educator, delivered the keynote address on “Brain Training and Decision Writing”, Alison L. Kirby, Tribunal Counsel, focused on “Issue Driven Decision Writing”, while Herman Van Ommen, KC, Tribunal Chair, shared strategies to ensure the timely issuance of decisions. His discussion was informed by an analysis of statistics and anonymous comments received from adjudicators regarding challenges they faced with decision writing.

Additionally, Alison Kirby and Sandra Haywood-Farmer, Tribunal Advisor, provided an update on significant professional regulatory cases from 2023. The topics covered included issues of delay, credibility, joint submissions and conduct unbecoming.

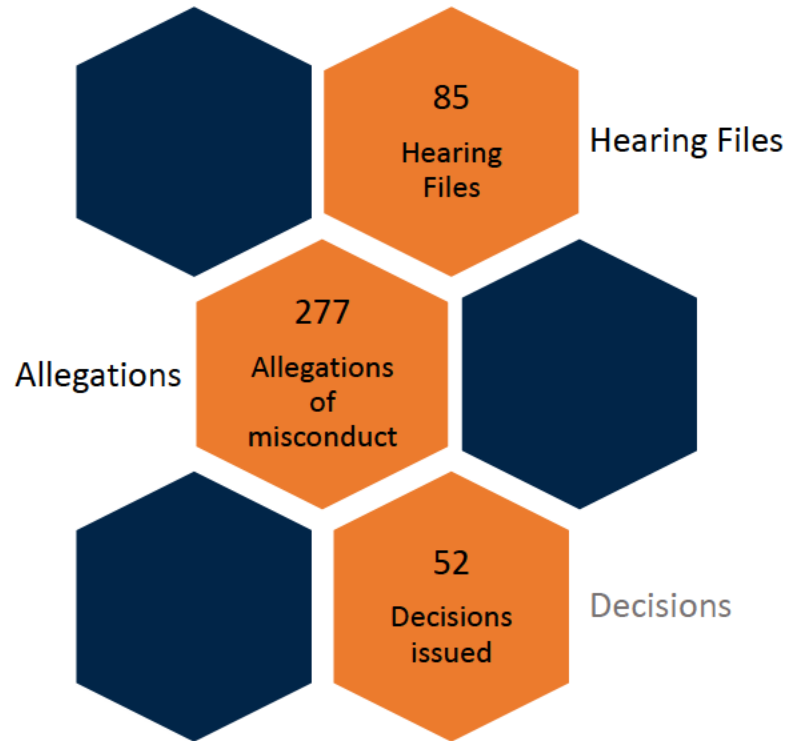
In 2023, all lawyer and public adjudicators also completed the Indigenous Intercultural Course offered by the Law Society which was designed to help British Columbia lawyers increase their Indigenous cultural awareness and understanding. Completion of this course will now be part of the mandatory training of all adjudicators.



Selected Hearing Statistics



Selected Statistics: Hearing Files



2023

In 2023, the LSBC Tribunal handled 85 disciplinary, licensing, extraordinary action and review files relating to 61 individuals with over 277 allegations of misconduct.

25 new disciplinary, licensing, extraordinary action and review files were opened in 2023.

28 disciplinary, licensing, extraordinary action and review files were closed in 2023.

52 decisions were issued.

