Message from the Chair

This is the third annual report of the Law Society Tribunal since it was established in 2014. In 2016, we took stock of the work we have done in establishing an independent administrative tribunal within the Law Society of Upper Canada. We also continued to evolve to improve the quality and efficiency of the services we deliver to the parties and the public.

In January 2016, the Tribunal Committee completed its three-year review of the ongoing implementation of the Tribunal model. It concluded that the “model is being thoughtfully and carefully implemented to reflect the goals Convocation established and is being received positively”, as well as identifying opportunities for further development. I am grateful in particular for the time and thought put in by the working group – Raj Anand, Marion Boyd, Cathy Corsetti and Barbara Murchie – and the helpful comments and feedback from our users, adjudicators, benchers and other stakeholders.

We continued to see results from our work on enhanced case management and promotion of resolution through robust pre-hearing conferences. In 2015, total adjudicator hours were down 26% from the previous year, and in 2016, they dropped a further 19%. This led to time and cost savings for the Tribunal as well as the parties.

Stemming from these and other changes in the Tribunal’s needs, we reorganized the Tribunal Office and Samantha Gomez joined our staff in the new position of Administration Manager. She also serves as Registrar.

In recent years, we have seen an increase in the number of interlocutory suspension motions. The Law Society filed 25 such motions in 2016, as compared with 15 in 2015 and 14 in 2014. Because they are brought on an urgent basis, they require quick action from staff to schedule and from our part-time adjudicators to be available and prepare on short notice. I am grateful to all of our team for meeting this challenge. Our case law on the subject also developed: among other cases see Law Society of Upper Canada v. Ejidike, 2016 ONLSTH 69, aff’d 2016 ONLSTA 18 and Law Society of Upper Canada v. Marusic, 2016 ONLSTA 22, aff’d 2017 ONSC 663.

We have more big plans for 2017, including continuing the implementation of our new electronic case management system, and working on a new, innovative set of Tribunal rules. These, and other ongoing initiatives are formally set out in the Treasurer’s Memorandum to the Tribunal Committee.

I am grateful to our staff, adjudicators, stakeholders and especially all those who volunteer their time as independent duty counsel for their work in serving the public, the professions and the parties before us.
Left to right: Christopher D. Bredt, Vice-Chair, Appeal Division; Isfahan Merali, Vice-Chair, Tribunal Committee; David A. Wright, Chair, Law Society Tribunal; Barbara J. Murchie, Chair, Tribunal Committee; and Raj Anand, Vice-Chair, Hearing Division.
TRIBUNAL STRUCTURE
(as of December 31, 2016)

**Tribunal Members**

- **Chair**
  - David A. Wright

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

- **Elected Lawyer Benchers** (31)
- **Elected Paralegal Benchers** (4)
- **Appointed Lay Benchers** (7)
- **Ex officio Benchers / Former Treasurers** (13)
- **Lawyer Appointees** (11)
- **Paralegal Appointees** (4)
- **Lay Appointees** (10)

**Office of the Chair**

- **Executive Assistant to the Chair**
- **Tribunal Counsel** (2)

**Tribunal Office**

- **Samantha Gomez**
  - Administration Manager and Registrar
  - Clerk (Bilingual)
  - Clerk (3)
  - Scheduling Coordinator
  - Publication Coordinator

**Tribunal Committee**

- **Barbara J. Murchie**
  - Chair
- **Isfahan Merali**
  - Vice-Chair
- **Committee Members** (10)
These three years

In June 2012, a report to Convocation recommended a new tribunal model and the following year, Convocation appointed David A. Wright as the Tribunal’s first independent Chair. Then, the Law Society Act was amended to formally establish the Law Society Tribunal in 2014.

In 2016, the Tribunal Committee, led by a working group, reported on the model’s implementation. It concluded that the implementation reflected the goals set out in the 2012 report for an enhanced hearing process that is transparent, fair and effective for the public and affected licensees alike.

