

Financial Services Tribunal

2021-22 Annual Report

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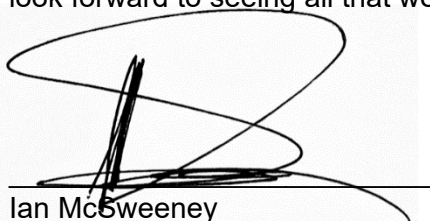
1.0 Message from the Chair

I am pleased to provide the 2021-22 Annual Report for the Financial Services Tribunal (the “FST” or “Tribunal”). This report includes details relating to our key activities and achievements over the year.

In a year that continued to be challenged by the ongoing COVID-19 global pandemic, the Tribunal’s business continuity plan allowed a rapid response to any changing health and safety declarations while still delivering critical services uninterrupted. The previously issued Electronic Hearings Practice Direction (the “EHPD”) supported the Tribunal’s continuation of virtual hearings by MS Teams. In-person and hybrid hearing requests were accommodated in accordance with a combination of the EHPD and the Tribunal’s COVID-19-focused Discretionary In-Person Hearing Practice Direction (the “DIPHPD”). As a result, all hearings continued to proceed in a timely fashion while still respecting the safety of staff, parties, adjudicators and the general public.

In 2021-22, the FST also finalized and approved all public accountability documents required under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (“ATAGAA”). These documents have been posted on the Tribunal’s website providing greater transparency and openness regarding the FST’s mandate and ATAGAA compliance policies.

As I hope you will see from this report, we have accomplished a lot in the past year, and we remain committed to continued improvement. The results we have achieved would not have been possible without the commitment and dedication of our people. I would like to extend my sincere thanks to my colleagues in the Tribunal, in the Registrar’s office and within the Ministry of Finance, who have worked tirelessly this year to support the success of our organization and look forward to seeing all that we will achieve in the next year.



Ian McSweeney
Chair

2.0 Overview of the FST

Established by the *Financial Services Tribunal Act, 2017* (the “FST Act”) the FST is an expert, independent adjudicative body. The FST conducts hearings and hears certain appeals on regulatory and disciplinary matters under statutes covering the sectors regulated by the Financial Services Regulatory Authority of Ontario (“FSRA”), including the:

- *Pension Benefits Act*;
- *Insurance Act*;
- *Mortgage Brokerages, Lenders and Administrators Act, 2006*;
- *Credit Unions and Caisses Populaires Act, 2020*;
- *Loan and Trust Corporations Act*; and
- *Prepaid Hospital and Medical Services Act*.

The FST has exclusive jurisdiction to exercise the powers conferred on it by legislation and to determine all questions of fact or law that arise in its hearings and the authority to make rules regarding the Tribunal’s practices and procedures, including the awarding of costs.

As an administrative adjudicative body, with powers similar to those of a court, the FST provides a relatively fast and cost-effective way to request hearings and appeals of proposed regulatory orders and decisions.

2.1 Mandate

The FST is an expert independent adjudicative body established under the Act with a mandate to conduct hearings and appeals on licensing, market conduct and other matters arising under, and in accordance with, legislation governing the financial services industry sectors regulated by FSRA, the *Statutory Powers Procedure Act* (the “SPPA”) and the FST’s Rules of Practice and Procedure and Practice Directions.

2.2 Mission Statement

The FST delivers adjudicative services to the citizens of Ontario in a fair, independent, effective and efficient manner that promotes public confidence in the sectors regulated by FSRA and protects the public interest in accordance with its legislated authority. The FST promotes public confidence by exercising integrity, expertise and excellence, and by being accessible, accountable and responsive.

2.3 Vision

The FST aspires to encourage diversity, inclusion and belonging within our team and to provide our services with compassion and respect. We continuously seek opportunities to collaborate, innovate and improve.

3.0 Key Activities and Initiatives

In fiscal 2021-22, the FST continued to operate as an independent tribunal with respect to proceedings that arose in relation to past regulatory enforcement activities by the Superintendent of Financial Services under the *Financial Services Commission of Ontario Act, 1997* in addition to regulatory enforcement activities carried out by the Chief Executive Officer of FSRA under the *Financial Services Regulatory Authority of Ontario Act, 2016*.

Considering the ongoing health and safety challenges posed by the COVID-19 pandemic, the FST continued to conduct business in accordance with its business continuity plan which details strategies and actions for recovery during an incident or a disruption, such as the pandemic, thus allowing the FST's operations to continue uninterrupted. Specifically, the FST undertook the following key measures to ensure delivery of its critical functions:

- All pre-hearings and most hearings continued to be conducted electronically via the MS Teams platform in accordance with the Tribunal's EHPD. In-person and hybrid hearing requests continued to be accommodated through a combination of the EHPD and the Tribunal's DIPHPD.
- The FST created and published online COVID-19 screening protocols for use in relation to in-person attendees at the Tribunal's offices for hearings etc.
- The FST continued with alternative work arrangements for its employees and the members due to ongoing COVID-19 related public safety restrictions.

