

An Update on the Profile of Labour Arbitration Cases in Ontario

by

Kevin Banks, Richard Chaykowski, and George Slotsve



**Presentation at the Workshop on Labour Arbitration as Access to Justice
Toronto, Ontario
April 29, 2011**

**Centre for Law in the Contemporary Workplace
Faculty of Law, Queen's University**

Plan of the Overview

- Introduction:
Picher and Mole as a benchmark
- Data for Ontario arbitrations for 1990 vs 2010
Selected comparative statistics for arbitrations
- Preliminary descriptive overview of the Ontario 2010 data

Picher and Mole*

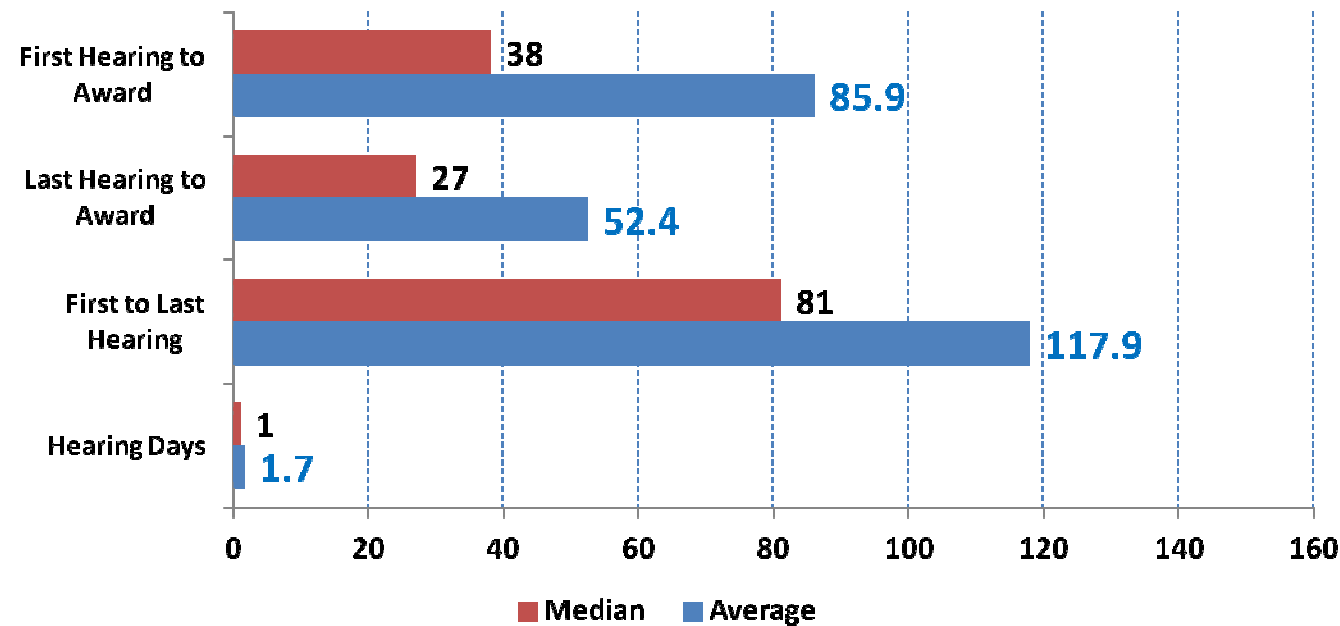
- Ontario arbitration awards, Sept. 1989 – Feb 1990; Source: Can Lab Arb Sum, CLB
- Included LRA, Colleges CB Act, and Teachers' Act; excludes Crown Employees CB Act
- Sample: 643 Awards total; Net 591 (omitted ~ 8.1% of awards)
- Data:
 1. Employer's Name
 2. Arbitrator or Chair's Name
 3. Award Date
 4. Sole Arbitrator or Tripartite Board
 5. Number of Hearing Days
 6. Date of First Hearing Day
 7. Date of Last Hearing Day
 8. Type of Award (disciplinary/ non-disciplinary)
 9. Employer as Public vs Private Sector
 10. Whether or not award issued under section 45 (now section 49) of LRA

* M.G. Picher and E.E. Mole. 1993. "The Problem of Delay at Arbitration: Myth and Reality" in W. Kaplan, J. Sack and M. Gunderson, eds.. Labour Arbitration Yearbook 1993. Toronto: Butterworths and Lancaster House.

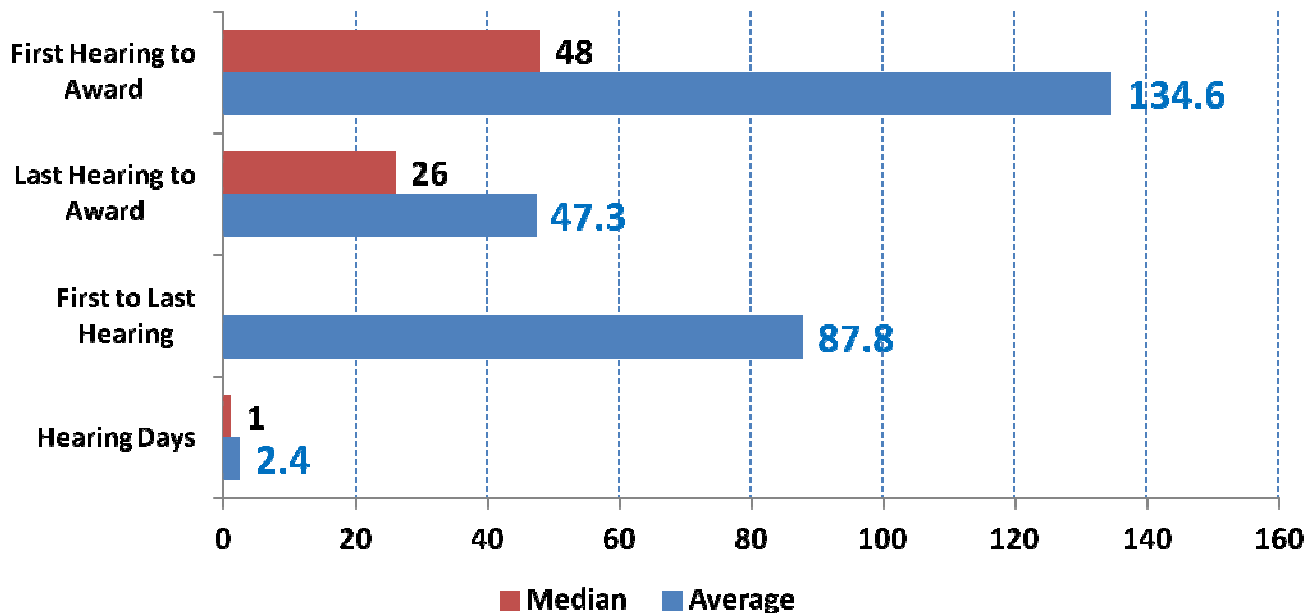
Banks, Chaykowski and Slotsve

- Ontario arbitration awards, Jan. 2010 – Dec 2010
- Source: All Ontario arbitration cases (Quicklaw) (some exclusions)
- Sample: approx. 640 cases; usable in range of 550 +, - depending on the variable
- Data:
 - Event Date
 - Grievance Date
 - Date of 1st hearing day
 - Date of Last hearing day
 - Award Date
 - Subject: (e.g., Human rights or discrimination; Charter;
Discharge for Discipline/ Non- Discipline; Discipline)
 - Total number of Subjects Dealt With
 - Award Outcome
 - Total Number of grievances in Award
 - Employer Represented by Legal Counsel & Rep Appearing for Employer
 - Union Represented by Legal Counsel & Rep Appearing for Union
 - Total Word Count

