ANNUAL REPORT

MESSAGE FROM THE CHAIR
BUILDING THE TRIBUNAL
TRIBUNAL OPERATIONS
TRIBUNAL METRICS

2015
Message from the Chair

2015 was a busy year for the Law Society Tribunal, filled with many changes to enhance the Tribunal’s unique, independent model of adjudication within the Law Society of Upper Canada.

In early September, we moved from the Law Society offices at Osgoode Hall to 375 University Avenue. We now have three full-sized hearing rooms and one multi-purpose room, all of which have state-of-the-art technology. There are also four breakout rooms for parties. The public and the parties now have equal access to a counter to file documents and obtain information.

This year, there was a large change in the Tribunal’s membership. At the beginning of the year, Convocation appointed four new adjudicators after a competitive process that involved review of writing samples and skills-based interviews. In May, 19 newly elected or appointed benchers became Tribunal members. All received comprehensive training and orientation.

The former Vice-Chairs of the Hearing and Appeal Divisions, Linda Rothstein and Mark Sandler, did not run for re-election as benchers and their terms ended in May. I thank both of them for their strong contributions as adjudicative leaders and their thoughtful advice to me since I started in 2013. As Chair of the Appeal Panel for more than six years, Mark wrote many reasons that made and developed key principles. His influence will continue for many years.

Raj Anand is now Vice-Chair of the Hearing Division and Christopher D. Bredt is Vice-Chair of the Appeal Division. I look forward to working closely with them in the years ahead.

We continued to develop our case law, providing guidance to the professions about their professional obligations and establishing principles affecting other Tribunal cases. Significant 2015 decisions include:

- **Law Society of Upper Canada v. DeMerchant, 2015 ONLSTA 6**, dealing with conflicts of interest in the context of large corporations;
- **Law Society of Upper Canada v. Abbott, 2015 ONLSTA 25**, considering the impact of investigative delay on penalty; and

Note: Abbott was upheld by the Divisional Court (see **2016 ONSC 641**) and Savone is under appeal to that Court as of March 2016.

I want to especially recognize the Tribunal staff and adjudicators, all of whom work very hard and are dedicated to our mission. Our team is committed to serving parties, the public, and the professions with excellence. We welcome feedback from the community, and will continue to innovate while keeping our independence and neutrality.
Building the Tribunal

A Distinct Identity

MISSION STATEMENT AND CORE VALUES
The Law Society Tribunal is an independent adjudicative tribunal within the Law Society of Upper Canada. The Tribunal was formally established on March 12, 2014, through implementation of the Modernizing Regulation of the Legal Profession Act, 2013.

In recognition of the Tribunal’s distinct identity and commitment to an enhanced process, a mission statement and core values were created and implemented through a process of consultation with stakeholders and members.

The Law Society 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 work of Tribunal members and staff is informed and governed by this mission statement and the core values of fairness, quality, transparency and timeliness.

TRIBUNAL TEAM
The Tribunal is led by the Chair and is made up of members and staff. Tribunal members are the adjudicators who hear and decide cases. All are part-time, with the exception of the Chair. We have one part-time and 13 full-time staff members, including the Chair.

Members
The Tribunal consists of a Hearing and Appeal Division. The Chair of the Tribunal is Chair of both the Hearing and Appeal Divisions, and each Division has a Vice-Chair. Under the Law Society Act, the Chair must be a lawyer who is not a bencher and the Vice-Chairs must be elected benchers.

Other Tribunal members include elected and other lawyer benchers, paralegal benchers, lay (public) benchers appointed by the Lieutenant Governor in Council, and lawyers, paralegals and lay (public) members appointed by Convocation on recommendation of the Chair. Public members must also be approved by the Attorney General for Ontario. As of December 31, 2015, there were 92 members of the Hearing Division, 24 of whom were also members of the Appeal Division. The Chair is appointed for a four-year term, and Vice-Chairs and members are appointed for terms of up to two years.

Members sit in panels of one, three or five to hear and decide cases. Panels are composed by the Chair in accordance with the requirements of Ontario Regulation 167/07.

