



TAB 5

Report to Convocation May 23, 2019

Tribunal Committee

Committee Members

Isfahan Merali (Chair)
Paul Cooper (Vice-Chair)
Barbara Murchie (Vice-Chair)
David A. Wright (*ex officio*)
Raj Anand
Larry Banack
Peter Beach
Christopher Bredt
Janis Criger
Rocco Galati
Marian Lippa
Jan Richardson
Raj Sharda
Peter Wardle

Purpose of Report: Information

**Prepared by the Tribunal Office
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Executive Summary

The Law Society Tribunal's 2018 statistics report is set out at **TAB 5.1**.

Committee Process

The Committee met on May 9, 2019. Committee members Isfahan Merali (Chair), Barbara Murchie (Vice-Chair), Raj Anand, Christopher Bredt, Jan Richardson, and David A. Wright (Chair, Law Society Tribunal and *ex officio* Committee Member) attended. Bencher Teresa Donnelly, Benchers Elect Brian Prill and Alexander Wilkes and Tribunal Counsel Lisa Mallia also attended.

Background

Starting in June 2016, the Tribunal Committee discussed and began to revise the statistical information and data gathered by the Tribunal to provide better, more relevant reports to Convocation and the public. The on-going collection and reporting of Tribunal operational statistics assists the Tribunal to monitor issues and identify needs and emerging trends and enables the Committee and Convocation to make policy decisions with a more fulsome understanding of the Tribunal's work.

The Tribunal Committee considered the kind of data that would be useful in public and internal reports to add to or replace the numbers being gathered and reported, bearing in mind the goals of the Tribunal model and the issues raised in the 2016 Tribunal Model Three-Year Review final report. The data centre on adjudicative purposes, measuring the effectiveness of the Tribunal's processes.

The goal was to have more 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;

while bearing in mind the public interest nature of the information and the goal of transparency.

The committee developed a list of statistics to be gathered and reported on, together with the reporting intervals (quarterly and annually).

The Law Society Tribunal's first year-end report with the new data, reviewing the year 2018, is set out at **TAB 5.1**.



2018 Law Society Tribunal Annual Statistics

For the period from January 1, 2018 to December 31, 2018

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Introduction

Statistics are critical to the work of the Law Society Tribunal. By recording, analyzing and sharing data, we are able to identify areas for improvement, to inform the continual evolution of our processes and policies, to assist Convocation in making policy decisions, and to be transparent with the public about the work we do.

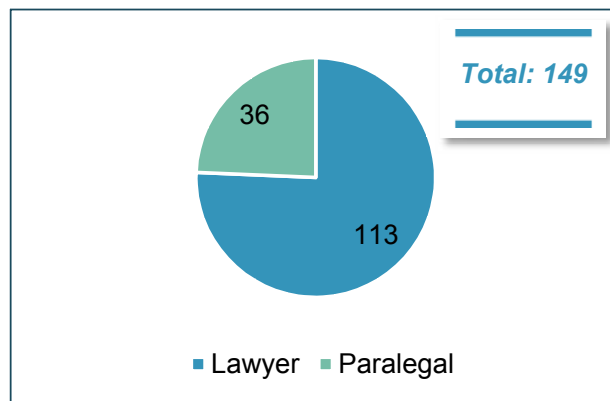
This year, the Tribunal began gathering a variety of new statistics, many of which are presented below. Our first quarter runs from January 1 to March 31, our second quarter from April 1 to June 30, our third quarter from July 1 to September 30, and our fourth quarter from October 1 to December 31.

Volume

Total Files Opened

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

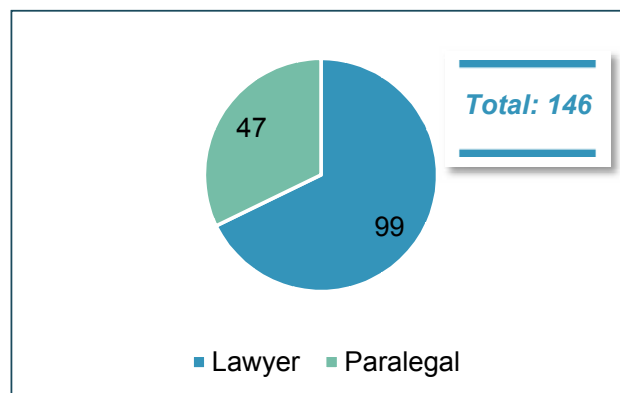
Figure 1: Number of files opened



Total Files Closed

The Tribunal closes a file after the final order or final reasons are published, or if the matter is abandoned or deemed abandoned.

Figure 2: Number of files closed



Proceeding Types

The Law Society Tribunal comprises 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 summary orders.

Figure 3: Number of files opened in 2018 by proceeding type

Proceeding type	Paralegal files opened	Lawyer files opened	Total files opened
Appeal by the Law Society	0	0	0
Appeal by the licensee / licence applicant	2	15	17
Capacity	0	4	4
Conduct (summary)	17	24	41
Conduct (non-summary)	11	47	58
Interlocutory suspensions / restrictions	2	14	16
Licensing	4	5	9
Reinstatement	0	3	3
Terms dispute	0	1	1
All proceeding types	36	113	149

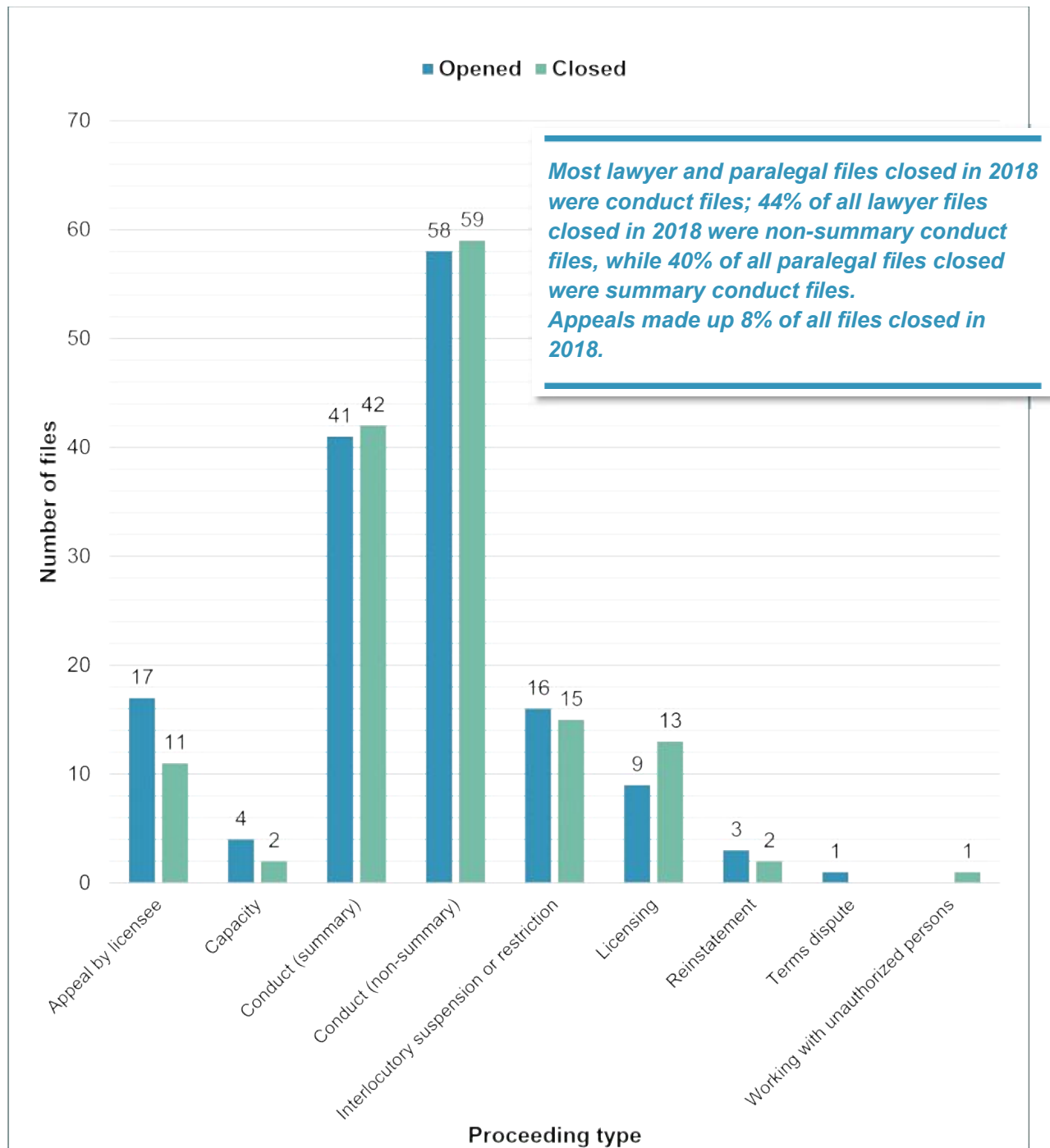
Most lawyer and paralegal files opened in 2018 were conduct files; 42% of all lawyer files opened in 2018 were non-summary conduct files, while 31% of all paralegal files opened were non-summary conduct files.