Selected Statistics: Types of Allegations

Types of Allegations



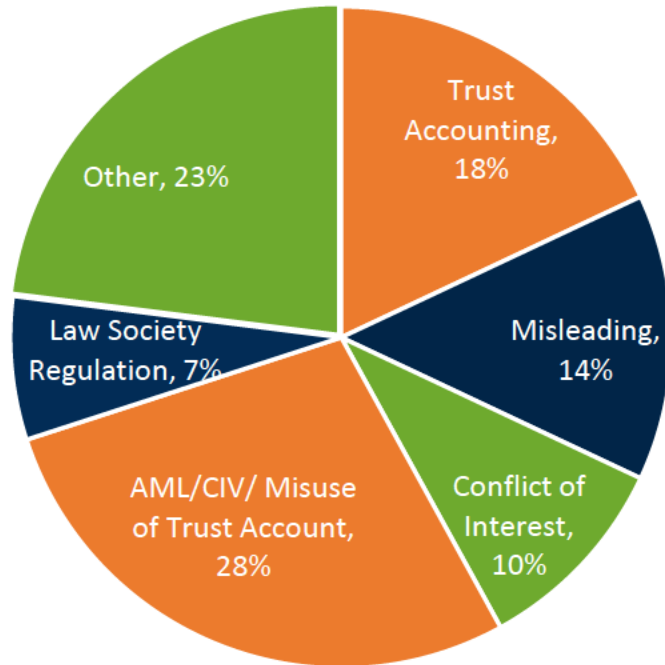
Types of Allegations

Of the 277 allegations of misconduct contained in the disciplinary files before the LSBC Tribunal in 2023

- 28% of the allegations related to money-laundering or client identification and verification 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.
- 18% 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.
- 14% of the allegations related to misleading or making false representations to a client, an opposing party or the Law Society investigator.

Selected Statistics: Types of Allegations

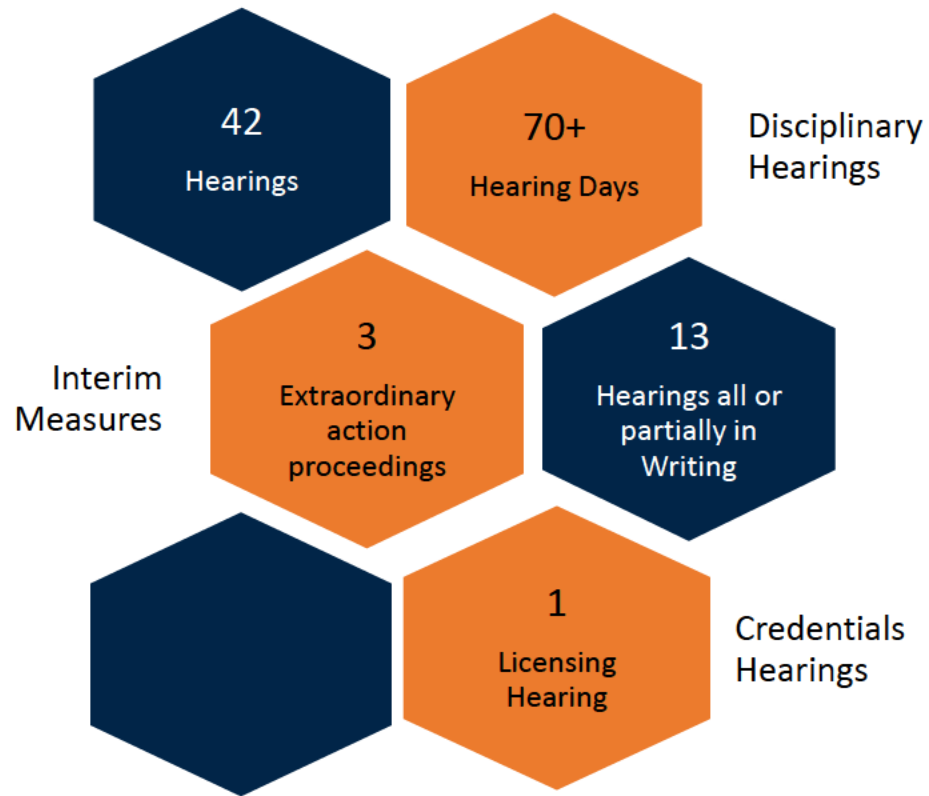
Types of Allegations



Types of Allegations

- 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.
- 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 alleged misconduct including failure to provide client with the quality of service expected of lawyers, breaches of undertakings, failure to pay practice debts, rudeness and incivility, criminal or quasi-criminal conduct, breach of confidentiality and engaging or facilitating dishonesty, crime or fraud.