Picher and Mole: Time Elapsed at Arbitration



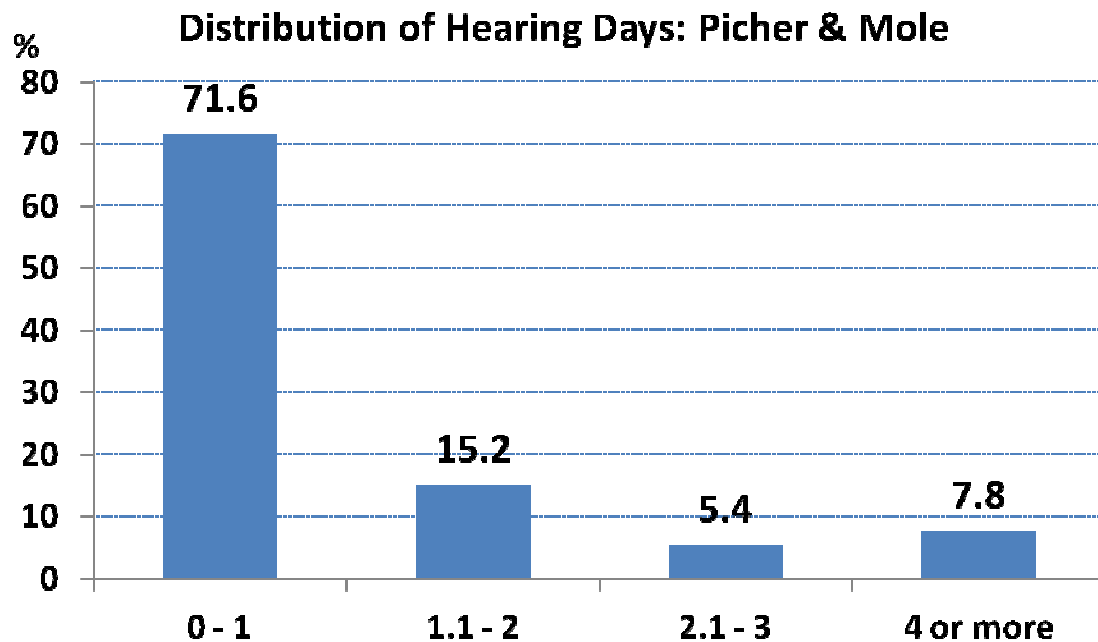
BCS: Time Elapsed at Arbitration



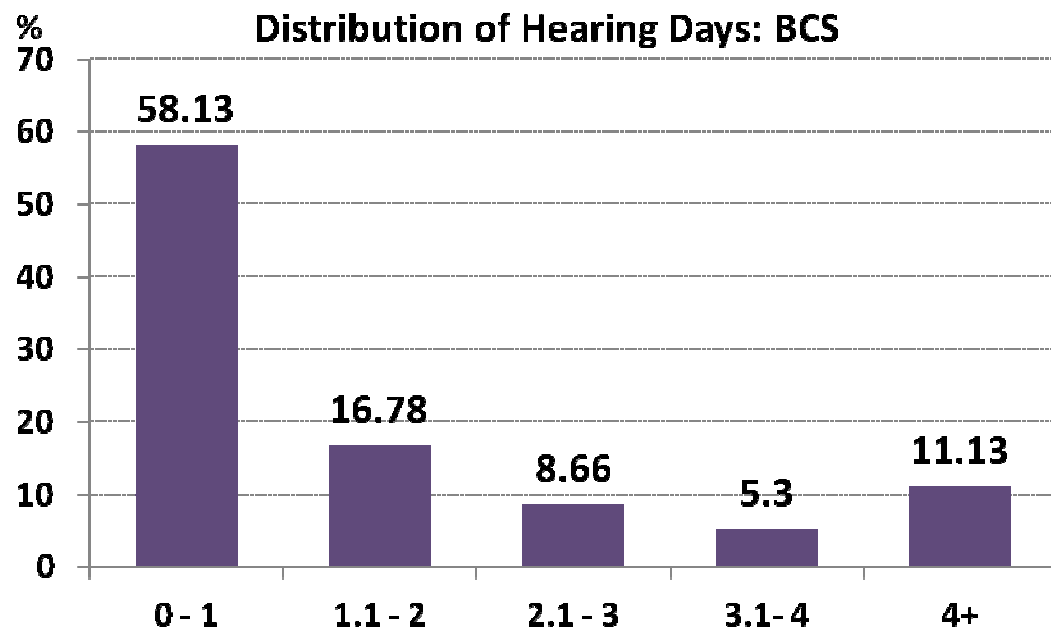
First Hearing to Award is much longer in 2010