Appeals made up 11% of all files opened in 2018.

Figure 4: Number of files closed in 2018 by proceeding type

Proceeding type	Paralegal files closed	Lawyer files closed	Total files closed
Appeal by Law Society	0	1	1
Appeal by licensee / licence applicant	3	8	11
Capacity	0	2	2
Conduct (summary)	19	23	42
Conduct (non-summary)	15	44	59
Interlocutory suspensions / restrictions	2	13	15
Licensing	7	6	13
Reinstatement	1	1	2
Terms dispute	0	0	0
Working with unauthorized persons	0	1	1
All proceeding types	47	99	146

Figure 5: Files opened and closed by proceeding type in 2018



Subject Areas

The Tribunal tracks subject areas of conduct files in order to better understand the kinds of cases that come before it. A single file can encompass more than one subject area.

Figure 6: Number of files opened in 2018 by subject area

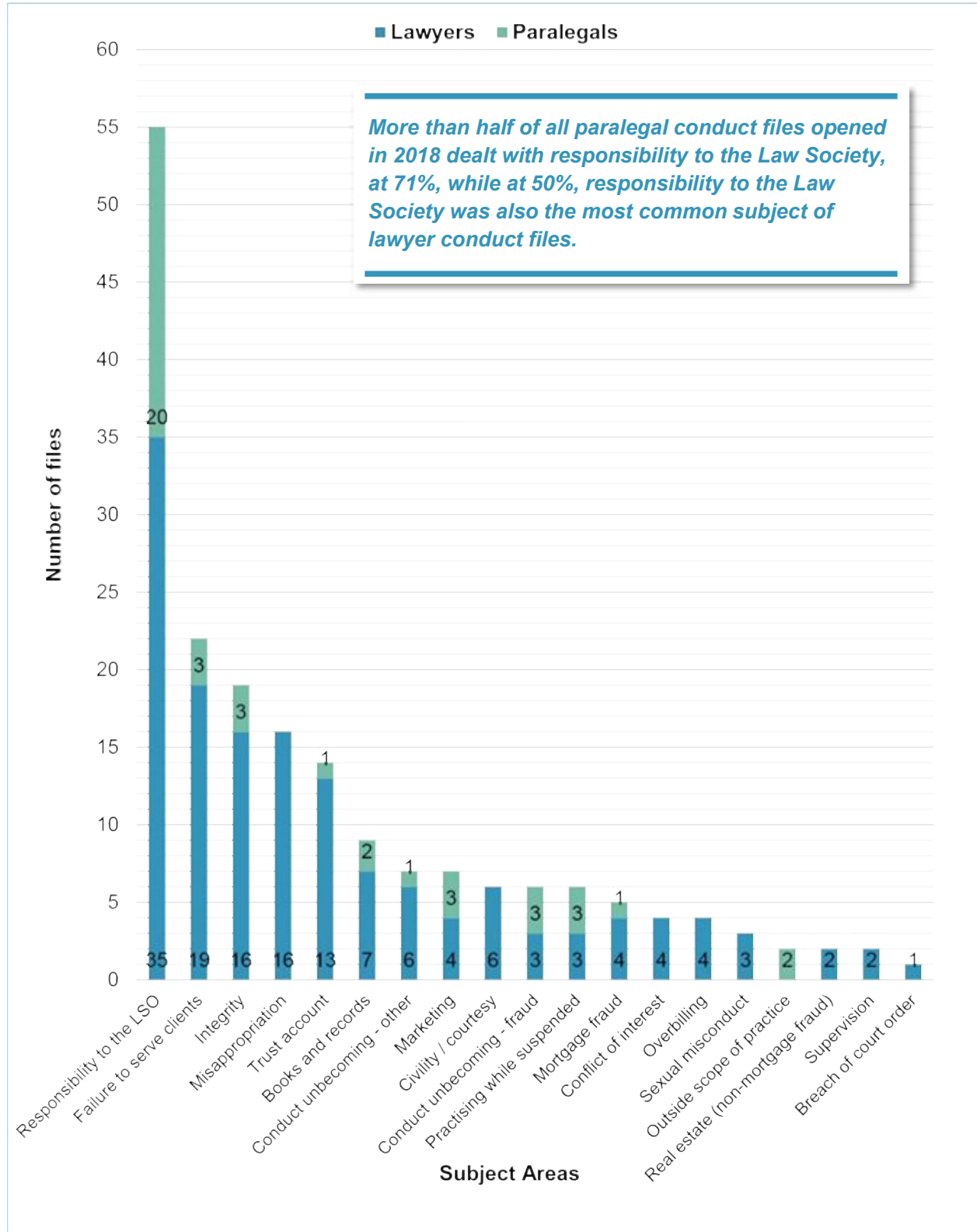
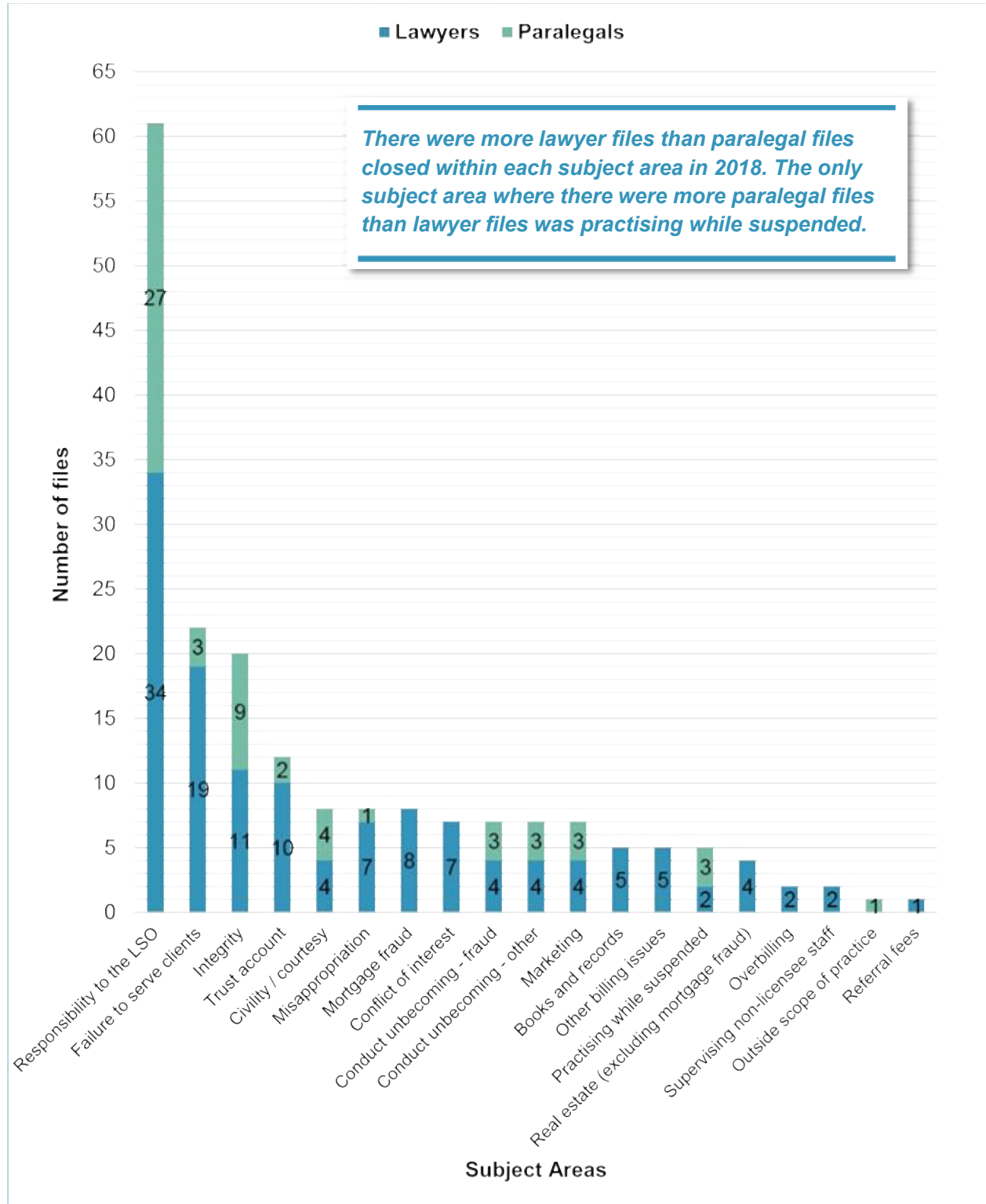