Selected Statistics: Types of Hearings



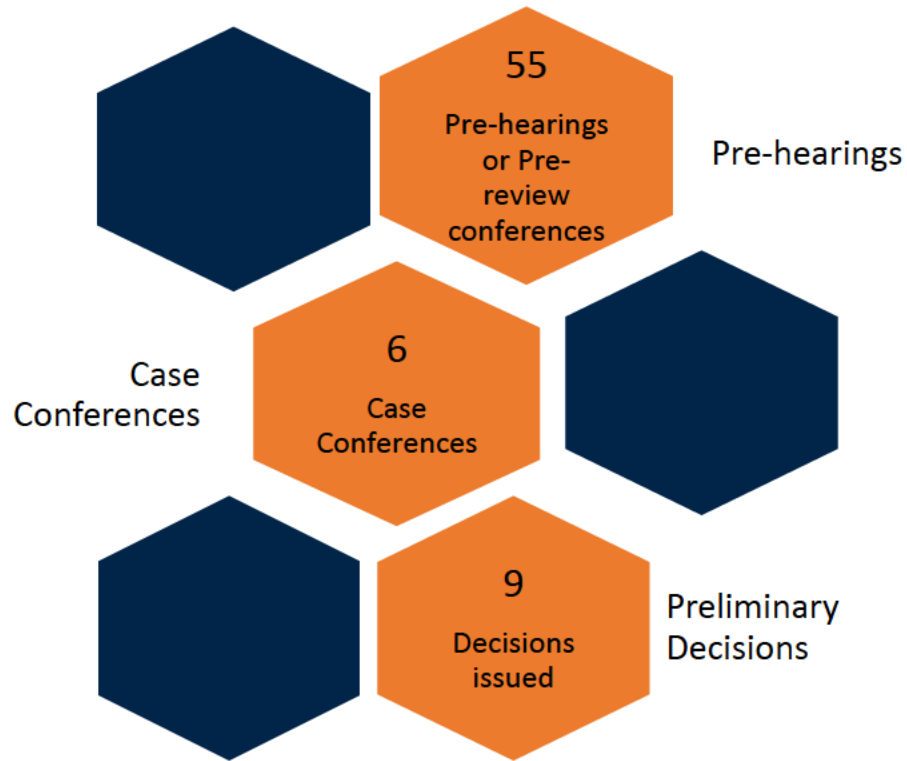
2023 Hearings

There were 42 hearings held or continued in 2023 either in writing, virtually or in-person over the course of 70+ days*:

- 6 hearings covering both facts and determination and disciplinary action
- 13 facts and determination hearings,
- 17 disciplinary action hearings,
- 2 hearings on review costs
- 1 credentials/licensing hearing, and
- 3 extraordinary action proceedings.

* 13 hearings were held partly, or fully, in writing.

