

The Law Society
of British Columbia



**Law Society of British Columbia Tribunal
2015 Annual Report**

March 2016

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Message from the 2015 Tribunal Chair

It has been a pleasure and honour to assist with the work of the tribunal, and I want to thank all those who sat on the hearing tribunals and reviews. Like most recent years, 2015 was a busy year for the Law Society Tribunal. Panels continue to apply the concept of progressive discipline, and in the summer, hearing panels disbarred two former lawyers as ungovernable. Later, a review board found that, in certain cases, the time for initiating a review from a hearing panel decision can be extended beyond the 30 days mandated in the *Legal Profession Act*.

Under our current tribunal system each hearing panel usually includes one person drawn from each of three pools: a sitting Benchers, a lawyer, and a public representative. The public representatives, although not formally trained in law, often adjudicate in their own professions or vocations and bring a strong public but external influence to the tribunals. This panel composition ensures that the process is seen to be fair both to the public and to lawyers.

In 2015 the Benchers reviewed our tribunal system, after four years in its current form. The Benchers confirmed that, with some clarification and efficiencies, panels with representation from each the three pools will continue. That process is rooted in principles of fairness and transparency.

The efficiencies include reducing the size of the public and lawyer pools from 25 people to between 16 and 18 people. The aim is to ensure that each pool member puts his or her training to better use by participating in one or two more hearings a year, resulting in three to five days of hearings for most adjudicators. The principle here is that experience results in efficiencies.

2015 was a busy year, not because we conducted more hearings but because the hearings we conducted took more time. In 2015, the Law Society conducted 46 hearings and reviews, 26 fewer than the previous year. However, the number of hearing days was almost unchanged, at 80, compared to 82 in 2014.

There are a number of reasons why hearings are taking longer. Hearings are more complicated, and respondent lawyers are often self-represented. In other instances, we are seeing new counsel representing respondent lawyers.

It might be worth asking whether hearings are too long, and whether there is anything we can do to better manage or shorten them. One thing tribunal members might consider is more active pre-hearing management. Our rules permit some limited management to obtain or to simplify a statement of facts. Those doing these pre-hearing conferences could ask a number of questions:

- Is the respondent represented? If not, the respondent could be directed to a list of counsel prepared to assist them, which is available for download on the Law Society website (<https://www.lawsociety.bc.ca/docs/discipline/counsel.pdf>).

- When is the hearing scheduled, how long is it expected to take, and what is the estimated cost?
- Is there an agreed statement of facts and exhibit list? If not, can agreed-upon facts be separated from those under contention?
- Is there an issue of law that needs addressing, for example, involving professional misconduct or a breach of rules?
- What is the position of the Law Society on a penalty in the event of an admission?
- Are there any procedural issues that need to be reviewed?

In another area, our tribunal might find efficiency in the use of chambers Benchers. These are currently sitting lawyer Benchers who are designated to conduct pre-hearing and pre-review conferences and to hear and decide preliminary questions before a hearing on a citation, credentials application or a review. Under our current tribunal system, a chambers Bencher is appointed for three months. It might be more efficient to instead appoint three or four chambers Benchers for the entire year. Then they could meet regularly (perhaps three or four times during the year) to discuss what is working, and to look for common themes in hearing management.

The chair of the tribunal body, I have noticed, is not full-time work, but it requires some concentration and willingness. However, there are efficiencies gained by knowledge. Knowledge, however, requires both time and effort.

I have very much enjoyed the work. Working with Jeff Hoskins, QC and with Michelle Robertson at the tribunal administration end is enjoyable and fulfilling. I wish the very best to Herman Van Omen, QC, who, as the President's designate, is taking over tribunal chair for 2016.

I hope the chair position somehow evolves naturally into something more than an annual Bencher appointment. I can say there was a bit of a learning curve, and it may make some sense to have two-year appointments with a vice-chair. However, that is for the future policy-makers when they think about this. I am grateful to all who have acted as adjudicators (Benchers, lawyers and the public). They serve the public in this important work. Good adjudication work is critical to the rule of law and an independent bar."

Kenneth M. Walker, QC
 Life Bencher
 President, 2015

The Law Society of British Columbia Tribunal

Before the *Legal Profession Act* of 1987, the final decision in disciplinary matters, or at least serious ones, was with the Benchers. A hearing was held before a panel, usually three Benchers, who made a finding and recommendation to the Benchers as a whole. It was the Benchers who imposed the penalties.

