



# SOAR CONFERENCE

November 2, 2023

## Planting the Seeds: Innovation in Tribunal Operations for Greater Independence and Best Practices

David Wright  
Chair



# Outline

1. Background to Change
2. New OPSDT Model
3. First year accomplishments
4. The Health Professions Discipline Tribunal Pilot (HPDTP)



# Background to Change



# The Goudge Report

- The Goudge Report (2018) was commissioned by the Province and authored by Justice Stephen Goudge, formerly of the Ontario Court of Appeal.
- The report made recommendations about the complaint and hearing process at the College.
- It included the recommendation that legally trained experts chair discipline hearings and pre-hearings.





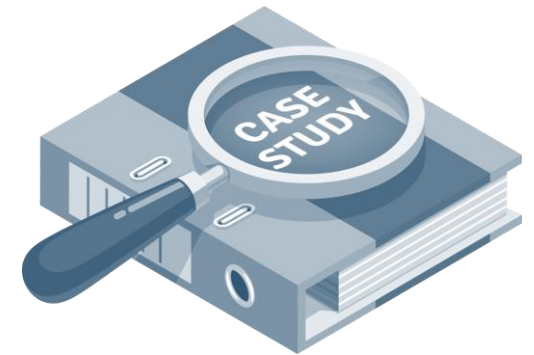
# Professionalizing Administrative Tribunals

- In recent years, there has been a growing trend towards the professionalization of administrative tribunals:
  - Merit-based recruitment processes
  - Robust education program
  - Written position descriptions
  - Performance assessment of adjudicators
- Adjudicators may sit on various tribunals at the same time and/or throughout their careers



# The Law Society of Ontario Model

- In 2013, the Law Society of Ontario (LSO) began implementing enhancements to its hearing process.
  - The Law Society Tribunal (LST) was established as a body with a separate identity from LSO.
  - The LST has its own premises, website and logo.
- Individuals with adjudicative experience were appointed to the Tribunal.
- A full-time Tribunal Chair position was established – a lawyer who is not a member of Convocation (Council)



# The New Model



# A New Approach to Discipline Proceedings

- Key changes included:
  - ✓ Building a separate identity (e.g. new logo, separate website, committee -> tribunal, hearings no longer at CPSO)
  - ✓ A full-time Chair with a professional member Vice-Chair
  - ✓ Having experienced adjudicators chair panels and write reasons rather than using independent legal counsel
  - ✓ More intense case management
  - ✓ Enhanced use of technology





# Full-time Independent Chair

- The Chair's role:
  - ✓ Manage the Tribunal Office (staff report to the Chair)
  - ✓ Responsibilities of senior management on operational issues
  - ✓ Adjudicative Leadership (assign panels, mentoring, education planning, recommendations for appointments, etc.)
  - ✓ Sit on hearings
  - ✓ Conduct case management conferences
  - ✓ Give case processing directions
  - ✓ Lead change



# Recruitment of Experienced Adjudicators

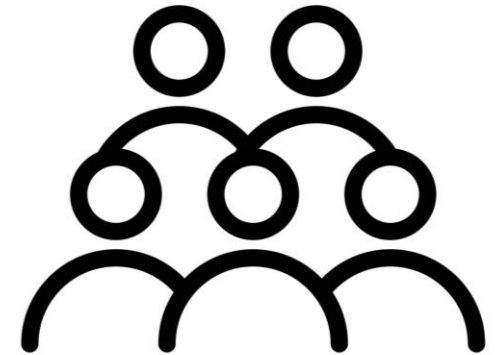
- Five experienced part-time adjudicators were recruited through an open and highly competitive process that attracted nearly 100 applicants.
- The recruitment process involved interviews and writing reasons.
- The successful candidates, all lawyers, are experts in administrative justice and have significant experience as adjudicators and/or leaders of other tribunals.
- Their experience includes adjudicating the following types of matters:
  - ✓ Sexual Harassment
  - ✓ Privacy
  - ✓ Human Rights and Charter
  - ✓ Professional Discipline (e.g. sexual abuse, complex fraud)
- All have expertise dealing with challenging case management issues and complex expert evidence, as well as working with vulnerable witnesses, litigants and self-represented parties.
- Collectively, they have written thousands of decisions.





# Composition of Hearing Panels

- The Code sets out hearing panel composition and the Tribunal Chair selects panel members for a given hearing.
- Each panel must have at minimum 3 and up to 5 members:
  - ✓ 2 members must be public members of Council
  - ✓ 1 must be a professional member of Council
- Where hearing panels consist of more than 3 members, there are no further specifications as to panel composition. This flexibility has permitted experienced adjudicators to sit as panel chairs.
- In light of the internal expertise brought by experienced adjudicators, independent legal counsel is no longer retained by the Tribunal to provide advice to hearing panels.





# Role of Panel Members

- Panels are comprised of experienced adjudicators, professionals and members of the public. All are equally important and the panel's diversity strengthens decision making.
- All panelists, whether public members, professional members or experienced adjudicators, bring their life experiences and perspectives to their decision-making role, acting in the public interest. For professional members, that background includes their training and professional experience.
- Experienced adjudicators bring adjudication and reason writing skills, legal knowledge and panel leadership experience

# Key Accomplishments



# Key Accomplishments

Improved  
quality/timeliness  
of reasons

Reduced costs

Active case  
management  
leading to more  
settlements

Fairer, more  
efficient and  
shorter hearings

Independence

Better  
perception of  
Members/Public

Improved  
accessibility of  
hearing process

Stakeholder  
engagement

# Health Professions Discipline Tribunal Pilot (HPDTP)



# HPDTP: Background

- The Pilot draws upon the OPSDT's transformative measures by sharing leadership, experienced adjudicators and other supports with other Ontario health colleges.
- Pilot participants include the College of Audiologists and Speech-Language Pathologists of Ontario (CASLPO), College of Massage Therapists of Ontario (CMTO) and College of Registered Psychotherapists of Ontario (CRPO).





# HPDTP: An Innovative Model

- Each participating college has cross-appointed the OPSDT's Chair and experienced adjudicators to their respective discipline committees. The Chair and experienced adjudicators:
  - ✓ Provide adjudicative leadership and case management
  - ✓ Chair hearing panels
  - ✓ Lead case management conferences
  - ✓ Write reasons for decision
- Work is done on a cost recovery basis



# HPDTP: An Innovative Model

- Pilot model also includes:
  - ✓ A robust case management rule that aligns with current best practices for courts and tribunals
  - ✓ Clearer and more accessible decision-writing style to mirror how judges write their reasons
  - ✓ Enhanced, joint education



# HPDTP: Predicted Outcomes

- As with the OPSDT, we anticipate that the Pilot model will:
  - ✓ Decrease hearing and decision-release time
  - ✓ Reduce discipline-related costs
  - ✓ Allow professional and public members to focus on decision-making rather than the legal rules of evidence, decision-writing and pre-hearings
  - ✓ Improve accessibility of decisions and other resources for the public
  - ✓ Avoid duplicative work by sharing templates and informational resources between colleges



# HPDTP: Early Results

- As of October 1, 2023, 13 hearings (3 contested) have been held as part of the Pilot and 12 sets of reasons released.
- The average time to decision release for cases where there was an allegation of sexual abuse is 56 days (n=3).
- 10 Pilot cases are currently in the pre-hearing process. Early feedback from parties on the case management approach adopted in the Pilot has been positive.
- Enhanced education programming for Pilot adjudicators includes College-specific orientation sessions; monthly adjudicator newsletter; and one-day joint conference planned for November.