Selected Statistics: Pre-hearings 2023

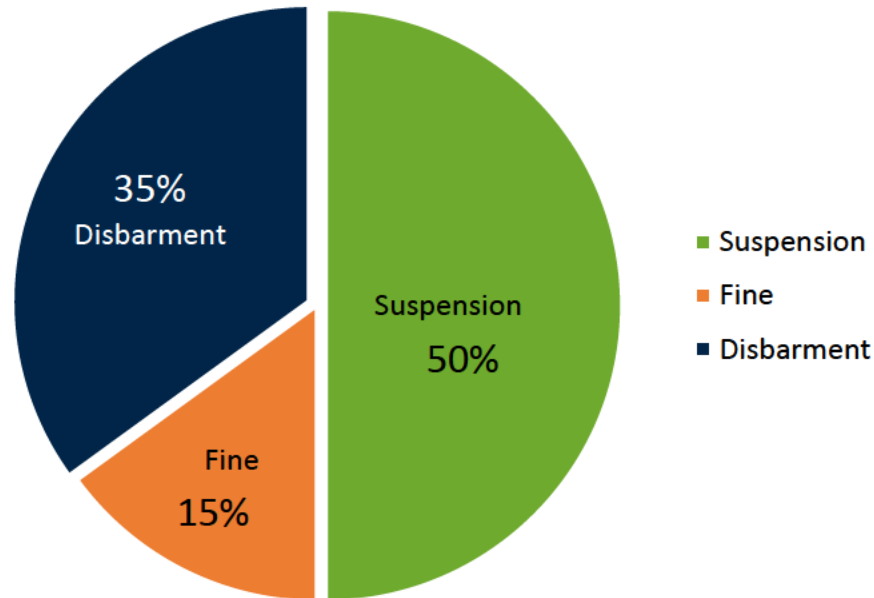


2023 Pre-hearings and Preliminary Applications

- There were a total of 55 preliminary applications, pre-hearing conferences, comprehensive pre-hearings, or pre-review conferences handled by the motions adjudicators in 2023. The applications related to issues such as a request for an adjournment, document disclosure, withdrawal of deemed admissions, change the presumptive mode of hearing, anonymization, closing hearing to public; removal of counsel for bias, recusal of panel for bias; dismissal of citation on grounds of abuse of process.
- There were also 6 case conferences held before panels with respect to preliminary applications or scheduling of sanction proceedings.
- 9 of the 52 decisions issued in 2023 related to preliminary applications.

Selected Statistics: Closed Files

Sanction Imposed



Sanction Imposed

28 hearing files were closed in 2023: 4 licensing, 1 review and 23 disciplinary files.

Of the 23 disciplinary files, 20 resulted in the following sanctions being imposed:

- Seven disbarments;
- Ten Suspensions;
- Three Fines.

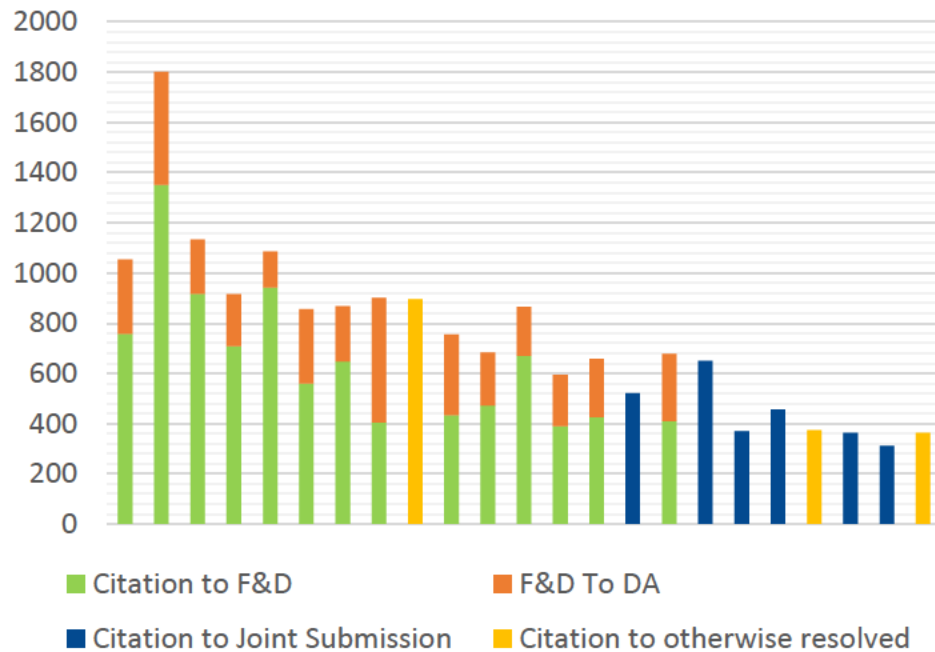
The remaining three files were closed when the underlying citation was rescinded or otherwise resolved without a hearing.

Of the four licensing files, one resulted in a dismissal of an application for reinstatement and the balance were closed on the basis that no action had been taken by the applicant for more than one year.

The one review file resulted in the overturning of hearing panel's finding of professional misconduct with respect to one of the allegations of misconduct but the upholding of the overall sanction for the other proven misconduct.

Selected Statistics: Completed Files 2023

Citation to Final Decision or Resolution



Citation to Final Decision or Other Resolution

It is in the public interest for citations to be dealt with expeditiously.