Figure 7: Number of files closed in 2018 by subject area

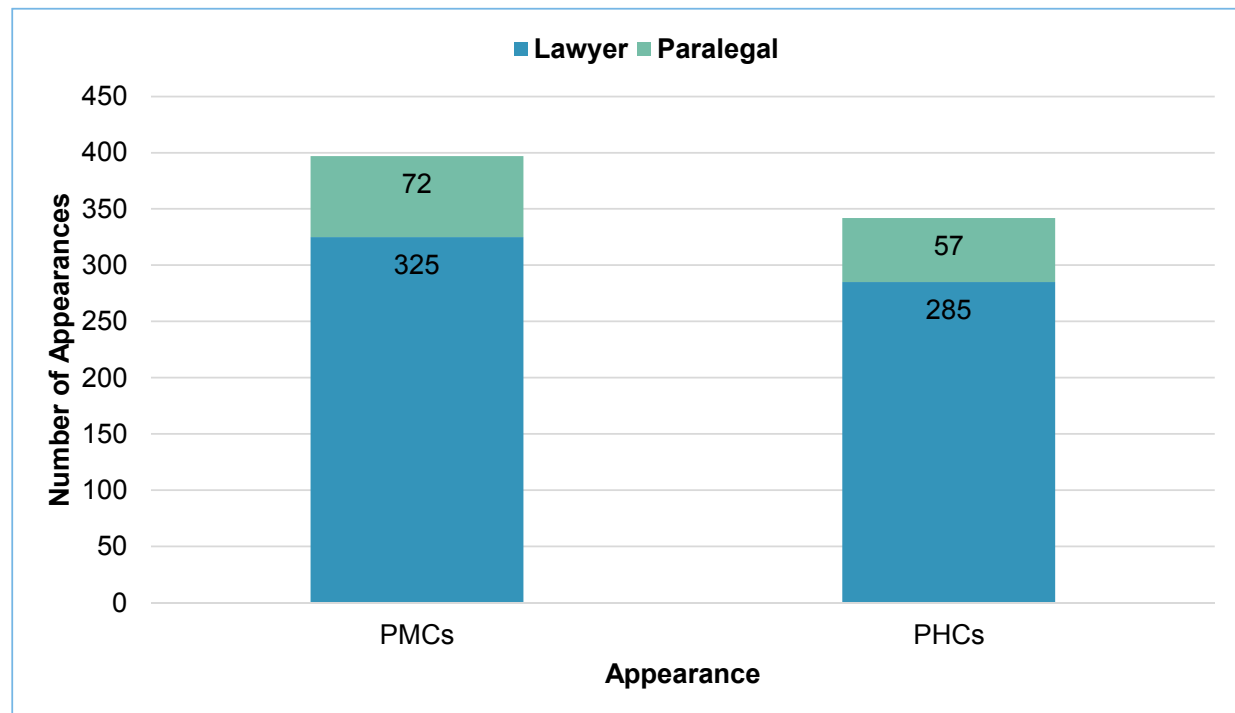


Types of Appearances

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 any other preliminary issue.

The matter may then proceed to a pre-hearing conference, which is used to identify, limit, simplify, or 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.

Figure 8: Number of PMCs and PHCs in 2018 by licence type

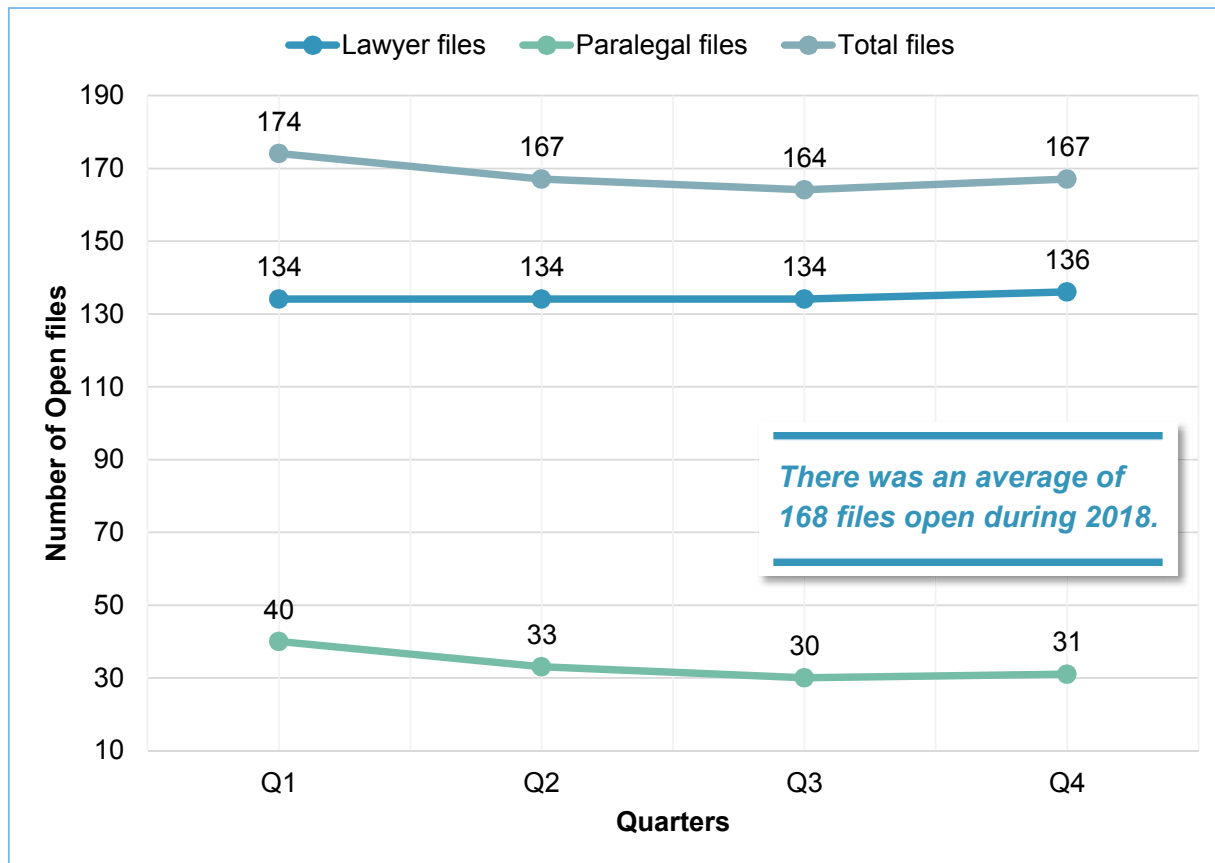


Caseload

There are a number of 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 quarter.

There were 164 open files at the end of 2017.

Figure 9: Number of open files at the end of each quarter



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. The following chart represents the number of each length of hearing day in 2018.