Effective April 6, 2021, Schedule 1 of Ontario Regulation 126/10 was amended to include the FST in the list of adjudicative tribunals under ATAGAA. As a result, the Tribunal in accordance with the requirements of ATAGAA, adopted and published the following documents on its website:

- Mandate and Mission Statement
- Accessibility and Accommodation Policy
- Code of Conduct
- Consultation Policy
- Ethics Plan
- Positions Descriptions and Qualifications for Chair, Vice-Chairs and Members
- Service Standards Policy

These policies received all necessary government approvals.

With respect to the FST's core activities, the FST remained committed to providing an impartial hearing process and adjudicating cases in a transparent, fair and timely manner. Specifically, there were a total of 15 new cases received in 2021-22, in comparison to 32 new cases received in 2020-21. At the same time, the number of cases pending at the end of the year also decreased to 28 cases, down from 38 cases pending at the end of 2020-21. Despite the drop in new cases and overall caseload, the Tribunal's scheduled activities greatly increased over the

past year. The FST closed 25 cases across various sectors regulated by FSRA, compared to 16 cases closed in 2020-21.

During 2021-22 there was a total of 159 days of pre-hearings, hearings and motions heard compared to the 87 days in 2020-21. This suggests there may be a growing complexity of files received despite the decrease in the actual number of files received. Table 3.0 summarizes the FST's activities in 2021-22.

Table 3.0: FST Activities in 2021-22

| Activity | Pension Matters (Excluding Financial Hardship) | Pension Matters (Financial Hardship) | Mortgage Matters | Insurance Matters | Credit Union Matters | Service Provider Matters | Total 2021-22 | Total 2020-21 | Total 2019-20 |
|---|--|--------------------------------------|------------------|-------------------|----------------------|--------------------------|---------------|---------------|---------------|
| Cases Pending at Beginning of Year | 11 | 0 | 15 | 12 | 0 | 0 | 38 | 22 | 67 |
| New Cases Received | 5 | 0 | 5 | 4 | 0 | 1 | 15 | 32 | 20 |
| Cases Closed | 6 | 0 | 12 | 7 | 0 | 0 | 25 | 16 | 65 |
| Cases Pending at End of Year | 10 | 0 | 8 | 9 | 0 | 1 | 28 | 38 | 22 |
| Oral Hearing Days | 10 | 0 | 21 | 1 | 0 | 0 | 32 | 4 | 18 |
| Written Hearings | 5 | 0 | 3 | 10 | 0 | 0 | 18 | 1 | 8 |
| Other Activity Days – Including: Pre-Hearing Conferences, Telephone Conferences, Settlement Conferences and Motions | 42 | 0 | 34 | 31 | 0 | 2 | 109 | 82 | 116 |
| Total Hearing (Oral and Written) and Activity Days before FST | 57 | 0 | 58 | 42 | 0 | 2 | 159 | 87 | 142 |

Notes:

1. Table does not include FST quarterly meetings, days for deliberation or decision writing.
2. Total number of days worked by all FST members combined for the period were 599.5 days.
3. Numbers may reflect activity in respect of files opened prior to 2021-22 fiscal year.
4. Written hearings may relate to financial hardship matters, motions, requests for costs or requests for a review of a decision.

3.1 FST Appointments

In accordance with the FST Act, the Tribunal must have a minimum of nine members, including the Chair and two Vice-Chairs, all appointed by the Lieutenant Governor in Council.

Appointments to the FST are made in accordance with the guidelines established by Ontario's [Public Appointments Secretariat](#).

In 2021-22 there were two new members appointed to the FST, in conjunction with the re-appointment of some existing members to meet the Tribunal's caseload requirements. The FST continues to seek out qualified candidates for appoint to the Tribunal both to assist in the Tribunal's workload and to offset the impact of departing members in accordance with Section 2(4) of the FST Act, to the extent practicable, members are appointed based on experience and expertise in the regulated sectors. This ensures that the FST has adequate technical knowledge and resources to provide adjudicative services to the regulated sectors within FSRA's jurisdiction. In 2021-22, the total remuneration for the FST (excluding staff) was \$157,304.83. Table 3.1 below provides details on FST memberships during the reporting period.

Table 3.1: FST Members in Fiscal 2021-22

| Name | Position | Tenure (From-To) |
|--|------------|--|
| Ian McSweeney | Chair | March 11, 2015 - September 13, 2023 |
| Bethune Whiston | Vice-Chair | December 17, 2013 - September 24, 2022 |
| Paul Farley ¹ | Vice-Chair | November 18, 2021 – November 17, 2023 |
| Paul Farley | Member | January 5, 2015 - November 18, 2021 |
| Anthony Fredericks | Member | April 11, 2018 - April 10, 2025 |
| Martin Guest | Member | December 2, 2021 – December 1, 2023 |
| Caroline Hunt | Member | February 8, 2018 - February 7, 2025 |
| Audrey Mak | Member | November 2, 2016 - November 1, 2021 |
| Christopher Portner | Member | August 17, 2017 - September 12, 2022 |
| Nicholas Savona | Member | March 18, 2020 - March 17, 2025 |
| Mohammad Faisal Siddiqi | Member | March 1, 2017 - March 20, 2023 |
| Edward Skwarek | Member | March 18, 2020 - March 17, 2025 |
| Carlo Spadafora | Member | April 16, 2020 - August 19, 2021 |
| Cyndee Todgham-Cherniak | Member | May 7, 2020 - June 24, 2021 |
| Jill Wagman | Member | December 17, 2013 - December 16, 2023 |
| Ruth Wahl | Member | December 2, 2021 – December 1, 2023 |
| Total fiscal 2021-22 remuneration | | \$157,304.83 |

¹ Paul Farley was appointed Vice-Chair effective November 18, 2021 and his previous OIC was revoked.