Numerous activities were undertaken these past three years to build on the vision set out in the report.

Independence

Highlighting the Tribunal’s independence from the Professional Regulation Division of the Law Society was key in the new model. The Tribunal was articulated as a distinct entity in the legislation, we established a mission statement and core values, created a Tribunal logo, launched a separate bilingual website and relocated off-site from the Law Society. We consolidated our reasons in one database on CanLII and now publish dedicated annual reports.

The Chair continues to encourage awareness of the Tribunal and its work within the legal, regulatory and administrative justice communities at conferences and events.

Adjudicative Excellence

The 2012 report emphasized adjudicative excellence as a cornerstone of the new model. With this in mind, we focused on the diversity, skills, and availability of adjudicators as well as their ongoing training and performance development. We have seen results in the quality and timeliness of hearings and decisions.

We started with a member position description to better define and inform the adjudicator’s role and established a performance development process to foster self-evaluation and promote continuous improvement of adjudicative skills. We recruited new adjudicators with experience in other tribunals, based on a competitive process. We also increased the number of bilingual adjudicators.

We ensured that new members receive in-depth, multi-day training tailored to this Tribunal’s process and continued mandatory substantive and skills training twice a year. Topics have included Navigating Challenging Interactions in Tribunal Processes; Identifying and Addressing Mental Health Issues; Reason Writing; Hearing Management; and most recently Conducting Hearings with Indigenous People.

The ongoing development of jurisprudence to provide consistent, coherent precedent continues to be a priority for the Tribunal. The Chair’s role as an adjudicator promotes guidance, consistency and quality.

Enhanced Processes

Better processes benefit the public, licensees and representatives before the Tribunal. They facilitate access, timely and fair resolutions, effective and efficient use of resources, and transparency.

Enhancing our processes is ongoing. We implemented a more efficient scheduling mechanism and reworked parts of our Rules of Practice and Procedure. We added new technology, such as assistive listening devices, and cameras and monitors to allow witnesses to testify remotely by video or web conferencing. These facilitate accessibility and transparency.

We began work on an electronic case management system to facilitate e-filing, improved statistics and adjudicator access to files and resources. The Tribunal is implementing this system in stages starting in 2017.

We continue to work on enhancing our processes and customer service to ensure the Tribunal remains accessible and innovative. We welcome feedback to remain responsive to the parties, the public and the legal professions.
By the Numbers

**PRE-HEARING CONFERENCES**
Fairness, quality, timeliness

The Tribunal is making increasing and active use of PHCs to engage parties earlier in the process, narrow issues, negotiate resolutions, reduce unnecessary adjournments and shorten hearing times. There has been a 142% increase in the number of PHCs from 2013 to 2016. This is part of an overall priority to manage each proceeding more effectively.

**HEARING TIME**
Quality, Timeliness

Total adjudicator hours are down 40% in the past two years, with a similar caseload. Reasons include increased case management, fewer re-hearings because of successful appeals, and more agreed facts and joint submissions on penalty. Hearing time, and costs for the parties and the Tribunal, have been reduced.

**BETTER CASE MANAGEMENT**
Timeliness

The focus on enhanced case management and mediation is having a positive effect. More files are resolving sooner. 79% of the total files closed in 2015 were between 0-18 months old while 84% of the total files closed in 2016 were between 0-18 months old.

The average age of a closed file is 12-13 months.

**APPEALS**
Quality

The number of appeals has fallen significantly over the past three years. Appeals represented 16% of our caseload in 2014 compared with 6% in 2016.
OUR PROCESS AT A GLANCE

Significant steps in a typical conduct application

First Stages *

1. Law Society files a Notice of Application.

2. Parties attend a Proceeding Management Conference (PMC).

3. A Pre-Hearing Conference (PHC) is scheduled. Law Society provides disclosure.

*These are the typical steps in a conduct application. Some cases and other types of applications may proceed differently.