Figure 10: Number of half days used for hearings in each quarter

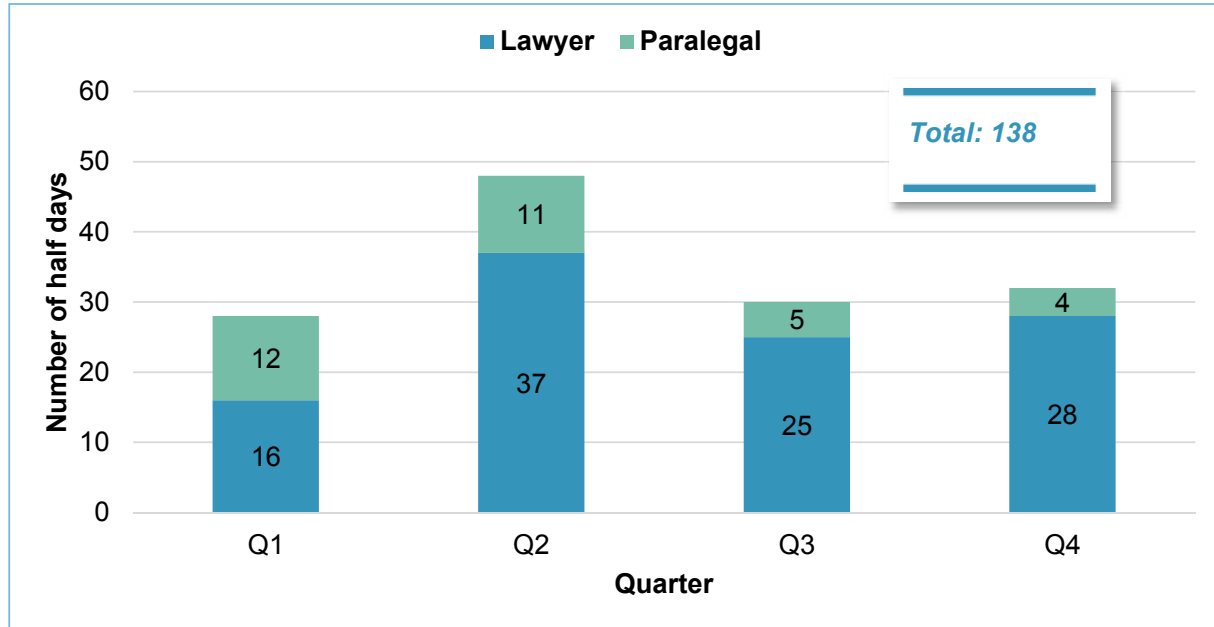
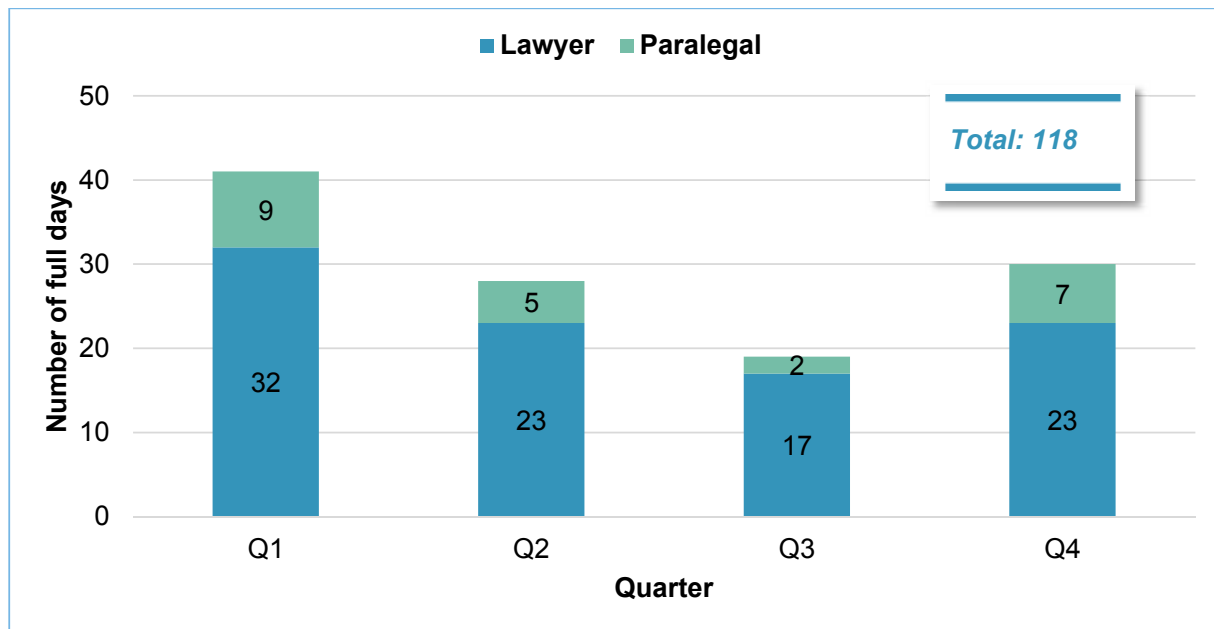


Figure 11: Number of full days used for hearings in each quarter



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 34 written hearings in 2018.

Vacated Hearings

Hearing days can be cancelled, or 'vacated', in advance of the hearing for a variety of reasons; this can occur during a PMC, a PHC, or by a notice of abandonment. 14 out of 256, or 5%, of hearings were adjourned on the day of hearing.

Figure 12: Number of full days and half days vacated in 2018

Days from date vacated to scheduled hearing	Full days vacated	Half days vacated
Within 7 days	13	8
From 8 to 28 days	17	9
From 29 to 59 days	17	1
60 or more days	5	0

In 2018, 52 full-day hearing dates and 18 half-day hearing dates were vacated.

Proceedings 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 13: Average days to significant milestones for files closed in 2018

Milestone	Lawyer files	Paralegal files	All files
First PMC	43	29	39
First PHC	156	82	136
First hearing	223	124	193
Decision on finding / determination	342	175	292
Decision on penalty (conduct matters only)	307	183	269
Last hearing / submissions	344	187	291
Reasons on finding / determination	353	226	315
Reasons on penalty (conduct matters only)	393	235	341
File closed	397	244	348

The Law Society of Ontario requires approval from the Proceedings Authorization Committee (PAC) to commence certain proceedings at the Tribunal. Conduct, capacity, non-compliance, and interlocutory suspension or restriction motions require PAC approval. In 2018, 119 of the 146 files closed had been approved by PAC.

The table below shows data for those 119 files. Averages are based on the number of files that do pass the corresponding milestones.

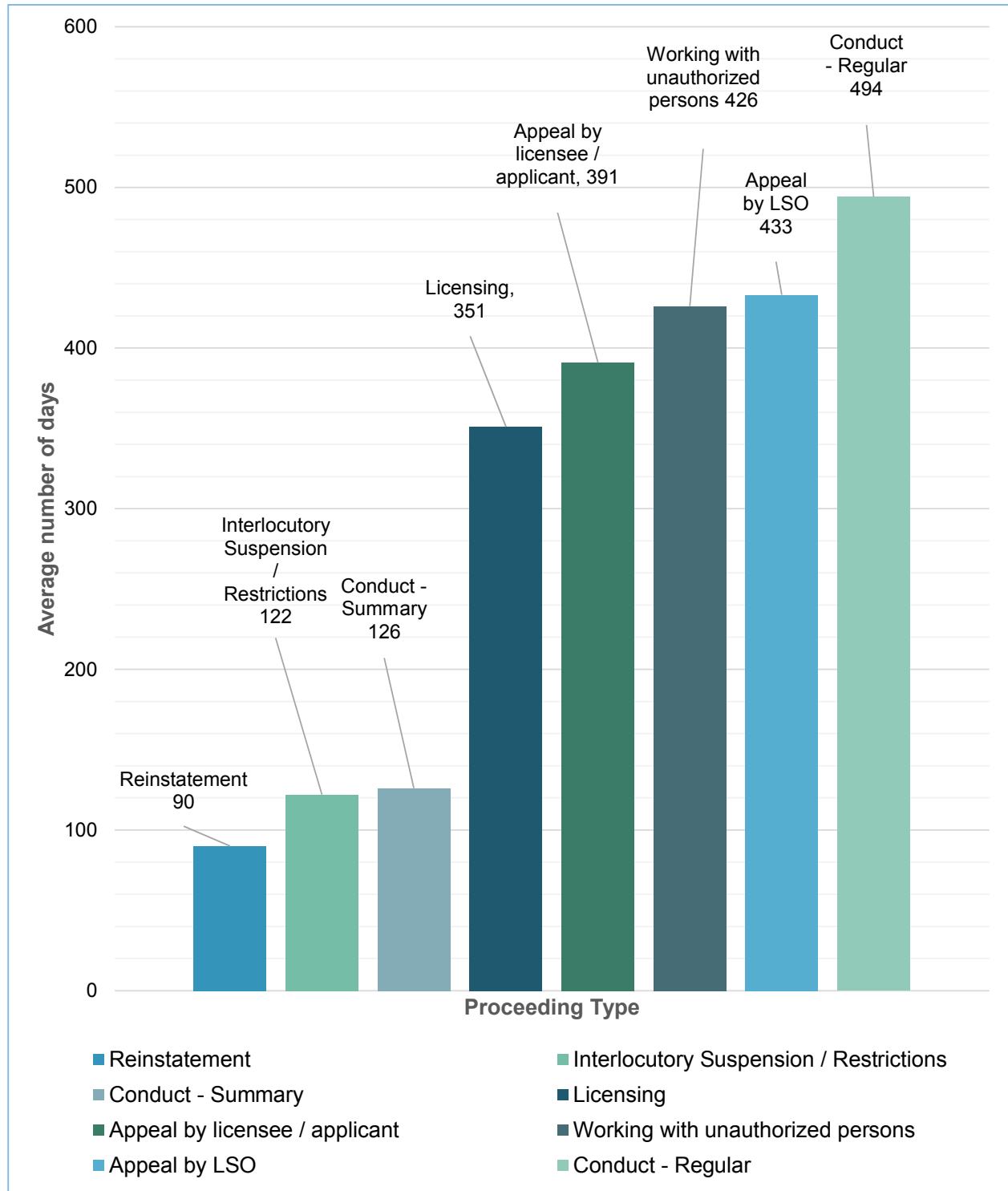
The following table does not include one capacity matter in which the licensee had not been responding since 2014, and one matter that was reheard after a lengthy appeal.