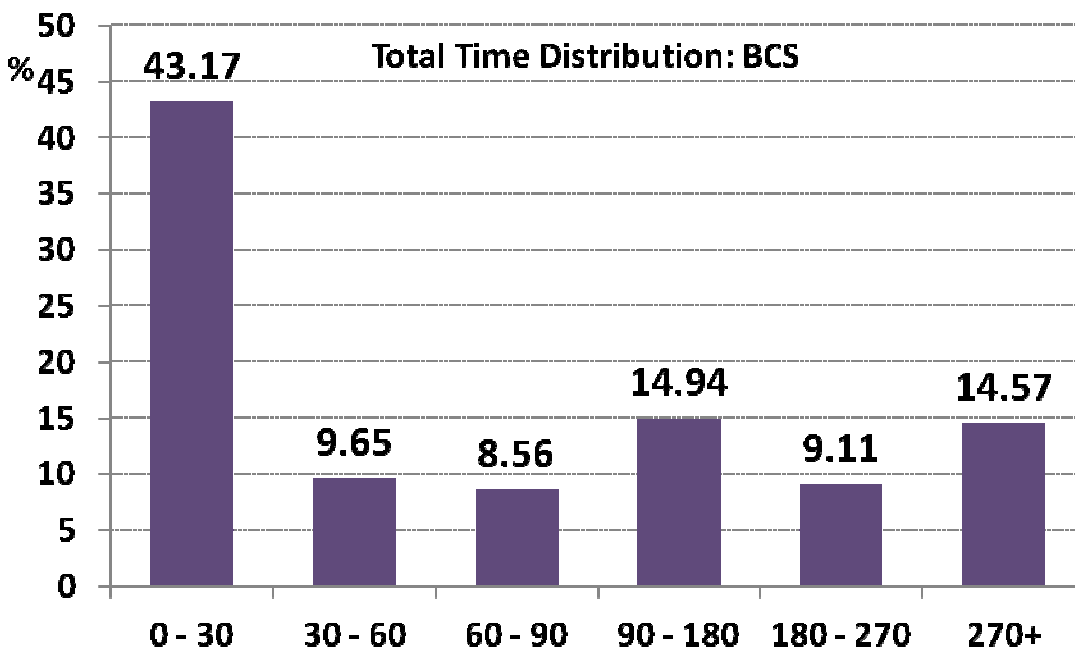
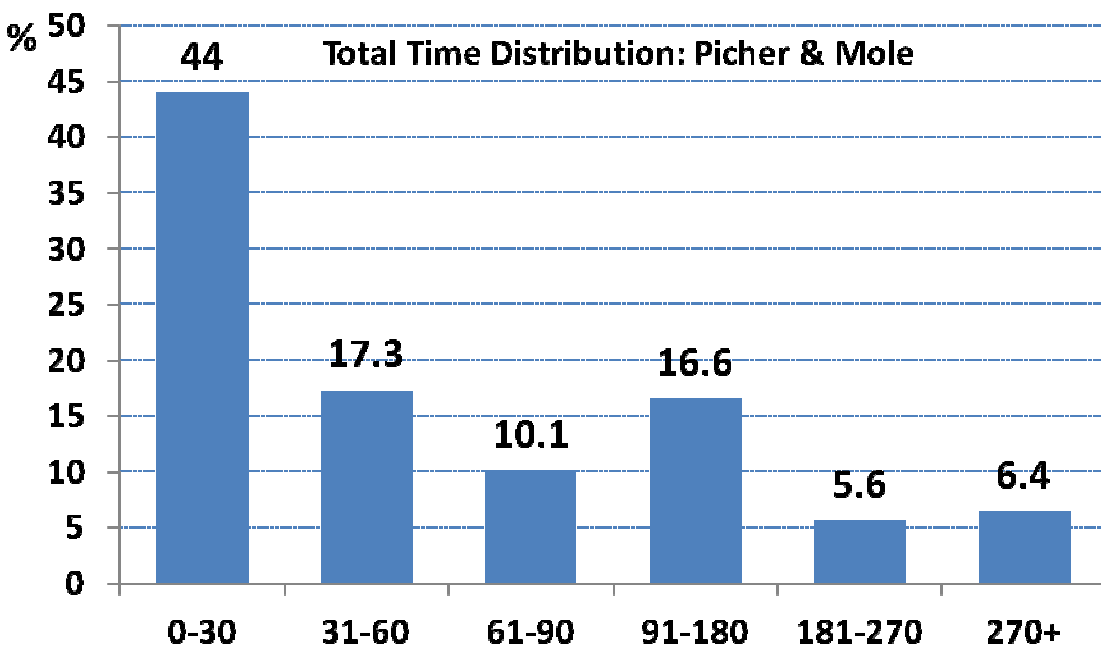
Last hearing to award about the same

More hearing days on average



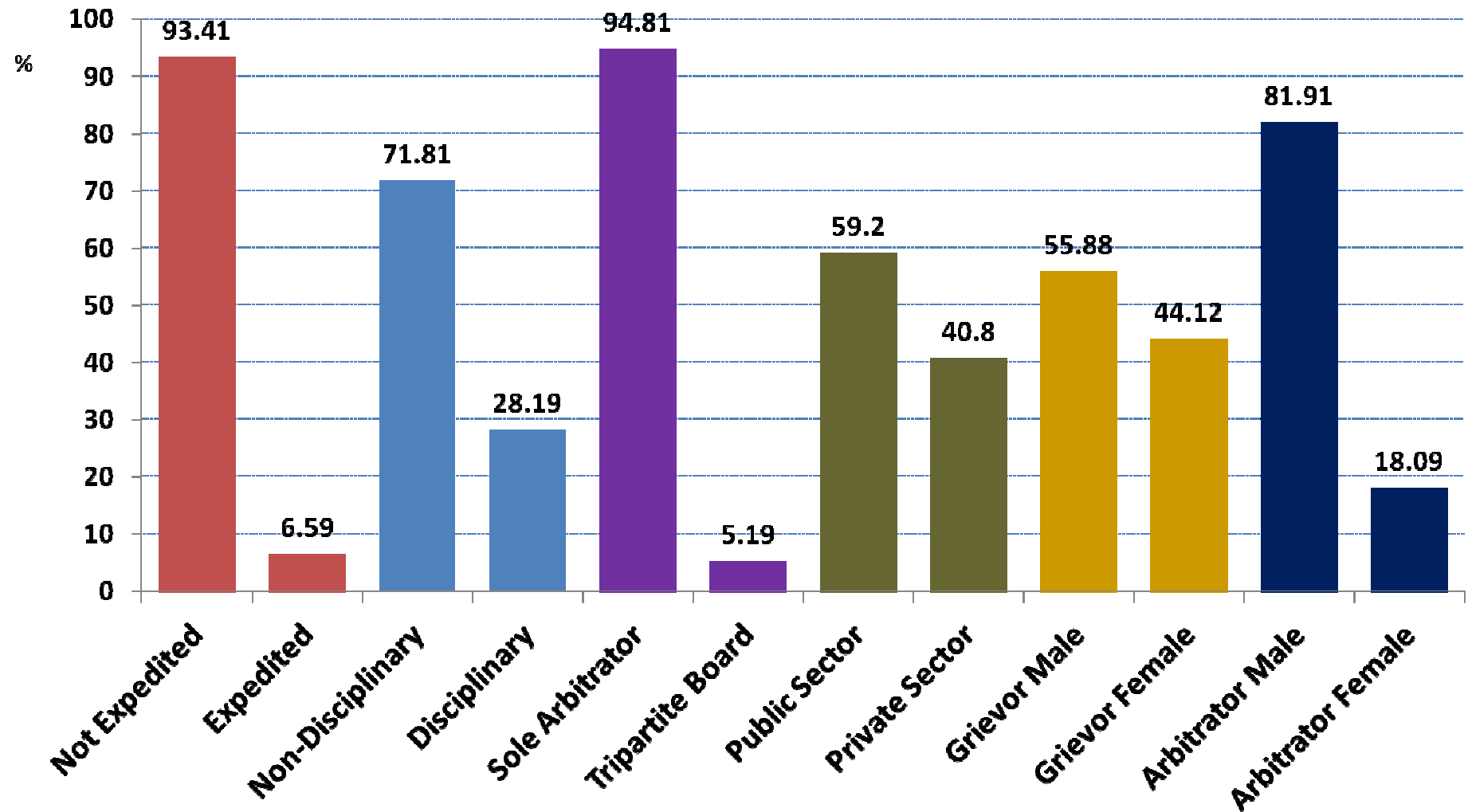
- Distribution of hearing days has shifted toward more days
- Distribution is slightly less skewed





