

Financial Services Tribunal

COVID-19 Procedures, New Practice Directions and Notice of Public Consultation

COVID-19 Procedures

In response to the recent COVID-19 pandemic, the declared state of emergency by the province of Ontario and recognizing outstanding safety concerns relating to large gatherings of people, the Tribunal encourages parties to abide by all health and safety measures issued by various levels of government.

The Tribunal also recognizes the need to reasonably balance public health concerns with our ongoing adjudicative responsibilities by ensuring our processes and the pending matters continue to move forward during this disruption without compromising public and personal safety.

While we encourage parties to not attend at the Tribunal offices, we are still accepting the filing of new Requests for Hearing / Notices of Appeal and we are still accepting the filing of materials on pre-existing Tribunal matters. Filings should be made by fax, email, mail or courier, subject to specific orders made by panel chairs. If any person has (i) recently traveled outside of Canada, (ii) been exposed to anyone who has contracted the COVID-19 virus or (iii) is otherwise exhibiting any symptoms, they should not, under any circumstances, attend at the Tribunal offices. Parties can file their material with the Tribunal by fax at 416-226-7750 or by e-mail to contact@fstontario.ca or by mail or courier. The Tribunal will also continue to issue Pre-Hearing Conference Memoranda and any Decisions already outstanding.

Any matters set to be heard by teleconference or by written submissions will continue as scheduled. Additionally, any disclosure schedules and filing/submission deadlines remain in effect, subject to order of the proceeding panel chair.

Further to Rule 25.01 of the Rules of Practice and Procedure for Proceedings Before the Financial Services Tribunal (“Rules”), in April 2020 the Tribunal decided to adjourn all previously scheduled in-person motions/hearings before it, due to ongoing COVID-19-related work and public safety restrictions. These in-person adjournments continue until further notice or until the Tribunal orders otherwise.

Also until further notice, and subject to the Tribunal ordering otherwise, all existing and new motions/hearings in a proceeding scheduled to be heard by the Tribunal will be held either in writing or electronically (by tele-conference or by video conference), as determined by the Tribunal pursuant to its Rules and practice directions and in consultation with the parties to the proceeding.

The Registrar will be contacting all affected parties to existing proceedings with respect to such adjournments and will be arranging a pre-hearing conference for the parties with their panel chair.

to discuss any required changes to proceeding arrangements, including new motion/hearing dates, as required. The Tribunal retains the discretion in all circumstances to determine the manner in which an electronic or virtual motion/hearing will be conducted (Rule 20, 21 and 22).

New Practice Directions

During the COVID-19-related adjournment, the Tribunal may, in its discretion, and provided adequate health and safety precautions are in place, order that a matter be heard by way of in-person hearing, either on its own motion or if a party demonstrates that there are exceptional or special circumstances which justify an in-person hearing. Any request by a party for an in-person hearing must be made to the Tribunal by way of motion demonstrating that exceptional or special circumstances exist. For example, if the requesting party were to demonstrate that an electronic or written hearing would likely cause them significant prejudice, or that there are other good reasons for not holding an electronic/written hearing (Rule 22). In this regard, the Tribunal plans to release a COVID-19-focused in-person hearing practice direction.

The Tribunal is also planning to release an electronic hearing practice direction to provide parties with a framework for motions/hearings to be conducted electronically by tele-conferencing (telephone) or by video conferencing using Microsoft Teams. This practice direction will be of general application, will not be limited to COVID-19-related circumstances and will apply to any part of a proceeding (i.e., pre-hearings, motions and hearings) to be conducted electronically.

Both practice directions will be subject to the Rules, the Statutory Powers Procedure Act, R.S.O. 1990, c 22 and other applicable legislation.

Notice of Public Consultation – Draft Practice Directions

Further to previous announcements, the Tribunal posted these practice directions in draft on September 30, 2020 for a 30-day public consultation period. All comments and suggestions relating to the draft practice directions should be sent to the Registrar by fax at 416-226-7750 or by e-mail to contact@fstontario.ca on or before October 31, 2020. During the public consultation period the Tribunal intends to use the draft practice directions as general guides in connection with all proceedings.

Following the public consultation period, the practice directions will be finalized and posted on the FST website.

In the interim, please contact the Registrar with any questions.

Transition

Effective June 8, 2019, the Financial Services Regulatory Authority of Ontario (FSRA) assumed the regulatory duties of the Financial Services Commission of Ontario (FSCO) and the Deposit Insurance Corporation of Ontario (DICO). FSRA's website can be accessed at www.fsrao.ca. 

Following June 8th, the Chief Executive Officer of FSRA assumed all of the existing regulatory and enforcement responsibilities of the Superintendent of Financial Services under the new FSRA Act and, through the legislation and Ministerial orders, automatically replaced the Superintendent as a party to all proceedings before the Financial Services Tribunal.

The Tribunal has actively reviewed and continues to actively review all of its forms, guidelines, rules, policies, FAQs etc., with a view to making changes necessary to reflect the foregoing. Where relevant changes have not yet been made, and until such changes are made, these documents should be read to give effect to these changes as the context requires in the circumstances.

General

The **Financial Services Tribunal** is an independent, adjudicative body composed of at least nine members, including the Chair and two Vice-Chairs. The Tribunal has exclusive jurisdiction to exercise the powers conferred under the [Financial Services Tribunal Act, 2017](#) and other Acts that confer powers on or assign duties to the Tribunal. It also has exclusive jurisdiction to determine all questions of fact or law that arise in any proceeding before it. As well, the Tribunal has authority to make rules for the practice and procedure to be observed in a proceeding before it and to order a party to a proceeding before it to pay the costs of another party or the Tribunal's costs of the proceeding.