Staff
The Tribunal Office is managed by the Registrar and Senior Counsel, who reports to the Chair. Tribunal counsel support the adjudicative and legal needs of the Tribunal through general legal advice, review of reasons and development of, and participation in, adjudicator education. Counsel may also represent the Tribunal at a judicial review or other court proceeding. Tribunal administrative staff support the work of the Tribunal through file management, scheduling, clerking hearings and releasing orders and reasons.

Tribunal Committee
The Tribunal Committee is a standing committee of Convocation. Its mandate is to develop for Convocation’s approval, in conjunction with the Chair, policy options on all matters relating to the Tribunal, including practice directions, the Adjudicator Code of Conduct, publication protocols for Tribunal decisions, Tribunal member professional development and rules of practice and procedure.
TRIBUNAL STRUCTURE
(as of December 31, 2015)

Tribunal Members
Raj Anand  
Vice-Chair, Hearing Division
Christopher D. Bredt  
Vice-Chair, Appeal Division

Elected Lawyer Benchers (32)
Elected Paralegal Benchers (4)
Lay (public) Benchers (7)
Ex Officio Benchers/Former Treasurers (14)
Lawyer Appointees (18)
Paralegal Appointees (4)
Public Appointees (10)

Chair
David A. Wright

Executive Assistant to the Chair
Senior Counsel

Tribunal Committee
Barbara J. Murchie  
Chair
Peter C. Wardle  
Vice-Chair
Committee Members (12)

Tribunal Office
Grace Knakowski  
Registrar and Senior Counsel

Administrator
Bilingual Clerk to Tribunal (2)
Clerk to Tribunal (3)
Counsel
Hearings Coordinator
Publications Counsel (2)
**Tribunal Advancement**

The Law Society Tribunal is committed to continuous improvement and advancement. As part of this commitment, a detailed Tribunal member position description and formal performance development process for members have been approved by Convocation and implemented.

**APPOINTMENT AND REAPPOINTMENT PROCESS**

Members are appointed and reappointed to the Tribunal by Convocation on recommendation of the Chair. Benchers are eligible to be appointed to an initial term by virtue of their position. Other members are appointed following a competitive process and must have adjudicative experience. Tribunal members must adhere to the Law Society Tribunal *Adjudicator Code of Conduct* and demonstrate many competencies, including:

- Knowledge of administrative law, legislation and rules
- Commitment to procedurally fair and transparent hearings
- Production of quality jurisprudence
- Collegiality and self-reflection
- Continuous development through education of adjudicative skills and knowledge of issues before the Tribunal

**BUILDING THE TRIBUNAL**

The Law Society Tribunal is committed to reflecting diversity of background, expertise and experience among its members, including French proficiency and subject-area knowledge. In 2015, Convocation appointed 20 new bencher adjudicators and four appointee adjudicators, further enhancing this diversity.

**ORIENTATION AND EDUCATION**

All new Tribunal members attend a multi-day orientation. Continuing education is offered to members and staff throughout the year, and attendance at two half-day sessions is mandatory for all members. This year’s sessions focused on hearing management. The Tribunal, in conjunction with the Society of Ontario Adjudicators and Regulators (SOAR), presented an intensive four-day orientation session to the new bencher members. The new appointee lawyers, all of whom have extensive adjudicative experience, received a two-day orientation session focused on issues particular to the Tribunal.
Outreach

STAKEHOLDER INPUT

The Chair’s Practice Roundtable continues to provide Tribunal stakeholders with a collegial forum in which to comment on the work of the Tribunal. It is comprised of counsel who regularly represent the Law Society or licensees, and duty counsel who frequently assist self-represented individuals at the Tribunal.

The Chair’s Practice Roundtable also provides an effective channel for the Tribunal to share and receive comments on developments and proposals about its processes.

Lawyers, paralegals and members of the public can receive email updates and consultation documents from the Tribunal by asking to be included on the Tribunal’s Stakeholder List.