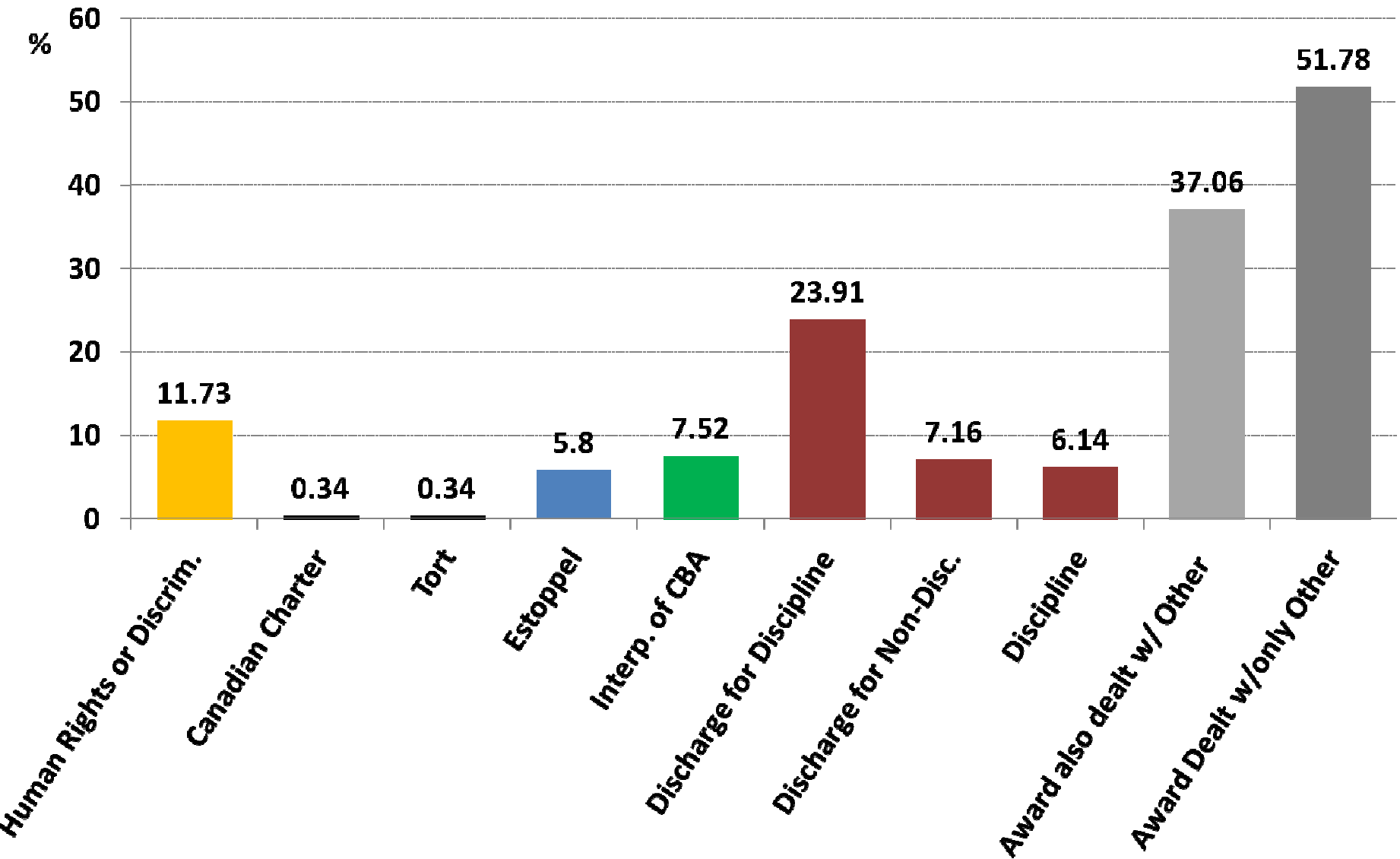
- Distribution of total time has shifted toward greater total time
- Distribution is slightly less skewed

Arbitration Cases in Ontario, by Selected Characteristics, 2010

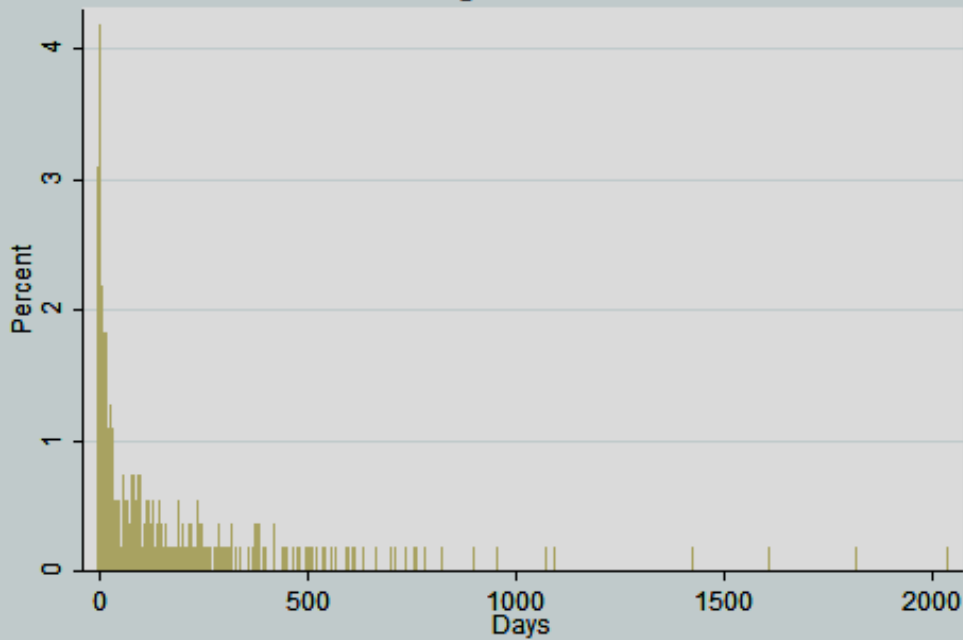


Banks, Chaykowski, Slotsve (2011)