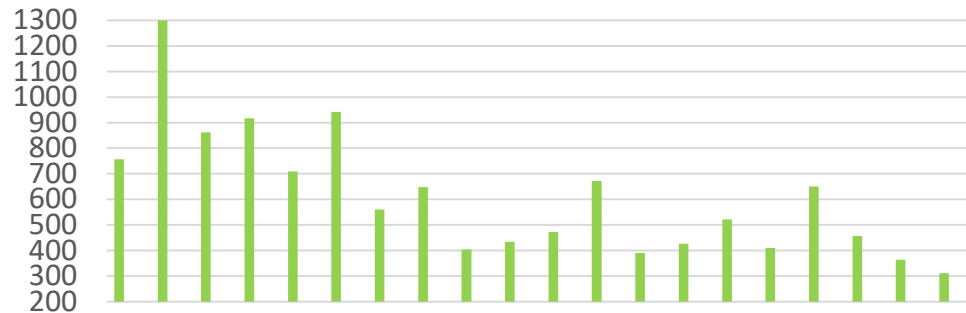
In 2023, 23 citation hearing files were closed: 20 of which resulted in disciplinary action and three of which were rescinded or otherwise resolved without a sanction hearing.

On average, it took two years between the issuance of a citation and the issuance of the disciplinary decision or other final resolution.

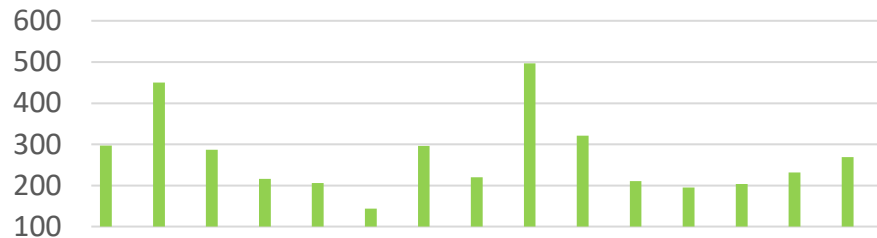
In an effort to improve these timelines, the Tribunal has instituted a case management program which requires parties to appear before the Tribunal within three months of the citation being issued to discuss the status of the file and explain why the matter has not been set for hearing. Similarly, parties are expected to schedule the disciplinary action promptly after the facts and determination decision has been issued with the hearing panel following up if the disciplinary action has not been scheduled within two months.

Selected Statistics: Completed Files 2023

Citation to F&D or Joint Submission



F&D Decision to DA Decision



Citation to Facts and Determination

There were 14 facts and determination and 6 joint submission decisions issued with respect to the 20 closed citation files.

The average time between the issuance of the citation and the issuance of the facts and determination or joint submissions decision was 1.6 years.

The average time between the issuance of the citation and the commencement of the hearing was 1.1 years.

The average time between the issuance of the facts and determination decision and the issuance of the disciplinary action decision was 0.7 years.

Several variables impact the timelines it takes to complete a hearing, such as the responsiveness of the respondent, stays pending appeal, adherence to scheduled hearing dates, scheduling of continuations, inclusion of expert testimony, availability of legal representation, panel members and witnesses, as well as the complexity of the case.

The implementation of new case management techniques aims to streamline proceedings, clarify pertinent issues and maintain procedural momentum.

Selected Statistics: Court Actions 2023

Court Cases initiated in 2023

In 2023, two appeals of hearing panel decisions were initiated in the Court of Appeal, both appeals are still pending.

Court Decisions Rendered in 2023 with respect to Tribunal Matters

In 2023, the Court of Appeal rendered five decisions with respect to Tribunal matters.