Figure 14: Average days to significant milestones for PAC-authorized files closed in 2018

Milestone	Lawyer files	Paralegal files	All files
Date filed	48	29	42
First PMC	67	60	65
First PHC	150	126	144
First hearing	246	144	215
Decision on finding / determination	304	196	271
Decision on penalty (conduct matters only)	351	218	305
Last hearing / submissions	357	193	306
Reasons on finding / determination	357	245	322
Reasons on penalty (conduct matters only)	402	267	356
File closed	411	249	361

The average time from PAC authorization to the closing of a file is less than one year. For summary files, it is less than 5 months.

Figure 15: Average days from date filed to date closed for files closed in 2018



Though interlocutory suspension/ restriction files average 122 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.

Three interlocutory suspension/ restriction files have been removed from the average because their unusual nature delayed their closing dates. In each case, the licensee's licence was suspended or the licensee had signed an undertaking not to practise early in the process.

There were two capacity files closed in 2018, one which took 1,691 days to close and one which took 958 days to close. Because this kind of file deals mostly with mental health matters, a variety of issues can arise that elongate the proceedings. Usually, when this is the case, there is a suspension in place to protect the public while the proceedings conclude.

Orders and Reasons

There are many types of orders that the Tribunal may make during the course of a proceeding. Merits orders decide an application on its merits (for example, whether an interlocutory suspension is granted or whether a licensee has engaged in misconduct and will be subject to a penalty) and are often accompanied by reasons.

The panel may reserve their decision at the end of a hearing or may provide their decision at the hearing with oral reasons given on the record or with written reasons to follow.

Figure 16: Merits orders and accompanying reasons during each quarter

Merits orders	Q1	Q2	Q3	Q4	All quarters
Decision reserved (order made after the hearing together with written reasons)	12	11	8	9	40
Order made at the hearing with written reasons to follow	13	20	14	16	63
Order made at the hearing with oral reasons	6	12	6	3	27
Order made at the hearing without reasons	1	1	1	1	4

There were a total of 134 merits orders issued in 2018.

Reasons

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

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

Figure 17: Time taken to complete reasons for reasons released within each quarter

Days taken to deliver reasons to the parties	Q1	Q2	Q3	Q4	All quarters
Oral reasons at hearing	3	13	11	9	36
30 days or less	4	10	4	6	24
31 to 60 days	10	18	18	18	64
61 to 90 days	10	13	9	13	45
91 to 120 days	9	6	4	2	21
more than 120 days	10	8	7	1	26

Figure 18: Matters awaiting reasons and decision at the end of each quarter

Licence type	Q1	Q2	Q3	Q4
Lawyer	6	13	16	13
Paralegal	4	2	1	5
All licence types	10	15	17	18

Figure 19: Matters awaiting only reasons at the end of each quarter

Licence Type	Q1	Q2	Q3	Q4
Lawyer	5	17	17	21
Paralegal	5	5	3	1
All licence types	10	22	20	22

Outcomes

Applications with the Law Society as applicant

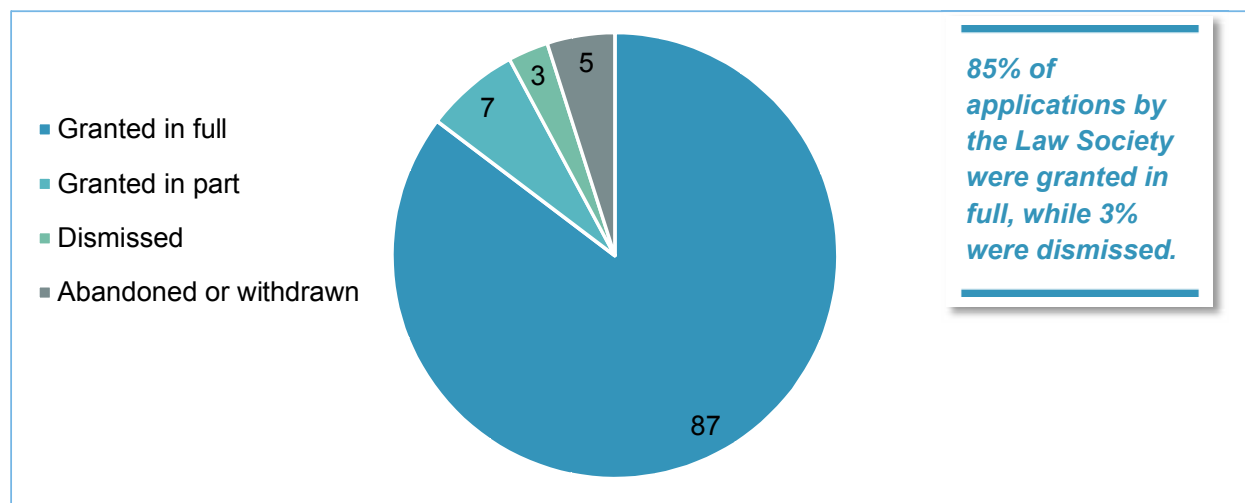
Most of the matters that are heard by the Tribunal are initiated by the Law Society, with the Law Society as the applicant and a licensee as the respondent. The figures below exclude interlocutory suspension matters.

Figure 20: Outcomes for lawyer matters closed within the quarter

Results of Applications by the Law Society	Q1	Q2	Q3	Q4	All quarters
Granted in full	11	18	16	13	58
Granted in part	1	1	3	0	5
Dismissed	1	1	1	0	3
Abandoned or withdrawn	0	0	2	1	3

Figure 21: Outcomes for paralegal matters closed within the quarter

Results of Applications by the Law Society	Q1	Q2	Q3	Q4	All quarters
Granted in full	9	14	5	1	29
Granted in part	0	1	0	1	2
Dismissed	0	0	0	0	0
Abandoned or withdrawn	1	0	1	0	2

Figure 22: Results of applications by the Law Society closed in 2018


Applications by the Licensee or Licence Applicant

Some matters that are heard by the Tribunal are initiated by the licensee or licence applicant, with the Law Society as the respondent.

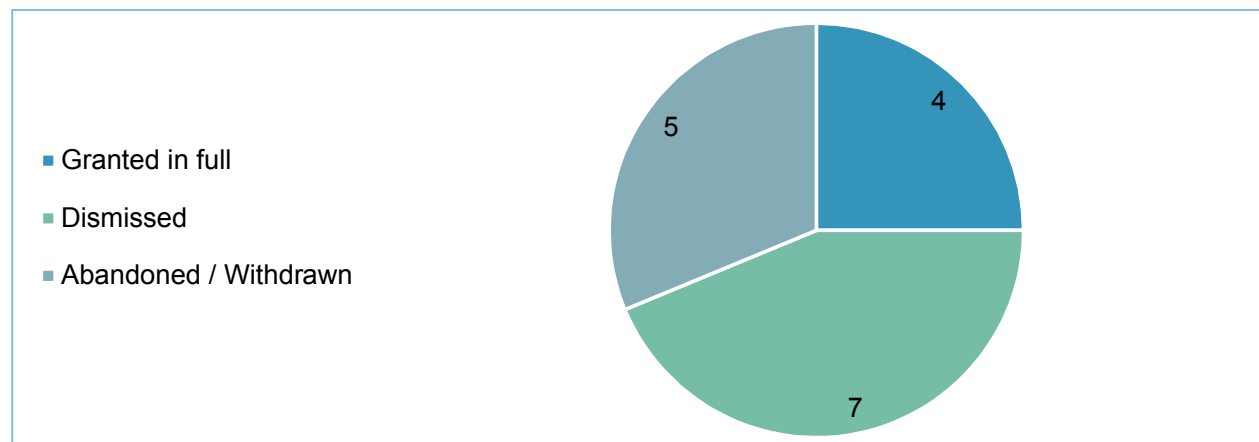
Figure 23: Outcomes for lawyer matters closed within the quarter

Results of Applications by the Licensee or Licence Applicant	Q1	Q2	Q3	Q4	All quarters
Granted in full	1	2	0	0	3
Granted in part	0	0	0	0	0
Dismissed	2	0	0	1	3
Abandoned or withdrawn	0	1	1	0	2

Figure 24: Outcomes for paralegal matters closed within the quarter

Results of Applications by the Licensee or Licence Applicant	Q1	Q2	Q3	Q4	All quarters
Granted in full	0	1	0	0	1
Granted in part	0	0	0	0	0
Dismissed	1	1	1	1	4
Abandoned or withdrawn	1	0	2	0	3

Figure 25: Results of applications by the licensee or licence applicant closed in 2018