Arbitration Cases by Subject, 2010



First Hearing to Award Duration

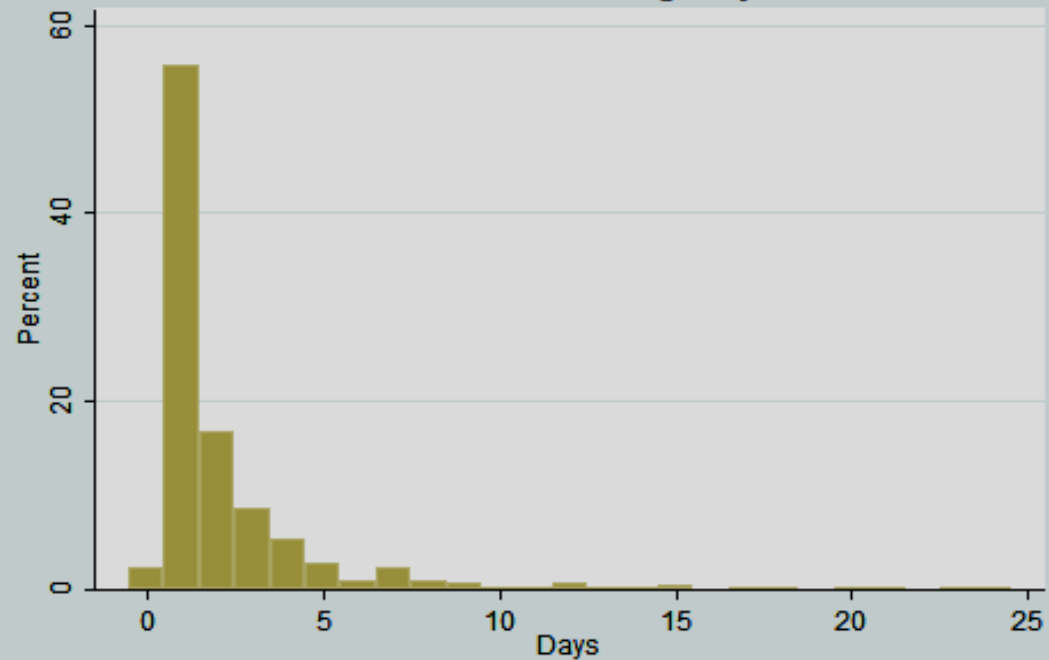


- ❑ Distribution is extremely skewed
- ❑ Median is 48 days
- ❑ Mean is 134.6

❑ Distribution of number of hearing days is skewed and centered on 1 day

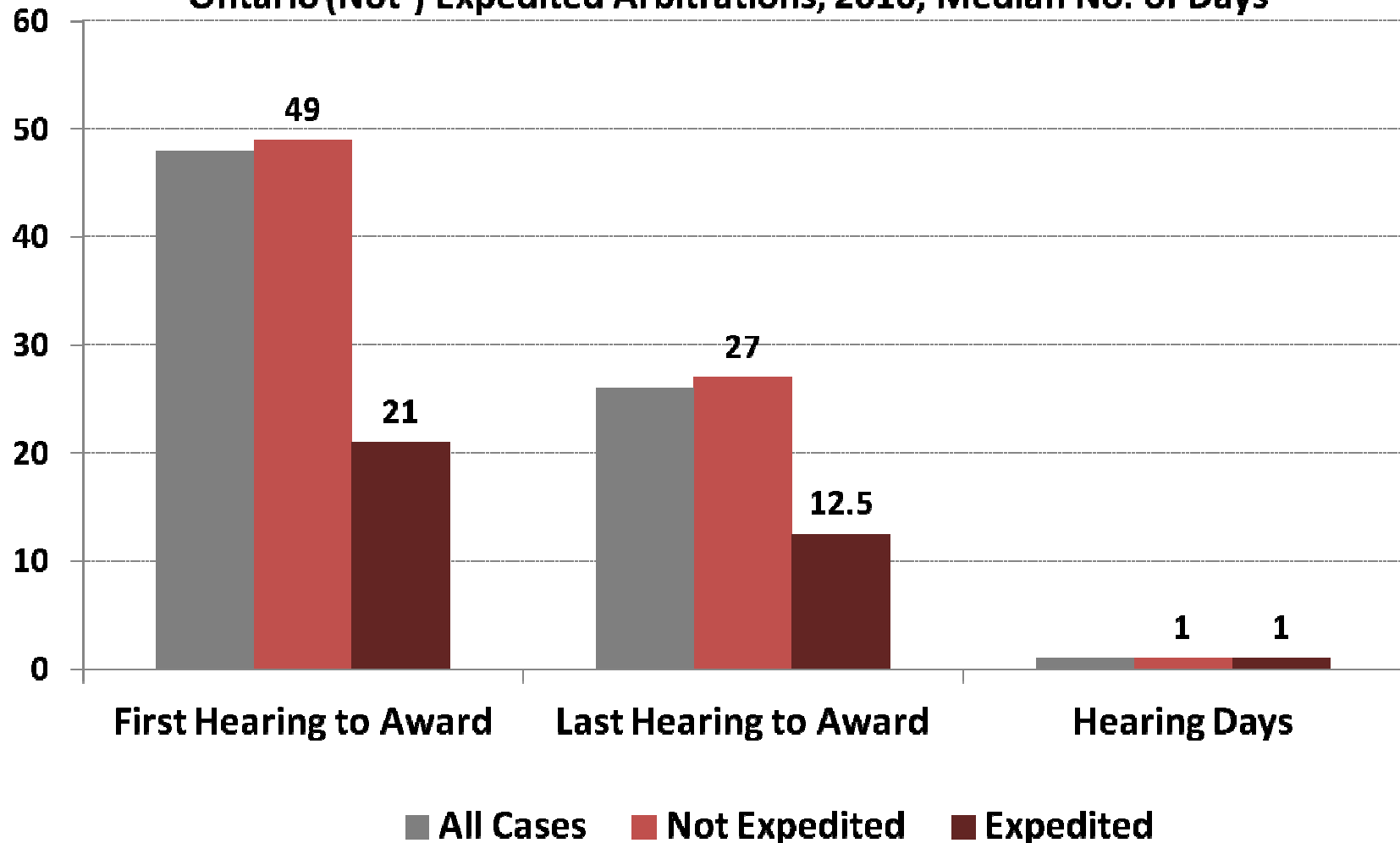
- ❑ Median is 1 day
- ❑ Mean is 2.4 days