The 1987 Act, which took effect June 1, 1988, gave panels of three Benchers the power to impose their own discipline. Hearing panels also began adjudicating on applications for enrolment in articles, call and admission and reinstatement as a member of the Law Society. At the same time, the Benchers were empowered to review the decisions of hearing panels. While all Benchers were eligible to sit on a review hearing unless they were otherwise involved in the case (as a member of the hearing panel whose decision was being reviewed or as a member of the Committee that ordered the hearing), Bencher review panels typically consisted of the quorum of seven Benchers, or one or two more.

A further reform in the 1987 Act allowed the provincial Attorney General to appoint up to three non-lawyers as Benchers of the Law Society. These Appointed Benchers were eligible to sit as members of hearing panels. As they were only three out of 28 eligible Benchers, their participation was more occasional than regular, but it was the first time that non-lawyers sat with lawyer-Benchers to make judgments affecting lawyers in BC. By 1999, the number of Appointed Benchers had increased to six out of 31 Benchers, but the majority of hearing panels continued to be composed only of lawyers.

In 2011 the Benchers decided that the legal profession as a whole and the general public ought to have a role, along with Benchers, in the Law Society Tribunal. Since that time, each hearing panel comprises one Bencher, one lawyer who is not currently a Bencher and one non-lawyer public representative. The Law Society Tribunal maintains a pool of 15 to 18 lawyers and another pool of 15 to 18 non-lawyers, all of whom are fully trained to act as adjudicators in the Law Society context. Both pools draw from all parts of British Columbia and comprise a diverse group of highly qualified individuals.

Benchers are eligible to sit on panels and review boards once they have received the appropriate training and for as long as they remain Benchers. Non-Bencher lawyers and public representatives are appointed for four-year terms and are eligible to be re-appointed only once. The terms of half of the adjudicators in each pool expire every two years to allow for both continuity while there is renewal regularly, but not too frequently.

All lawyer adjudicators are volunteers receiving only reimbursement for reasonable expenses incurred. Non-lawyer adjudicators receive a modest per diem in addition to the reimbursement for expenses incurred.

A list of the members of the two pools is attached as Appendix A.

Effective January 1, 2013, the *Legal Profession Act* was amended to provide for review of hearing panel decisions by a review board of Benchers, non-Bencher lawyers and public representatives. Review boards replaced reviews by the Benchers as a whole. Review boards consist of three Benchers, which

may include a non-lawyer Bencher, two lawyers who are not currently Benchers and two non-lawyer public representatives.

The Protocol for the appointment of Law Society hearing panels and review boards is attached as Appendix B.

Hearings before Law Society Tribunal hearing panels and review boards are open to the public, subject to limited exceptions primarily to preserve confidentiality between lawyers and clients. All decisions of panels and review boards are published by posting on the Law Society website, although in some cases the Law Society Rules require that the name of the applicant or respondent not be published.

Under section 48 of the *Legal Profession Act*, all decisions of the Law Society Tribunal are subject to appeal directly to the British Columbia Court of Appeal.

Law Society Tribunal Developments 2015

In September 2015 the Benchers received the final report of the Tribunal Program Review Task Force. While not accepting all of the recommendations of the task force, the Benchers approved the following modifications to the Tribunal program:

- The Law Society Tribunal needs its own Code of Conduct for Adjudicators. Work on that document is expected to get underway in 2016;
- Two sets of criteria for appointment of non-Bencher and non-lawyer adjudicators were reviewed and adjusted slightly;
- The size of each pool of adjudicators was reduced to 15 to 18 to allow individual adjudicators to participate in hearings more often;
- Chairs of hearing panels and review boards will be an appropriately trained and experienced lawyer, usually a Bencher but sometimes another lawyer when the Bencher is new;
- Benchers who complete their term limits as Benchers and become Life Benchers will continue for two years in the hearing pool as spares, sitting on hearings only when no Bencher is available, in the case of lawyers, or when no public representative is available, in the case of Appointed Benchers;
- Members of the non-Bencher lawyer and the public pool will be appointed for four-year terms, renewable once only. Terms will be staggered so that half of each pool expires every two years.

The Benchers declined to approve a recommendation that would have combined the Bencher-lawyers with the non-Bencher lawyer pool, making it easier to ensure that there are two lawyers available for each hearing panel. As well, the Benchers were not in favour of creating the position of independent chair of the Tribunal to fulfill the functions now done by the president and executive director or their designates.

In December the executive committee re-appointed members of the hearing panel pools who indicated that they would like to continue. The reduction in the size of the pools was accomplished by attrition. The executive committee also approved the appointment of two new non-Bencher lawyer adjudicators, Carol Roberts and Gillian Dougans. Once they have completed the training required of all adjudicators, they will begin sitting on hearing panels in 2016.