Interlocutory Suspension or Restriction Motion

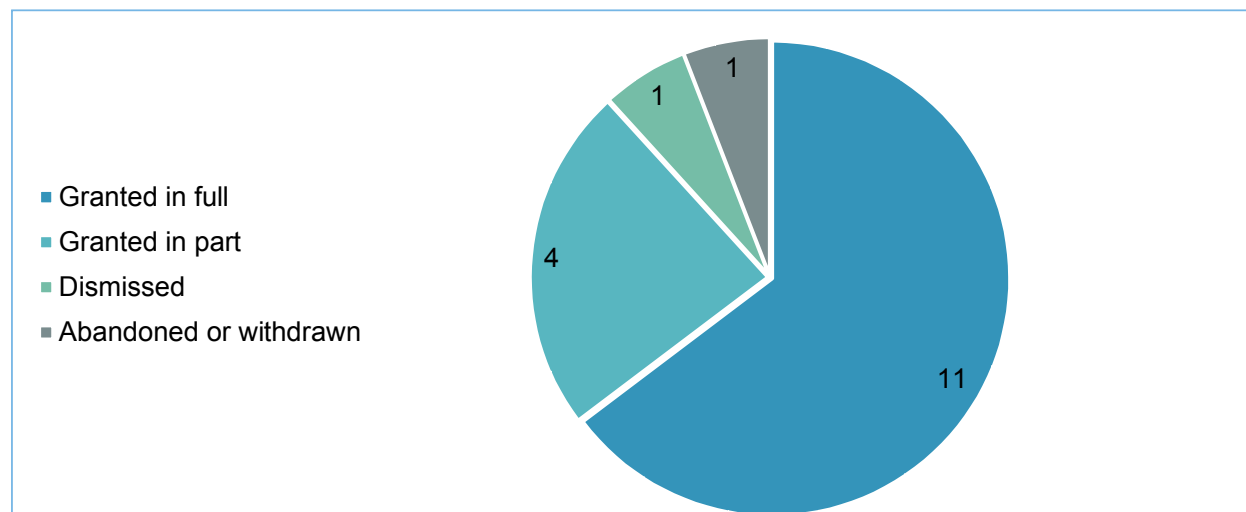
An interlocutory suspension or restriction is an interim measure that may be requested by the Law Society before the hearing on the merits of the case. Interlocutory suspensions may be ordered when significant risk to the public or to the public interest in the administration of justice has been demonstrated.

Figure 26: Outcomes for lawyer interlocutory suspension or restriction motions closed in each quarter

Results of Motions for Interlocutory Suspension or Restriction	Q1	Q2	Q3	Q4	All quarters
Granted in full	1	2	2	4	9
Granted in part	0	2	0	2	4
Dismissed	0	1	0	0	1
Abandoned or withdrawn	1	0	0	0	1

Figure 27: Outcomes for paralegal interlocutory suspension or restriction motions closed in each quarter

Results of Motions for Interlocutory Suspension or Restriction	Q1	Q2	Q3	Q4	All quarters
Granted in full	2	0	0	0	2
Granted in part	0	0	0	0	0
Dismissed	0	0	0	0	0
Abandoned or withdrawn	0	0	0	0	0

Figure 28: Results of interlocutory suspension or restriction motions closed in 2018


Appeals

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

One appeal by the Law Society was dismissed in the first quarter and six appeals initiated by a licensee were dismissed while five were abandoned or withdrawn in 2018.

Agreement between parties in conduct matters

In addition to hearings, the Tribunal holds pre-hearing conferences (PHCs) which are used to identify, limit, simplify, or attempt to settle some or all of the issues of the case. In 2018, of the 101 conduct files closed, 55 had at least one PHC, and 45 of those saw the parties reach some kind of agreement. Of the total 101 conduct files closed, 65 had some kind of agreement.

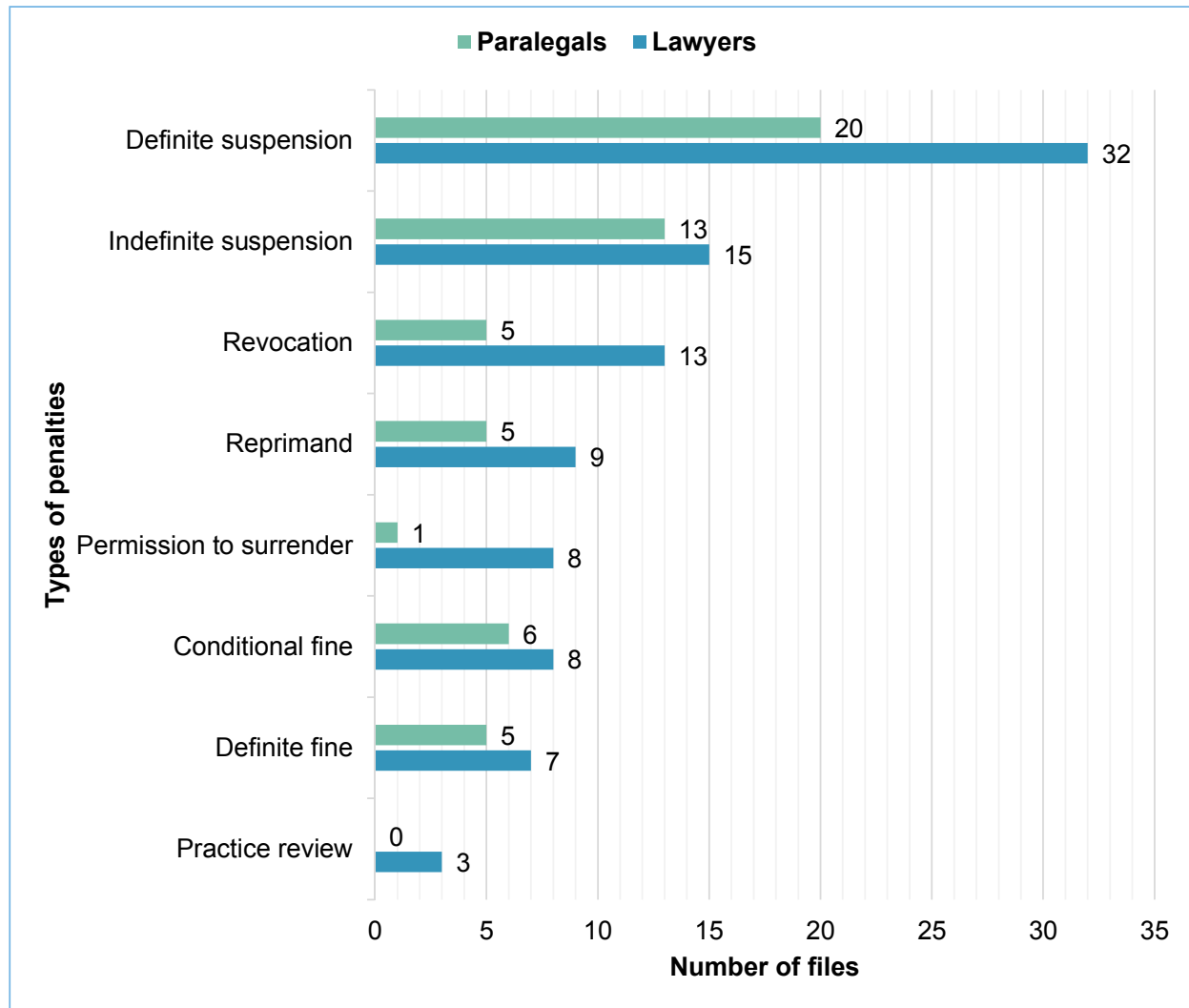
Figure 29: Closed conduct files that had some form of agreement

Type of agreement	Files with at least one PHC	Files without a PHC	Average PHCs (in files that had at least one PHC)	Total PHCs
Partial agreed statement of facts	4	0	4	15
Agreed statement of facts	33	7	4	122
Admission of misconduct	31	19	4	113
Partial joint submission on penalty	4	2	6	22
Joint submission on penalty	30	11	4	121

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 30: Penalties ordered by licence type for files closed in 2018



Suspensions

When a definite suspension was ordered in a lawyer matter, the average length was 1.8 months. The maximum was 6 months.

When a definite suspension was ordered in a paralegal matter, the average length was 2.4 months. The maximum was 19 months.

In 2018, 88% of suspensions ordered in files closed were between one and three months.