Number of Hearing Days

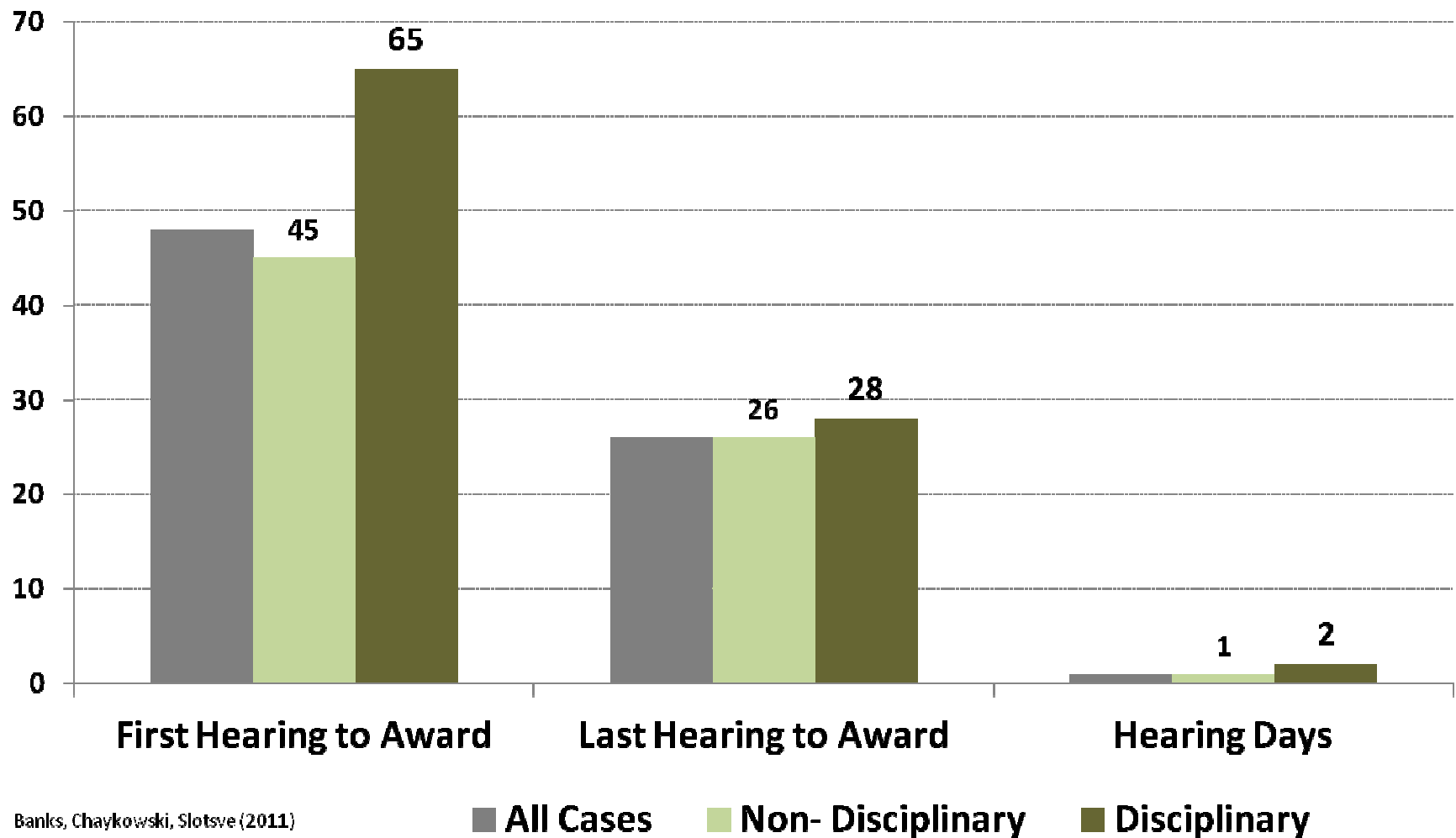


- ❑ Expedited arbitrations take substantially less time (about ½)
- ❑ Hearing days are the same

Ontario (Not-) Expedited Arbitrations, 2010, Median No. of Days



Ontario (Non-) Disciplinary Arbitrations, 2010, Median No. of Days

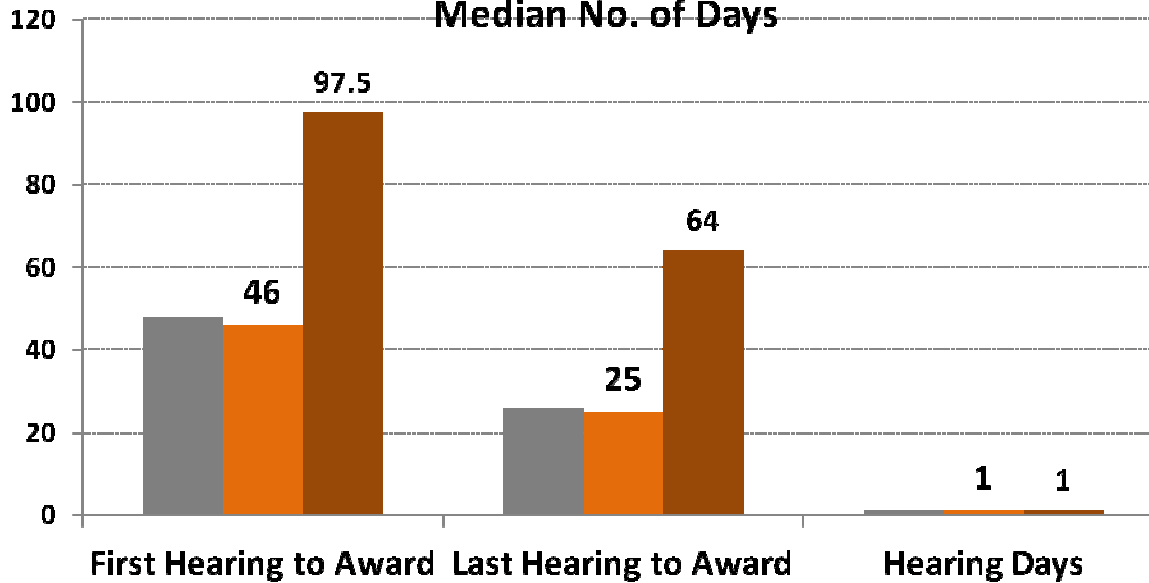


Banks, Chaykowski, Slotsve (2011)

□ Disciplinary cases take longer & substantially more hearing days

Ontario Sole vs Tripartite Panel Arbitrations, 2010,

Median No. of Days



□ Tripartite Boards take substantially more time (about 2x)

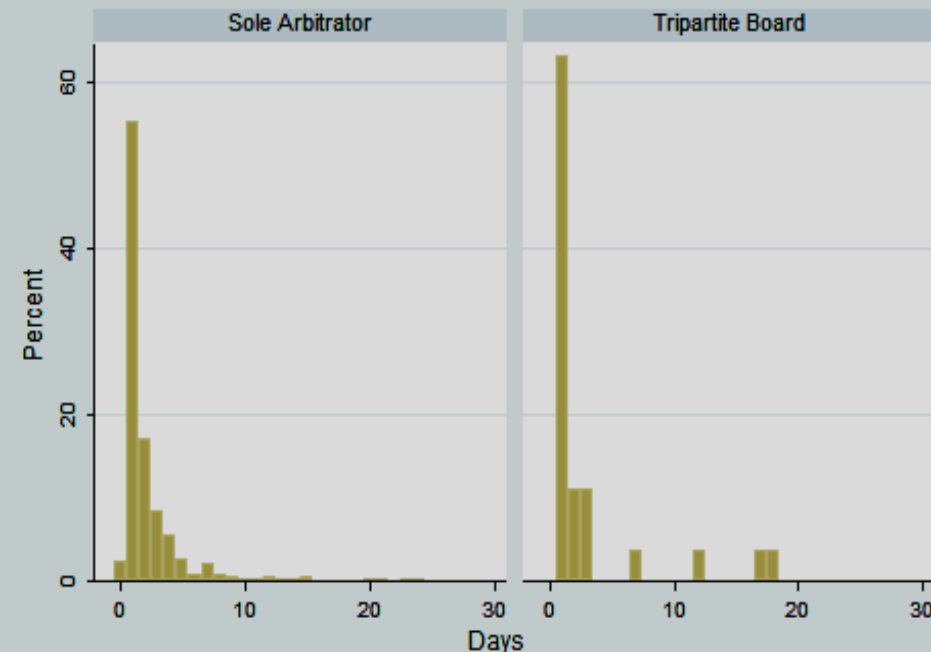
□ Hearing days are the same

Banks, Chaylowski, Slotsve (2011) ■ All Cases ■ Sole Arbitrator ■ Tripartite Board