REGULATORY AND ADMINISTRATIVE JUSTICE COMMUNITY

The Law Society Tribunal continues to establish its presence within, and make contributions to, the regulatory and administrative justice community. In 2015, David A. Wright was appointed to the Board of Directors of the Council of Canadian Administrative Tribunals and spoke at many conferences and events, including:

- TAG – The Action Group on Access to Justice and the Canadian Institute for the Administration of Justice — Opening Minds to Mental Health
- SOAR Annual Conference — Public Interests: Useful Concept or Meaningless Subterfuge?, and, together with the Law Society Tribunal Registrar and Senior Counsel, Promoting Tribunal Neutrality in an Integrated Regulatory Model
- Association des juristes d’expression française de l’Ontario (AJEFO) — Mise à jour des développements récents importants dans le nouveau Tribunal du Barreau indépendant et les changements d’adjudication au Barreau
- Ontario Paralegal Association — Administrative Law
- Manitoba Council of Administrative Tribunals — Ethics: Herding Cats – Tools in your Toolbox
- Association of Professional Engineers of Ontario — Getting into the Mindset of an Adjudicator
- Health Services Appeal and Review Board, Health Professions Appeal and Review Board, Ontario Hepatitis C Assistance Plan Review Committee — The Public Interest in Professional Regulation
Mission Statement and Core Values

MISSION STATEMENT
The Law Society Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just and in the public interest.

Fairness
We will be fair and impartial in our processes and proceedings, treating all with respect, courtesy and dignity.

Quality
We strive for excellence, acting with dedication and professionalism. We aim for continuous improvement, valuing diverse perspectives. We commit to an atmosphere that enables all to perform at their best.

Transparency
We will act in a manner that bears the closest scrutiny. Our decisions, rules, processes and policies will be available to licensees and the public, accessible and easily understandable.

Timeliness
We are guided by the importance of timely resolution of all matters. We will schedule hearing and continuation dates expeditiously and complete written reasons promptly.
Tribunal Operations

Relocation
On September 4, 2015, the Tribunal relocated its offices and hearing rooms from the Law Society of Upper Canada’s offices at Osgoode Hall to new premises at 375 University Avenue, at the corner of Armoury Street. The relocation of the Tribunal further demonstrates the Law Society’s commitment to foster an independent adjudicative tribunal. There are well-designed hearing rooms, multiple breakout rooms for parties, and functional panel deliberation rooms. Each hearing room has public seating, and overflow can be accommodated in a separate room through video display. Hearing rooms have enhanced video, audio, telecommunication and Internet capabilities. A party, witness or panelist may now participate at a hearing through video or web conferencing. Fixed cameras and large television monitors allow the parties, panel and public to see and hear those participating in a hearing on site or remotely.

The work and staff of the Tribunal are supported through a dedicated file-management area and modern moving filing system that securely stores all materials in one location. The new premises allow staff to better serve hearings seamlessly since hearing, breakout and deliberation rooms, and staff offices and workspaces are now all close to one another.
Accessible

The Law Society Tribunal values being accessible to its stakeholders. Our new premises comply with the *Accessibility for Ontarians with Disabilities Act, 2005* and have ergonomic seating and furnishings, assistive listening devices and braille signage. Onsite underground parking and elevators make the Tribunal more accessible to people with mobility challenges. A reception space with waiting area, coat closet, printer and a large screen listing hearings, along with telephones and water in all hearing rooms make the premises user-friendly and welcoming. Law Society representatives, licensees and the public can equally access the Tribunal and its staff through the front counter.
Three-Year Review

In 2015, a working group of the Tribunal Committee consulted extensively with Tribunal stakeholders to gain input and feedback on the Tribunal’s progress since its establishment in March 2014. Among those consulted were the Chair’s Practice Roundtable; Treasurer’s Liaison Group; four Law Society Committees — Audit and Finance, Equity and Aboriginal Issues, Paralegal Standing, and Professional Regulation; Tribunal members; a sample of legal representatives who appear before the Tribunal with some frequency and, through them, their clients. The Tribunal Model Three-Year Review Final Report concluded that the “model is being thoughtfully and carefully implemented to reflect the goals Convocation established and is being received positively.”
**Initiatives**

In 2015, the *Tribunal Book of Authorities*, containing frequently cited cases at Tribunal proceedings, was created and made publicly available through the Tribunal’s website. The *Tribunal Book of Authorities* assists parties and reduces their costs. Cases from the *Tribunal Book of Authorities* can be relied upon through a simple citation reference instead of copying the entire case. The Tribunal issued a *practice direction* to explain this new resource.