Law Society Tribunal 2015 Performance

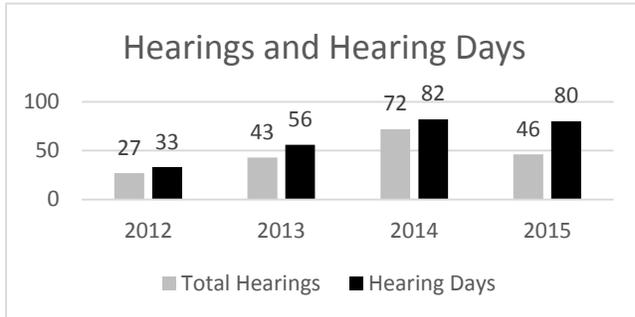


Figure 1: Hearing Days

Although there were fewer hearings in 2015 compared to the previous year, the total number of hearing days remained relatively constant due to the increased complexity of hearings.

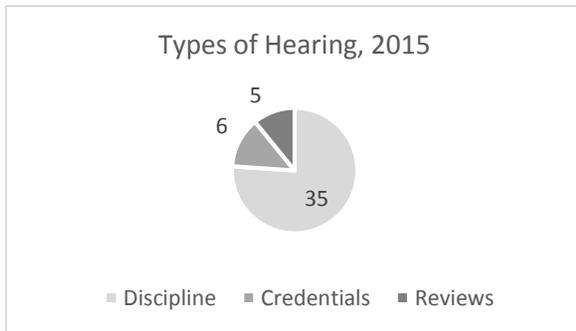


Figure 2: Types of Hearing

Discipline hearings accounted for the majority of hearings and reviews in 2015.

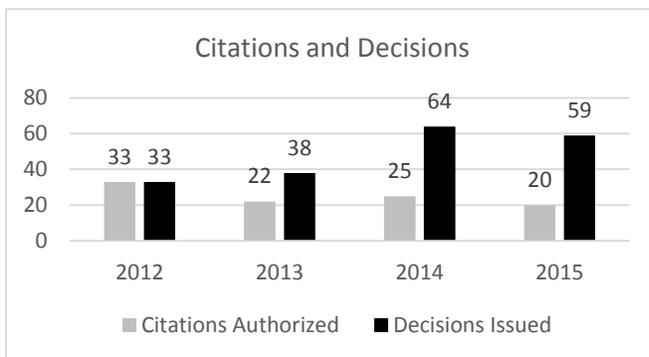


Figure 3: Citations and Decisions

The number of decisions issued has increased in recent years, while the number of citations issued has remained relatively constant.

Appendix A: Tribunal Members 2015

Hearing panel pools demonstrate the Law Society's commitment to maintaining public confidence and transparency. Lawyers and members of the public from around the province volunteer to be part of the Law Society's hearing panel pools. Panel members are selected, based on established criteria, from a public (non-lawyer) pool and a lawyer (non-Bencher) pool to help adjudicate all discipline and credentials hearings.

In addition to a public representative and a non-Bencher lawyer, each panel includes a current Bencher lawyer, who is usually the chair of the panel.

Public Representatives

Donald Amos, Sidney

Dr. Gail Bellward, Vancouver

Glenys Blackadder, Victoria

Paula Cayley, Lions Bay

Dennis Day, Langley

Adam Eneas, Penticton

Jory Faibish, Vancouver

Carol Gibson, Vancouver

Dan Goodleaf, Vancouver

J.S. "Woody" Hayes, Duncan

Patrick Kelly, Victoria

John Lane, Cobble Hill

Linda Michaluk, North Saanich

Laura Nashman, Victoria

Lance Ollenberger, Fort St. John

June Preston, Victoria

Graeme Roberts, Brentwood Bay

Lois Serwa, Kelowna

Clayton Shultz, Surrey

Thelma Siglos, New Westminster

Robert Smith, Surrey

Non-Bencher Lawyers

Jasmin Ahmad, Vancouver
Ralston Alexander, QC, Victoria
James Dorsey QC, North Vancouver
William Everett, QC, Vancouver
Carol Hickman, QC, New Westminster
John Hogg, QC, Kamloops
Gavin Hume, QC, Vancouver
David Layton, Vancouver
Bruce LeRose, QC, Trail
Richard Lindsay, QC, Vancouver
Shona Moore, QC, Vancouver
Karen Nordlinger, QC, Vancouver
Donald Silversides, QC, Prince Rupert
William Sundhu, Kamloops
John Waddell, QC, Victoria
Brian J. Wallace, QC, Victoria
Peter Warner, QC, Peachland
Sandra Weafer, Vancouver