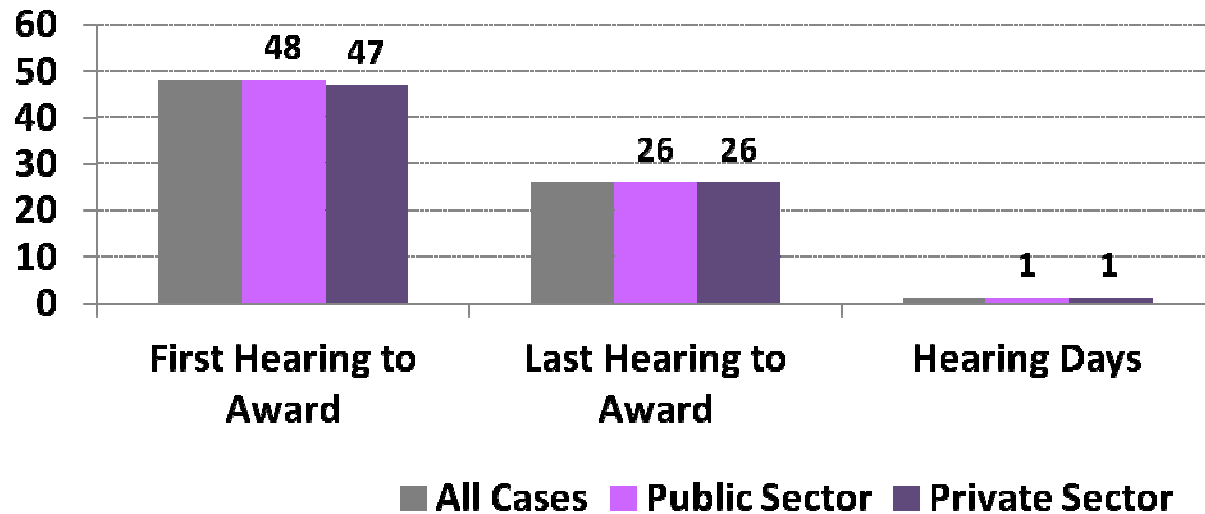
□ Hearing days for Tripartite Boards are distributed differently compared to sole arbitrators

□ Average is 3.4 for the Trip. Board vs. 2.4 days for sole arbitrator

Number of Hearing Days



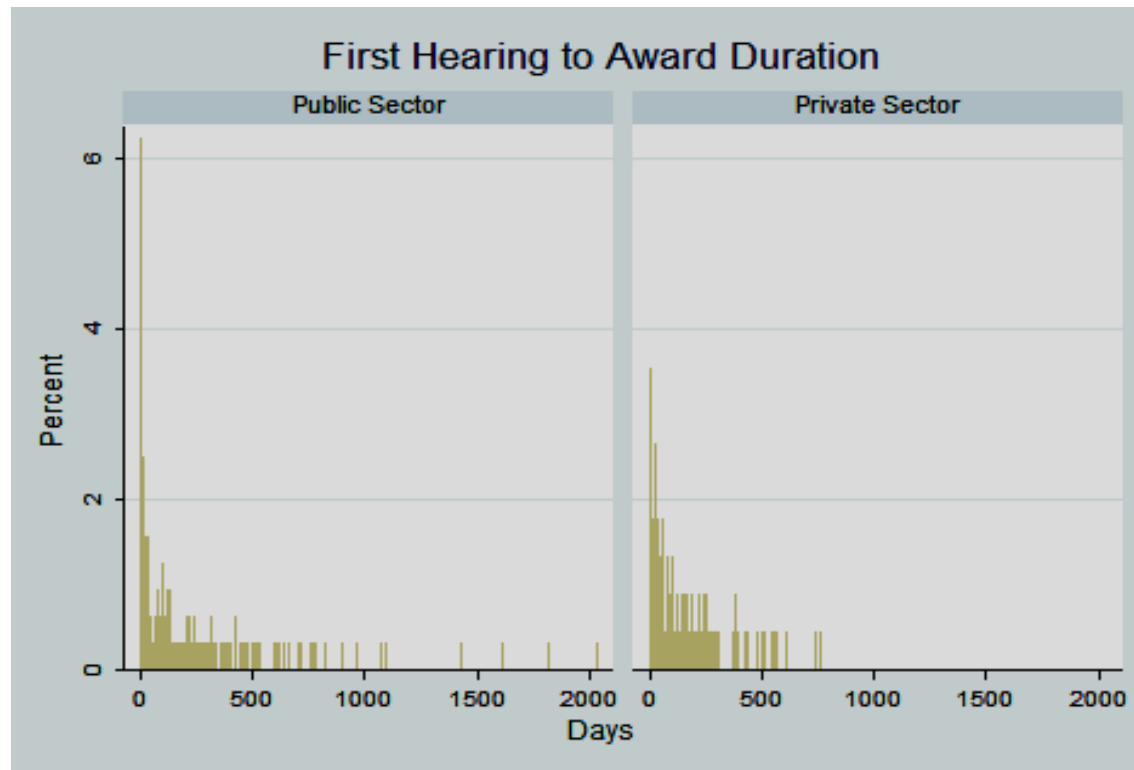
Ontario Arbitrations by Sector, 2010, Median No. of Days