In addition, we enhanced the Tribunal’s website, allowing stakeholders to easily research Tribunal orders and reasons and information about hearings. New sort and search features for the *Current Proceedings*, *Upcoming Hearings* and *Orders and Reasons* web pages were added. Order summaries on the Tribunal website now provide a link to related reasons on the *Canadian Legal Information Institute* (CanLii) website. We added a frequently asked questions (*FAQ*) page, designed in particular to assist self-represented parties and the public.
The Tribunal continues to keep pace with its caseload by opening about as many files as it closes. In 2015, the Law Society Tribunal opened 142 notices of application or referral for hearing and motions for interlocutory suspension or practice restriction to be considered by the Hearing Division, compared to 125 filings in 2014, a 14% increase. The Tribunal also opened 16 notices of appeal to be considered by the Appeal Division, compared to 23 filings in 2014, a 30% decrease. The total number of filings in 2015 is similar to that of 2014.
Tribunal Metrics
The Law Society Tribunal’s 2015 statistics may be found here.

HEARING AND APPEAL FILES CLOSED IN 2015

<table>
<thead>
<tr>
<th></th>
<th>Lawyers</th>
<th>Paralegals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hearing Files</td>
<td>[Graph]</td>
<td>[Graph]</td>
</tr>
<tr>
<td>Appeal Files</td>
<td>[Graph]</td>
<td>[Graph]</td>
</tr>
</tbody>
</table>

FILES CLOSED
In 2015, the Tribunal closed 142 files that were before the Hearing Division compared to 152 closed files in 2014, a 7% decrease. The Tribunal also closed 18 files that were before the Appeal Division compared to 28 closed files in 2014, a 36% decrease.
At year-end 2015, the Tribunal’s active files had been open for the following lengths of time:

- 0 to 6 months – 68 files (44%);
- 7 to 12 months – 42 files (27%);
- 13 to 18 months – 16 files (11%);
- 19 to 24 months – 12 files (8%);
- and over 24 months – 15 files (10%).

As in 2014, nearly half of the Tribunal’s active files at 2015 year-end were 0 to 6 months old and 82% of the Tribunal’s active files were less than 18 months old. These figures are almost identical to 2014 and 2013 year-end figures. This is a significant improvement from 2012 when 33% of open files at year-end were 0 to 6 months old and 76% were less than 18 months old.

In 2015, a total of 137 files were before the proceeding management conference (PMC), a slight 5% decrease from the 144 files of the year before. The instances in which files were considered by the PMC decreased to 298 instances from 338 in 2014, a 12% decrease. A total of 158 files were before the Hearing Division, a 17% decrease from the 190 files of the year before. The number of times files were considered by the Hearing Division decreased by 25% to 282 from 377 in 2014. The emphasis placed on active case management at PMC and pre-hearing conferences (PHCs) likely accounts for this reduction. Twelve files were before the Appeal Division, a 54% decrease from the 26 files of the year before. Files were considered by the Appeal Division 16 times in 2015 as compared with 37 times in 2014, a 57% decrease.

In 2015, hearings or PHCs were scheduled on 93% of all available calendar days. 337 single-day or multiple day hearing blocks were scheduled before the Hearing and Appeal Divisions. Of these, 315 were for Hearing Division hearings and 22 were for Appeal Division hearings. Of the 337 hearing blocks scheduled, 20% were vacated, similar to the 17% vacated in 2014. Twenty-three percent of Appeal Division hearings were vacated, an increase of 11% from 2014. The Tribunal continues to apply its practice direction on adjournment requests.

In 2015, the Tribunal produced 140 written reasons, a 24% decrease from 2014, likely due to fewer files proceeding before the Hearing Division. Tribunal written and oral reasons continue to be published on the CanLII website so Tribunal jurisprudence is easily available to lawyers, paralegals and the public.