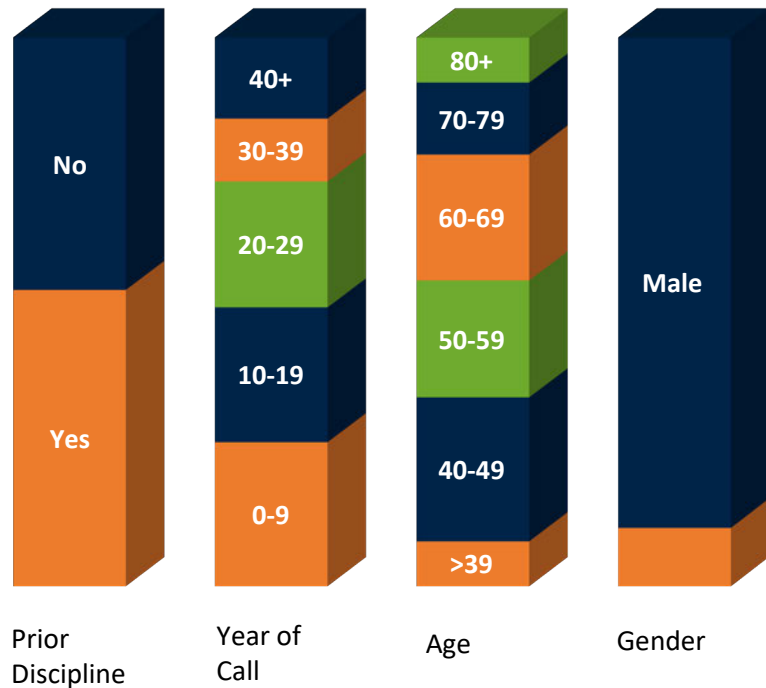
In two cases, the appeals were dismissed (*Hemminger v. Law Society of British Columbia*, 2023 BCCA 36 and *Cole v. The Law Society of British Columbia*, 2023 BCCA 199); two were allowed in part (*May v. Law Society of British Columbia*, 2023 BCCA 218 and *Ahmadian v. Law Society of British Columbia*, 2023 BCCA 470) and the final decision related to costs of a prior appeal (*McLeod v. Law Society of British Columbia*, 2023 BCCA 217).



These decisions confirm, among other things, the Tribunal's ability to quickly cure procedural missteps (*Hemminger*), the importance of giving sufficient reasons especially as it relates to finding of credibility (*Cole*), the ability to apply the same facts to breaches of different rules (*May*), and the need to give a respondent the opportunity to fully advance their case (*Ahmadian*). The Court also clarified the law on misappropriation versus improper withdrawal or handling of trust funds (*Ahmadian*).

The Court's decisions give guidance to the Tribunal on its practice and decision writing, on what is working and what can be improved.

Selected Statistics: Demographics 2023



Respondent or Applicant Characteristics

Of the 61 respondents or applicants before the Tribunal in 2023:

- 54% had a prior discipline history.
- 74% had 10 or more years of practice
- 66% were over 50 years old
- 84% identified as male

Annual Survey and Chair's Roundtable



In 2023, the first meetings of the Chairs Roundtable were held for the purposes of obtaining feedback from hearing participants, the public and Tribunal Staff about the Tribunal's practice and procedure.

At the same time, hearing participants (past and present) and adjudicators were separately invited to complete anonymous surveys seeking feedback on the Tribunal's practices and procedures, how they could be further improved and what further information could be provided to the public or hearing participants to make its processes more accessible.

Following consideration of the feedback, the Tribunal Chair updated the Practice Directions and published further instructions and guides for the public and participants on the Tribunal website.

There were around 160 visitors per day to the LSBC Tribunal website in 2023. The vast majority were from Canada but the website was also visited by people in the United States, China, United Kingdom, Australia, Mexico, Germany and France.

Highlights of Changes to Practice Directions



Four Days or less: Presumptive Virtual Hearing Five Days or more: Presumptive In-person Hearing