3.2 Rules, Practices, Procedures and Guidelines

The FST has established its Rules, Practice Directions and guidelines to govern the conduct of its hearings, subject, as well, to the SPPA and enabling legislation applicable to the financial services sectors regulated by FSRA. To further assist hearing participants, the FST has also created and posted online a Guide to Regulatory Proceedings (Guide). The Guide provides detailed information regarding how the FST conducts its proceedings.

For hearing participants' convenience, the FST's hearing schedule, decisions and Rules are posted on the [FST website](#), along with the biographies of current FST members.

4.0 FST Public Service Standards

In accordance with the OPS Service Directive (Directive), the FST has developed service standards to meet the Directive's mandatory requirements to:

- Establish and communicate to customers, program-specific service standards for services offered;
- Monitor and measure the quality of service provided; and
- Communicate to customers, the actual quality of service provided.

The Directive articulates and reinforces the need for service standards, processes and practices, roles and responsibilities to ensure accessible and quality services to customers. In fiscal 2021-22, the FST continued to focus on meeting its commitments and delivering service to the members of the public. Table 4.0 summarizes how the FST performed against its standards in fiscal 2021-22.

Table 4.0: FST Service Standards in Fiscal 2021-22

| Performance measures | # of cases / decisions | Target # of cases ¹ | # of cases that met standard | Service Standard Achieved |
|--|------------------------|--------------------------------|------------------------------|---------------------------|
| Acknowledgement letter sent within 5 calendar days Standard: 100% of cases | 15 | 15 | 15 | Yes |
| Pre-hearing date scheduled within 35 calendar days of filing completed Request for Hearing or Notice of Appeal Standard: 90% of cases | 14 | 13 | 14 | Yes |
| Decision issued within 90 calendar days from final day of hearing Standard: 90% of cases | 27 | 24 | 25 | Yes |

Notes:

¹ Calculated as number of cases/decisions multiplied by Standard %

Service excellence is a priority for the FST, and it highlights the FST's commitment to providing fair, effective and timely judgements. While the FST strives to meet the service standards for issuing decisions within 90 calendar days, the capacity to issue a decision may sometimes be affected by other services and factors that are beyond FST's control. In particular, during the 2020-21 fiscal year, the FST fell below the benchmarked service standards due to numerous operational challenges brought on by the COVID-19 pandemic. As these operational challenges normalized, the FST was able to modernize its daily to day operations and meet the service standards for the 2021-22 fiscal year without any issues.

5.0 Financial Summary

The FST's budget is funded through interim spending authority provided by the government, until its costs are fully recovered from the regulated sectors through an annual assessment facilitated by FSRA. The expenses and expenditures of the FST are charged to the Ministry of Finance's Financial Services Tribunal Program and are fully recovered from the regulated sectors through FSRA.

The FST's spending authority is funded through interim payments from the Consolidated Revenue Fund, authorized under Section 15.1 of the *Financial Administration Act*, which are to be fully recovered from FSRA in each fiscal year. Table 5.0 below provides an overview of FST revenues and expenditures.

Table 5.0: FST Revenues in Fiscal 2021-22

| Item | 2021-22 | 2020-21 |
|-----------------------|-------------------|---------------------|
| Recovery from Sectors | 639,095.70 | \$863,413.63 |
| Total Revenue | 639,095.70 | \$863,413.63 |

Table 5.1: FST Expenditures in Fiscal 2020-21

| Item | 2021-22 | 2020-21 |
|-----------------------------------|---------------------|---------------------|
| Salaries and Wages | \$157,304.83 | \$125,608.55 |
| Employee Benefits | \$22,118.57 | \$20,271.09 |
| Transportation and Communications | \$2057.89 | \$2,415.75 |
| Services | \$457,124.16 | \$714,954.75 |
| Supplies and Equipment | \$490.25 | \$163.49 |
| Total Expenditures | \$639,095.70 | \$863,413.63 |

Notes:

1. Under subsection 15(1) of the FST Act, 2017, the Lieutenant Governor in Council may assess FSRA with respect to all expenses and expenditures that the FST and the Ministry of Finance have incurred and made under the FST Act or any other Act that confers powers or assigns duties to the FST. This assessment is made in accordance with Order in Council 115/2020 and O. Reg. 144/19.

In fiscal 2021-22, the FST reported \$639,095.70 in total revenues and expenditures compared to \$863,413 in the previous year. The expenditures are lower than the previous year partly due to lower than expected services expenditures due to the ongoing pandemic.