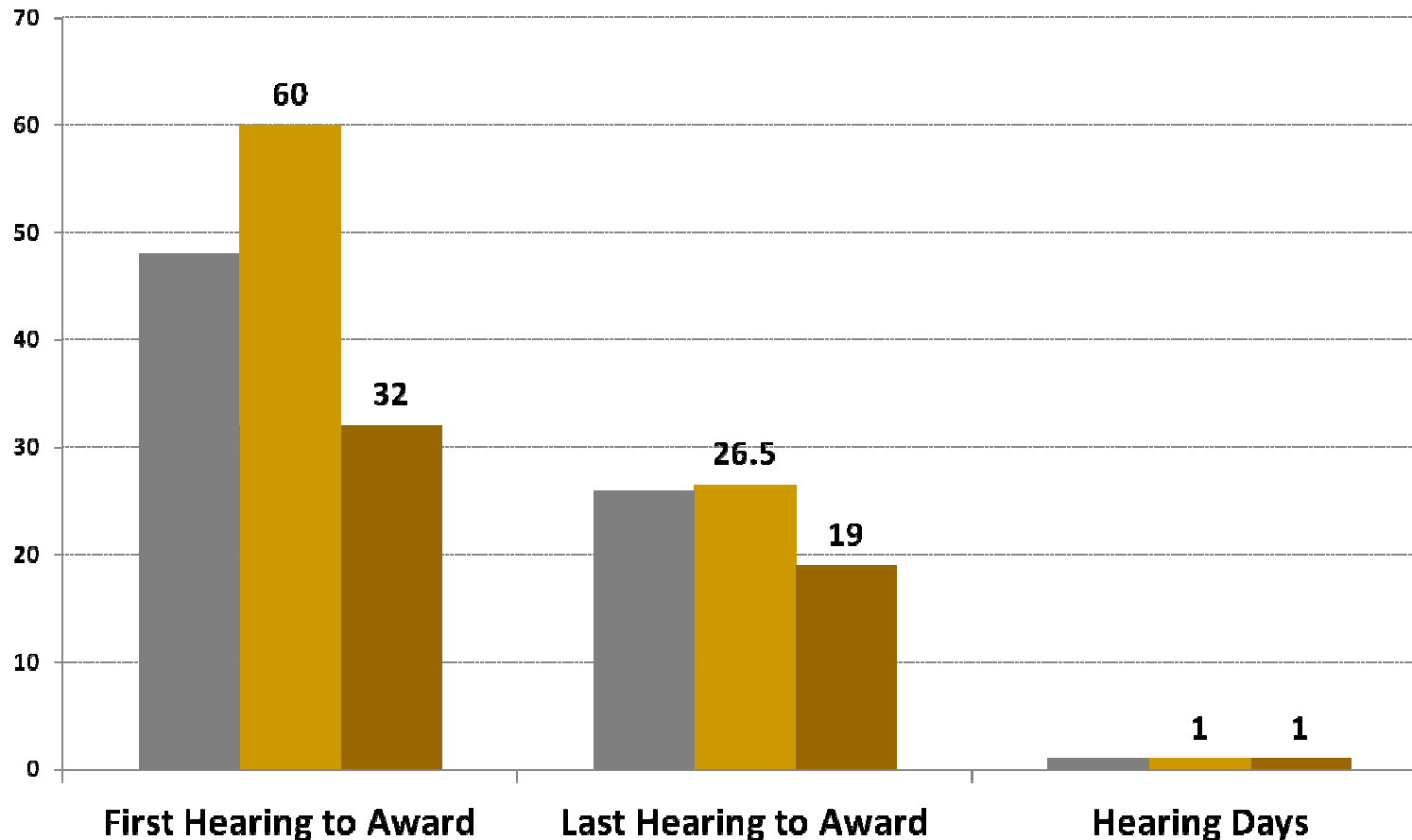
□ Little difference in time or median hearing days between sectors

Banks, Chaykowski, Slotsve (2011)

□ Distribution of time duration is different with less dispersion in private sector



Ontario Arbitrations by Grievor Sex, 2010, Median No. of Days



Banks, Chaykowski, Slotsve (2011)

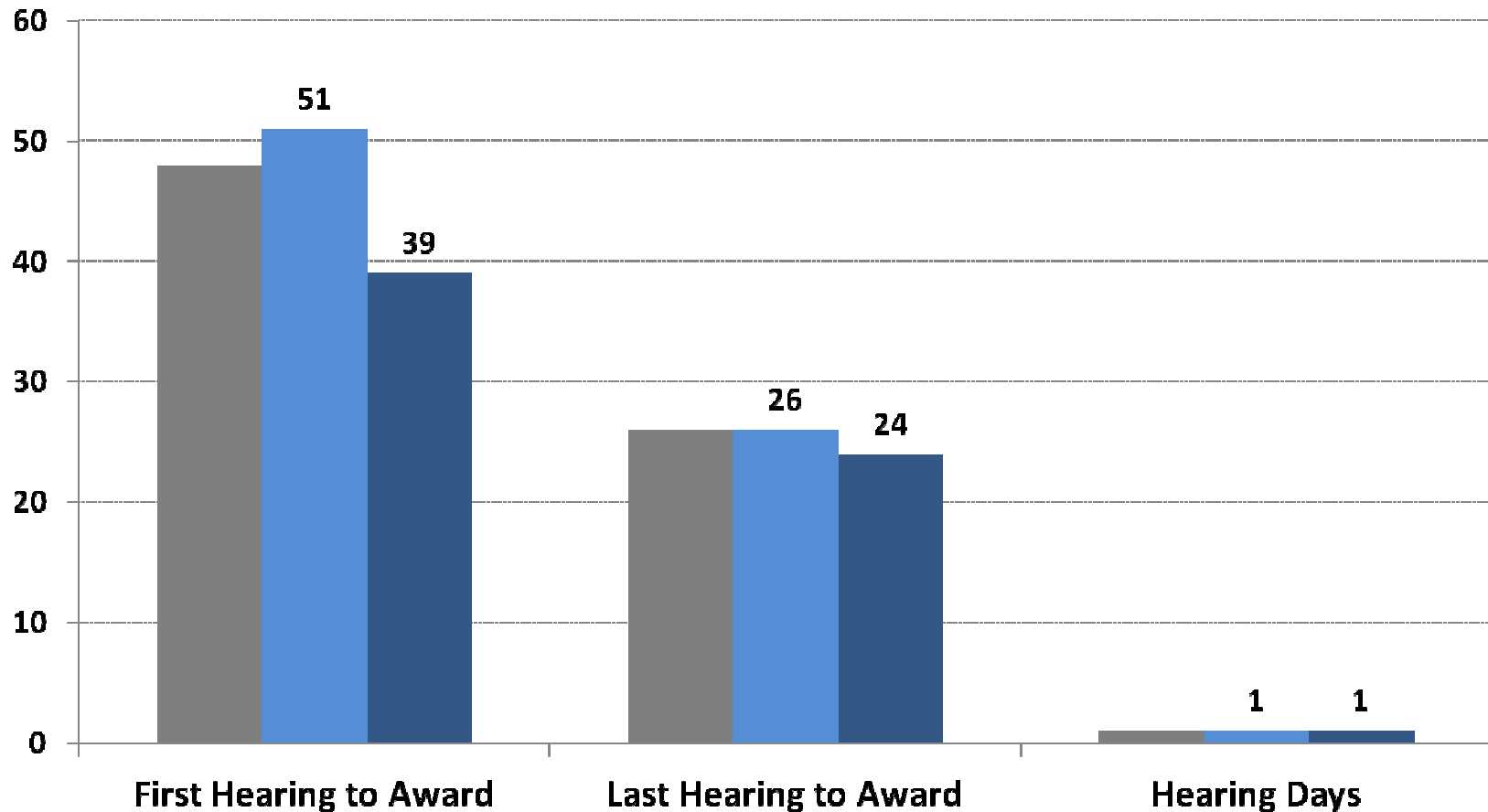
■ All Cases

■ Grievor Male

■ Grievor Female

- ☐ Cases with female grievors take substantially less time
- ☐ Hearing days are the same

Ontario Arbitrations by Arbitrator Sex, 2010, Median No. of Days



Banks, Chaykowski, Slotsve (2011)

■ All Cases ■ Arbitrator Male ■ Arbitrator Female

- ☐ Cases with female arbitrator take less time
- ☐ Hearing days are the same

Next steps in the analysis:

- Expand the number of years to examine changes over time
- Analyze whether or not differences are statistically meaningful (i.e., significant)
- Extend the distributional analysis
- Focus on regression and other statistical analyses to explain variation in time duration and in number of days
 - explore role of specific factors such as subject matter, employer, union, specific industry, as well as others