Benchers

Haydn Acheson, Richmond
Joseph Arvay, QC, Vancouver
Satwinder Bains, Abbotsford
Pinder Cheema, QC, Victoria
Lynal Doerksen, Cranbrook
Thomas Fellhauer, Kelowna
Craig Ferris, QC, Vancouver
Martin Finch, QC, Chilliwack
Miriam Kresivo, QC, Vancouver
Dean Lawton, Victoria

Jan Lindsay, QC, Vancouver*
Jamie Maclaren, Vancouver
Sharon Matthews, QC, Vancouver
Ben Meisner, Prince George
Nancy Merrill, QC, Nanaimo
Maria Morellato, QC, Vancouver
David Mossop, QC, Vancouver
Lee Ongman, Prince George
Greg Petrisor, Prince George
Philip Riddell, Port Coquitlam
Elizabeth Rowbotham, Vancouver
Alan Ross, Vancouver*
Herman Van Ommen, QC, Vancouver
Ken Walker, QC, Kamloops
Cameron Ward, Vancouver
Tony Wilson, Vancouver

*Former Bencher completing a hearing in progress

Appendix B: Protocol for the appointment of Law Society hearing panels and review boards

Under the Law Society Rules, the appointment of hearing panels and review boards is in the discretion of the president. This protocol sets out guidelines for the exercise of that discretion, based on Benchers resolutions and operational practice.

1. Each hearing panel comprises
 - a Bencher who is a lawyer,
 - one lawyer who is not a current Bencher, and
 - one person who is not a lawyer.
2. Each review board comprises
 - three Benchers, at least two of whom are lawyers,
 - two lawyers who are not current Benchers, and
 - two people who are not lawyers or Benchers.
3. A hearing panel is chaired by a lawyer who has completed at least two hearings as a member of the panel and the hearing skills workshop. When the Bencher on a panel meets those criteria, the Bencher acts as chair.
4. A review board is chaired by a lawyer Bencher who has completed at least two reviews as a member of the review board and the hearing skills workshop. In the event that no Bencher on the review board meets those criteria, another lawyer may act as chair.
5. The hearing administrator maintains three rosters:
 - a roster of current lawyer Benchers;
 - a roster of non-Bencher lawyers who are members of the hearing panel pool; and
 - a roster of non-lawyer members of the hearing panel pools, including current Appointed Benchers.
6. When a member of the hearing panel pool or a lawyer-Bencher completes the required training courses, his or her name is added to the bottom of the appropriate roster.
7. The required courses are as follows:
 - for all panellists, the introductory course on administrative justice and any annual updates

- required by the Benchers;
- for all lawyers, the decision-writing workshop; and
 - for all lawyers to qualify to chair a hearing panel or review board, the hearing skills workshop;
8. When a hearing panel or review board is to be appointed, the hearing administrator determines the highest member(s) on each roster who
- is not disqualified under Rule 5-3(1) or (2);
 - is not a member of the Committee that ordered the hearing, either at the time the hearing was ordered or at the time of the hearing;
 - where possible, has not had previous dealings with the respondent or applicant that could give rise to a reasonable apprehension of bias;
 - is not the subject of a complaint investigation or discipline matter;
 - in the case of lawyers, is a practising lawyer;
 - is available on the hearing dates.
9. For a period of two years after becoming a Life Bencher,
- a lawyer who is otherwise qualified may be appointed to a hearing panel or review board when no current Bencher is available, and
 - a person who is not a lawyer may be appointed to a hearing panel when no other non-lawyer is available.
10. Before being appointed to a review board, a member of the hearing panel pool or a Bencher must have completed at least one hearing as a member of the hearing panel.
11. The president establishes hearing panels composed of the three pool members under clause 1, and review boards composed of seven pool members under clause 2.
12. The president may appoint members of the pool out of order in a case that, in the president's opinion, requires special skill, expertise or experience.
13. When a member of the pool is appointed to a hearing panel or review board, his or her name goes to the bottom of the appropriate roster. If the hearing or review does not proceed, or if the pool member does not begin the hearing or review, for any reason, he or she may request that his or her name be returned to the top of the roster.
14. If a pool member at the top of a roster is not available for three or more consecutive hearings

panels or review boards, the president may direct the hearing administrator to place the pool member's name at the bottom of the appropriate roster.

15. The hearing administrator keeps a complete record of the appointment process for each hearing panel or review board.
16. Pool members and Benchers may enquire of the hearing administrator as to where they stand on the applicable roster.
17. The discretion of the president may be exercised by another Benchers designated by the president under the Law Society Rules.