TRANSPARENCY: NOTICES AND PMCS

- Notices are posted on our website under "Current Proceedings".
- PMC s are public unless ordered otherwise and transcripts can be ordered. The adjudicator prepares an endorsement at each PMC that includes the next step in the process. Endorsements are available from the Tribunal Office.
Pre-hearing Preparation

4. PHCs are held. Parties often prepare Agreed Statement of Facts or Request to Admit.

5. Hearing dates are scheduled.

TRANSPARENCY: PHCS AND HEARING DATES
- PHCs are private and informal. An endorsement is prepared at each PHC that includes the next step in the process and endorsements are available from the Tribunal Office.
- Hearing dates are posted on our website under “Upcoming Hearings” up to 90 days in advance or when scheduled if less than 90 days.
The Hearing

6. Hearing on whether there was professional misconduct is held. The panel may reserve its decision, give a finding with reasons to follow or give oral reasons.

7. If misconduct is found, a hearing on penalty and costs follows. This hearing may be on the same day or a different day. The panel may reserve its decision, give a finding with reasons to follow or give oral reasons.

TRANSPARENCY: HEARINGS

- Hearings are public unless ordered otherwise. The chair prepares an endorsement after each hearing day or group of days. Exhibits and other documents filed are public unless ordered otherwise and are available from the Tribunal Office. Transcripts of public hearings may be ordered from the court reporting service (a charge may apply). Reasons, including written versions prepared from oral reasons, are available on the CanLII website. Most orders are published on our website under “Orders and Reasons” with a link to any corresponding reasons.
Actions towards reconciliation

The Truth and Reconciliation Commission of Canada emphasized in its Final Report that reconciliation requires constructive action in addressing First Nations, Métis and Inuit peoples’ experiences with the administration of justice. Meeting the TRC’s call to action is important to the Law Society Tribunal, in particular because our decisions about lawyers and paralegals affect how they do their work within the Ontario justice system.

In 2016, one of our mandatory education sessions for adjudicators focused on Indigenous issues. Led by two members of the Indigenous Advisory Group to the Law Society, Myeengun Henry (Elders Council) and Kathleen Lickers (Chair), it developed our adjudicators’ knowledge of the history and current lived experiences of Indigenous peoples in Canada. We recognize that it is important to ensure that proceedings at our Tribunal fairly and respectfully deal with Indigenous people and issues that affect them in the administration of justice.

We have sought guidance from community members on how to be more inclusive. At a long hearing that started in 2016 in northern Ontario, Elders were present throughout, conducted smudges and opened and closed each session in a traditional way. We adapted the hearing room setup to a circle with the community in a central place.

We were also honoured to have been gifted with Eagle Feathers by Anishinaabe Elders to be held by witnesses. The Eagle Feathers are available on request at all Tribunal hearings.

Looking forward, we recognize that as an administrative tribunal, we need to continue to improve how our process responds to the needs and experiences of Indigenous people. We need to learn more about Indigenous views, perspectives and experience, reflect and then act to incorporate that learning into how we do all aspects of our work.
Core Values

All staff and adjudicators have committed to model the core values in our everyday work by creating an atmosphere that is open, reflects quality and timeliness. One way this is accomplished is by investing in semi-annual training for adjudicators to ensure the delivery of accessible, impartial and respectful proceedings that meet the needs of the diverse population we serve. All staff job descriptions were amended to take into account the core values and changing needs of the Tribunal’s users. On-site staff training develops and reinforces the skills of the professionals who help deliver our services.

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 STAFF IN 2016
Left to right: Tatiana Arellano, Joe Zaffino, Savi Gangaram, Bianca D’Souza, Samantha Gomez, David A. Wright, Vashti Ramsukh, Hélène Bever, Jenny Trivino, Lisa Mallia, Shalini Vyas (not pictured).
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