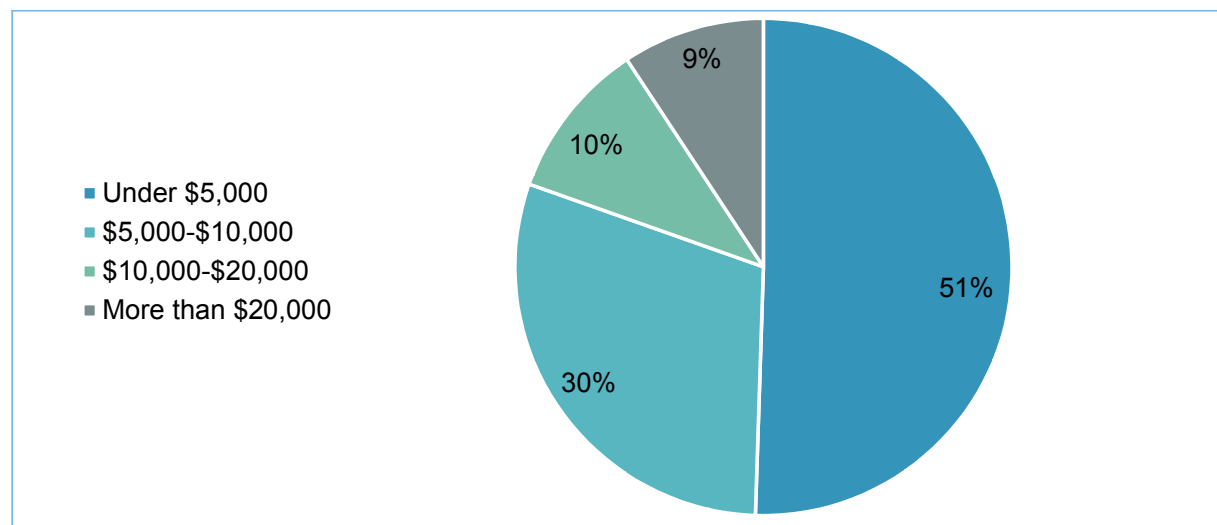
Fines

A panel can order up to \$10,000 in fines. In 2018, 92% of all definite fines and 79% of all conditional fines were between \$1,000 and \$2,000.

Costs

Costs can be awarded in any type of proceeding before the Tribunal. Though costs can be awarded against the Law Society, for files closed in 2018, all instances of costs awarded were against the licensee.

Figure 31: Costs distribution for files closed in 2018



Panels

Adjudicator hours and Tribunal composition

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

In 2018, 61 of the Tribunal's 69 adjudicators sat on at least one panel.

Figure 32: Hours in 2018 by adjudicator location

Adjudicators	Hours including PMCs and PHCs	Hours excluding PMCs and PHCs
Residing in Toronto	2082.8	1719.4
Residing outside Toronto	1147.2	1101.0

Figure 33: Hours in 2018 by adjudicator type

Adjudicator type	Hours including PMCs and PHCs	Hours excluding PMCs and PHCs
Lawyer	1872.2	1638.1
Paralegal	161.0	161.0
Lay	699.2	699.2
Chair	497.4	322.1

Figure 34: Hours in 2018 by adjudicator category

Adjudicator category	Hours including PMCs and PHCs	Hours excluding PMCs and PHCs
Appointee	1127.0	1034.8
Bencher (elected / appointed)	1484.4	1342.5
Ex officio / Former Treasurer	121.1	121.1
Chair	497.4	322.1
Total hours	3229.9	2820.4

Figure 35: Tribunal composition by adjudicator location

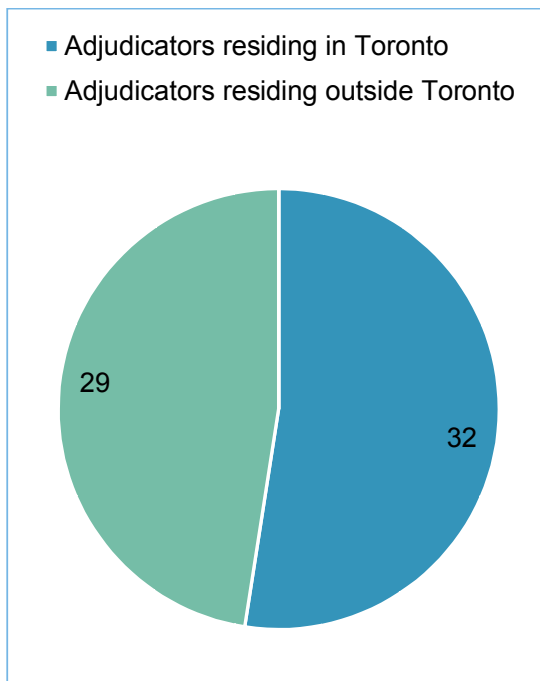


Figure 36: Breakdown of adjudicator hours

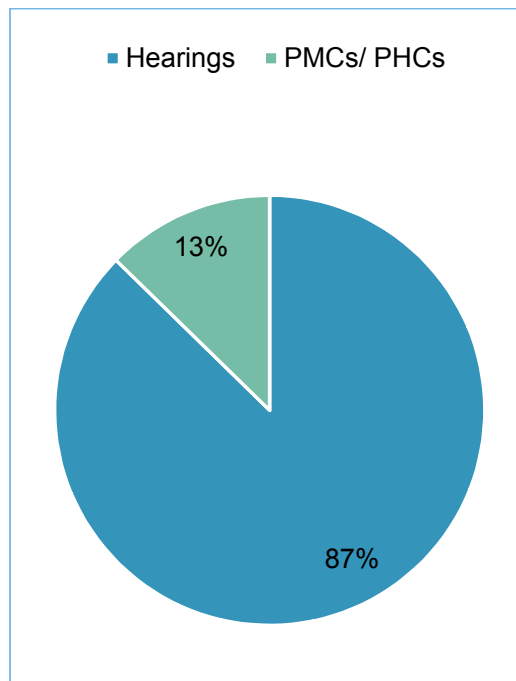


Figure 37: Tribunal composition by adjudicator type

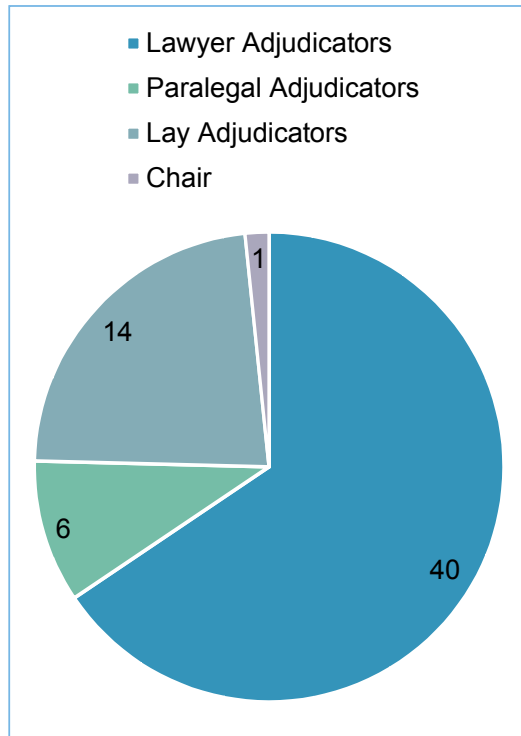
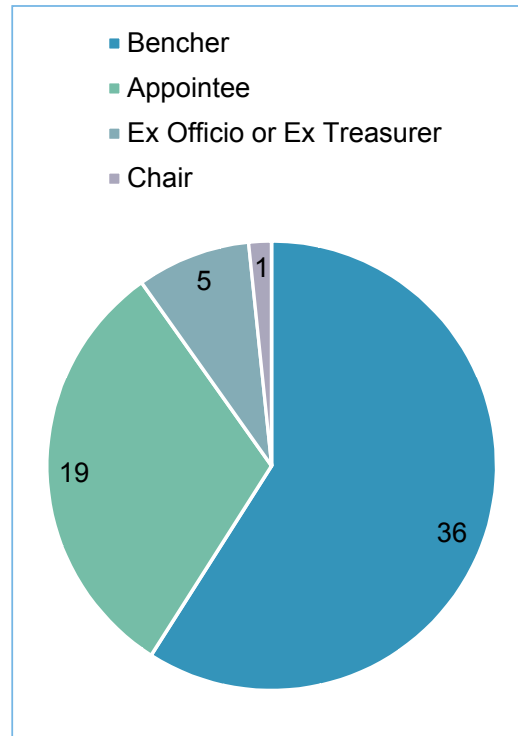


Figure 38: Tribunal composition by adjudicator category



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 39: Merits hearing panels for files closed in 2018

Panel size	Total
One-member panels	54
Three-member panels	73
Five-member panels	5
All sizes	132

Of the above 132 panels, 31 included the PHC adjudicator, 4 presided in French, and 2 presided outside of Toronto.