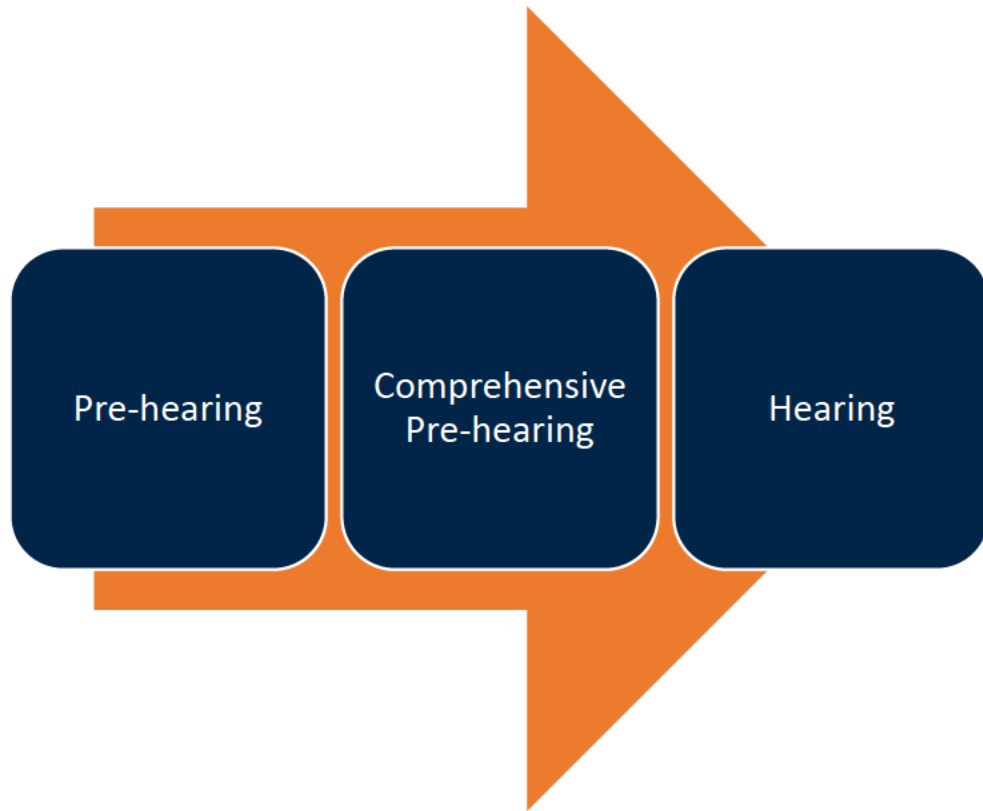
In order to improve accessibility and lower attendance costs to the public and participants, since July 2022, all hearings are presumptively to be held by way of a video conference.

This directive was modified in January 2024 following consultation with adjudicators and hearing participants to require in-person hearings on matters that will take more than four days.

In all cases, the parties continue to be entitled by agreement or by order of the Tribunal to change the presumptive method of hearing 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 at an in-person hearing.

Active Case Management



Under the Tribunal's case management system, all matters will now be scheduled for a mandatory pre-hearing or pre-review conference within 3 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 pre-hearing conference.

In order to improve efficiency, Thursday was designated as a regularly scheduled date to which the Tribunal Chair or one of four appointed motions adjudicator were assigned to hear any scheduled pre-hearing, preliminary motions, comprehensive pre-hearing or pre-review conference matters.

As of January 2024, disciplinary matters will remain under the motions adjudicator's active case management until they are scheduled for hearing.

Stricter Timelines



Since July 2022, Tribunal Directions have contain new and stricter timelines such as:

- Pre-hearings within 4 months if matters not set for hearing
- Comprehensive pre-hearing within 7 months if matter still not set for hearing or hearing scheduled for more than 5 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

In January 2024, new practice directives have been added prohibiting adjournments of scheduled hearing on the merits without a Tribunal order. In March, the timelines were further tightened to require a pre-hearing within 3 months.

These new hearing timelines should have a positive impact on the time it takes for disciplinary matters to be resolved.

Tribunal Office

Tribunal 2023

The Tribunal has its administrative office on the 9th Floor, 845 Cambie Street in downtown Vancouver.

The Tribunal Office's main function is to co-ordinate hearings and provide support to the Tribunal Chair and adjudicators in the exercise of their duties.

Staff is also responsible for updating the Tribunal's website and communicating with hearing participants, individuals and organizations about the hearing processes.

I would like to thank staff and the adjudicators for all their hard work. Their contributions are indispensable to the Tribunal's ability to fulfill its vital responsibilities in serving the public interest.

Tribunal Staff in 2023

Herman Van Ommen, KC (Chair),

Alison L. Kirby (Tribunal Counsel),

Sandra Haywood- Farmer (Tribunal Advisor),

Michelle Robertson (Hearing Administrator),

Mimi Odkhuu (Hearing Clerk),

Amanda Kerr (Hearing Clerk and legal assistant),

Brittany Betts (summer student), and

Jeff Hoskins KC (Legislative Counsel).