Figure 40: Panel sizes for files closed in 2018

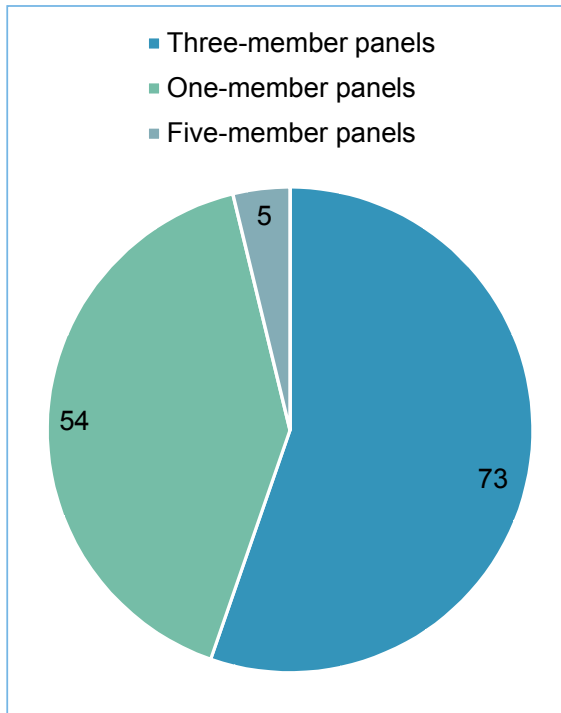
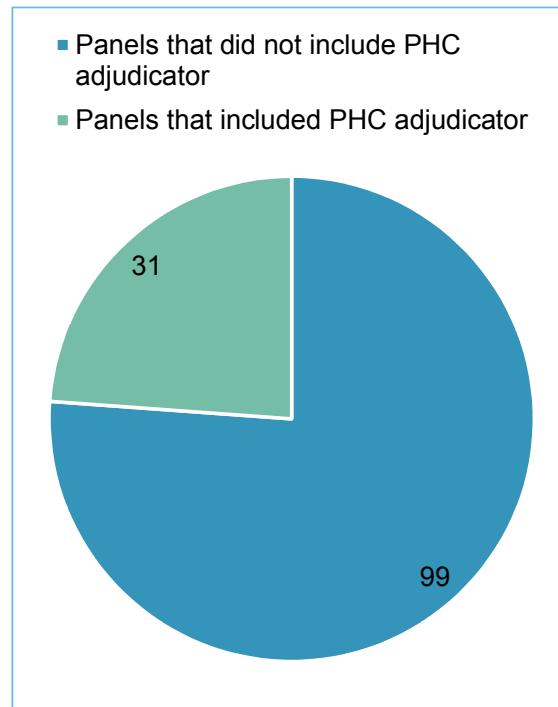


Figure 41: Presence of PHC adjudicator



Year-to-Year

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

Figure 42: Files opened and closed by year

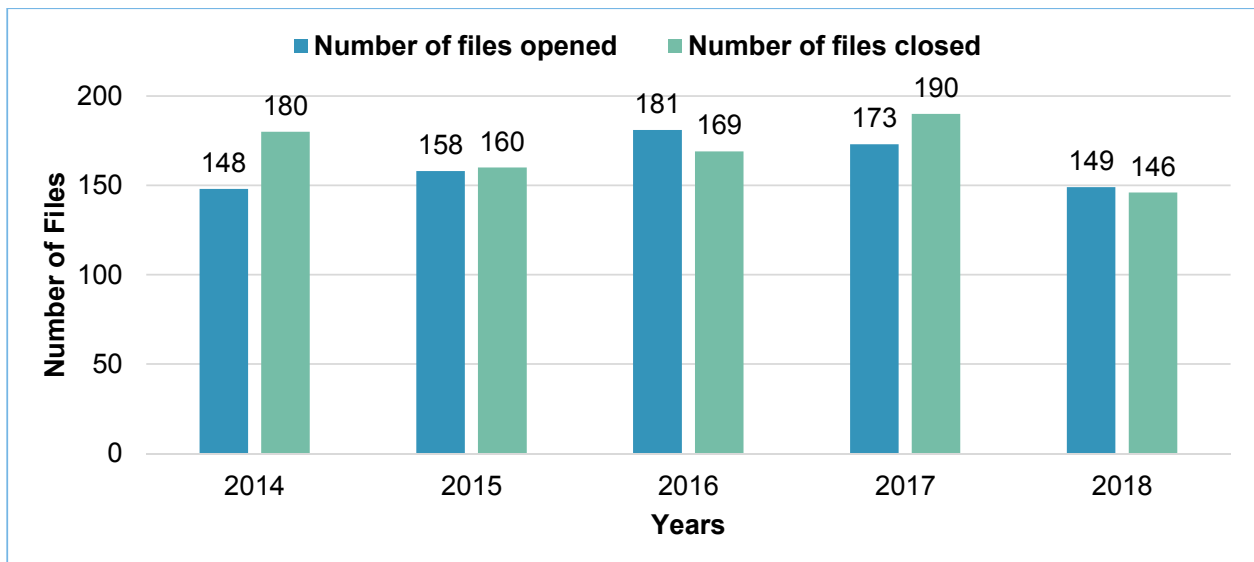


Figure 43: Adjudicator hours by year (including PHCs and PMCs)

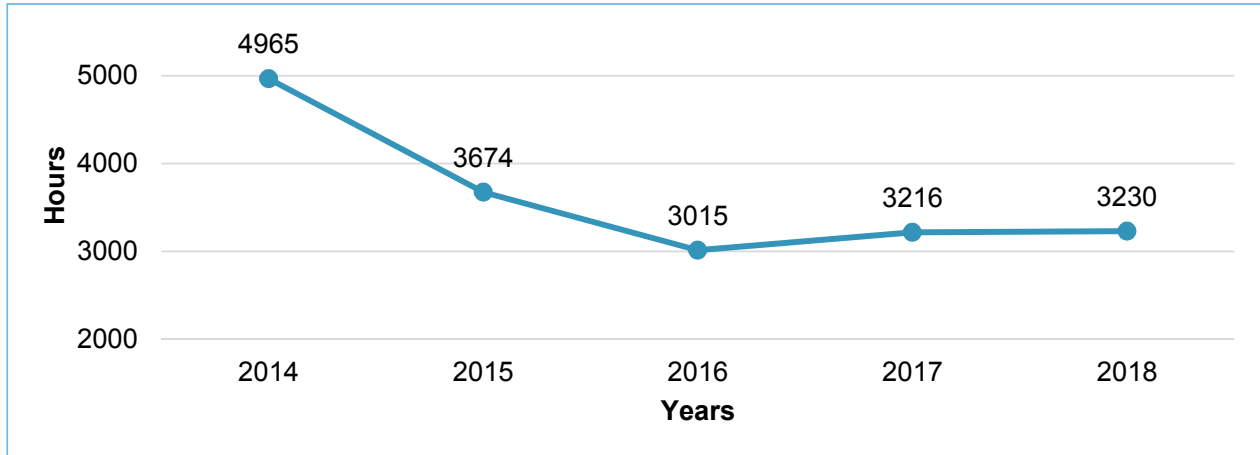


Figure 44: Number of pre-hearing conferences

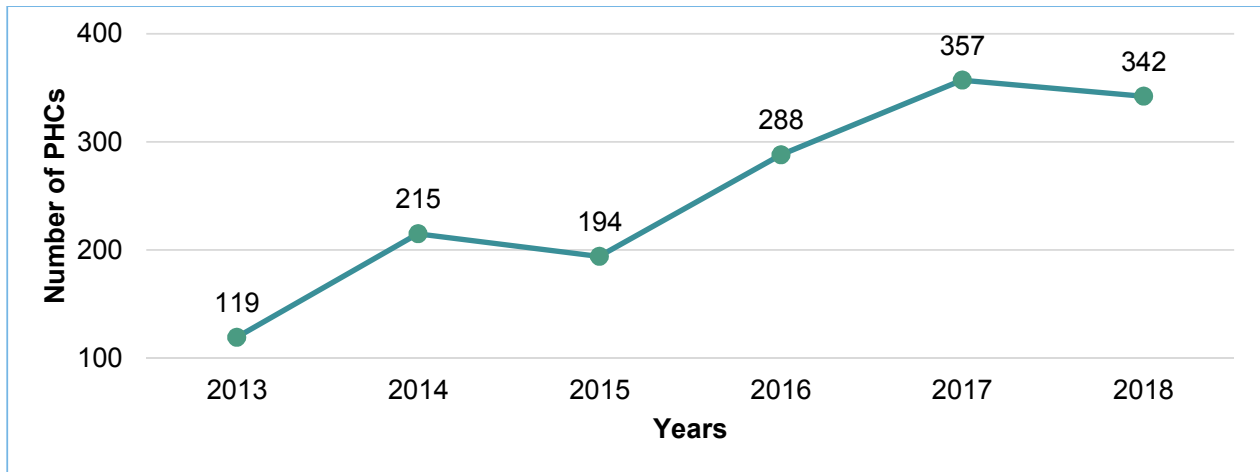


Figure 45: Reasons published by year

