

# Financial Services Tribunal

2021/22 - 2023/24

Annual Business Plan

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## 1.0 MESSAGE FROM THE CHAIR

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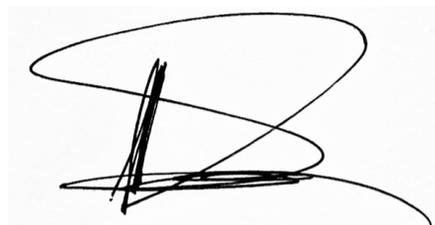
It is my pleasure to present the 2021/22-2023/24 Annual Business Plan (Plan/Business Plan) for the Financial Services Tribunal (FST/Tribunal). The Plan highlights the Tribunal's core functions, future commitments and challenges. It sets out the Tribunal's strategic direction and the resources necessary to achieve our goals. Through this Business Plan, the Tribunal will continue to support the government's priorities, including greater public confidence in financial services regulation and the independent adjudicative function.

In response to the COVID-19 global pandemic and the province's emergency declarations, the Tribunal activated its business continuity plan. This plan provides strategic guidance and actions for recovery during any incident or disruption to ensure that the Tribunal continues to deliver all critical functions and meets its benchmarks. Proceedings before the Tribunal continue through electronic hearings governed by new practice directions issued to support our ongoing mandate and maintain public safety as a priority. The Tribunal will continue to closely monitor the impact of the pandemic on its operations and will make any further adjustments needed to address current and evolving circumstances.

The Tribunal is dedicated to meeting its commitments and achieving excellence in conducting its proceedings, writing quality decisions and maintaining the highest standards in delivering its services to the public. Tribunal members and staff will work together to achieve the strategic directions described in this Plan.

I would like to thank the hard-working and dedicated Tribunal members and staff whose valuable contributions and professionalism make it possible for the Tribunal to succeed in discharging its mandate in an efficient, fair and effective manner. I would also like to thank the Government of Ontario for its ongoing support of the Tribunal as an independent adjudicative body.

Sincerely,



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**Ian McSweeney**

Chair

## 2.0 OVERVIEW OF THE FST

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The FST is an independent, expert decision-making body that, at the request of affected persons, hears appeals from decisions and holds hearings to review proposed decisions of the Chief Executive Officer (CEO) of the Financial Services Regulatory Authority of Ontario (FSRA) or its predecessor the Superintendent of FSCO and the Deposit Insurance Corporation of Ontario (DICO). These decisions relate to market conduct and licensing matters arising out of the sectors regulated by FSRA.

Although the FST is an administrative adjudicative body with powers similar to those of a court, it is not a court of law. Members of the Tribunal are called adjudicators (not judges) and form panels of one or three members (Panel) with respect to proceedings before them. A Panel makes decisions based on the evidence and submissions presented by parties during the proceeding.

The FST has authority to hold hearings and adjudicate appeals under the Ontario statutes that govern the regulated sectors within FSRA's mandate, including the:

- *Pension Benefits Act*;
- *Insurance Act*;
- *Mortgage Brokerages, Lenders and Administrators Act, 2006*;
- *Loans and Trust Corporations Act*;
- *Credit Unions and Caisses Populaires Act, 1994*;
- *Co-operative Corporations Act*; and
- *Prepaid Hospital and Medical Services Act*.

Until April 1, 2019, the FST was established under the *Financial Services Commission of Ontario Act, 1997* (FSCO Act) and was administratively supported by FSCO. On April 1, 2019, the majority of the *Financial Services Tribunal Act, 2017* (FST Act) came into force, which established the FST as a stand-alone entity.

The FST continues 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 FSCO Act and the President and CEO of DICO under the *Credit Unions and Caisses Populaires Act, 1994*, in addition to current and future regulatory enforcement activities carried out by the CEO of FSRA under the *Financial Services Regulatory Authority of Ontario Act, 2016* (FSRA Act).

### 3.0 LEGISLATIVE MANDATE AND VISION STATEMENT

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#### Legislative Mandate

The FST exercises the powers conferred upon it under the FST Act, the *Statutory Powers Procedure Act* (SPPA), the governing enabling statutes and other legislation as applicable to the FST and its activities. The FST has exclusive jurisdiction to determine all questions of fact or law that arise in related proceedings and the authority to make rules regarding the Tribunal's practices and procedures, including the awarding of costs.

#### Vision Statement

To provide expert and timely adjudicative services to the citizens of Ontario as outlined in the FST Act and related legislation.

### 4.0 FST FUNCTIONS

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The Ontario Government transferred the regulatory responsibilities of FSCO and DICO to the new FSRA on June 8, 2019. Following the transfer, FSCO and DICO ceased to have jurisdiction over the regulated sectors and the FST started hearing proceedings arising out of decisions and proposed decisions of the CEO of FSRA, in addition to those already before the Tribunal in which the CEO replaced the Superintendent as a party. The FST has the following three main functions:

- 1. Conducting pre-hearings, hearings and decision-making** – This function is performed by the Tribunal adjudicators (with administrative assistance from the FST Registrar and Assistant Registrar) and includes conducting hearings and pre-hearings, hearing motions, and the writing of related decisions and accompanying reasons. Hearings take place at the offices of the FST, which were recently relocated to 25 Sheppard Ave W, 7th floor, Toronto, ON. Traditionally, the FST has held its hearings in person, electronically or in writing in accordance with its Rules and the SPPA. Due to the current state of emergency, all hearings are being conducted electronically; however, in-person hearings may be requested under strict practice direction guidelines and will resume as the FST's regular format when safe to do so in accordance with appropriate health and safety protocols.

Under the FST's published service standards Tribunal members are normally required to render their decisions within 90 calendar days from the final day of the hearing. This provides the hearing Panel time to fully consider and discuss all evidence and submissions presented at the hearing and to prepare written reasons. The FST has been able to exceed this standard in most proceedings.

- 2. Proceeding administration** – This function is primarily performed by FST staff with assistance of the Tribunal Chair/Panel Chair and includes all administrative steps necessary to process a request for hearing or notice of appeal from the date of filing to the completion of the hearing. This may include reviewing the filed application and assessing its compliance with the applicable legislation,

requesting additional information from the parties as necessary, scheduling the pre-hearing(s), any motions and the hearing, monitoring and managing the case throughout the process, sending the final written decision to the parties and to legal reporting websites such as CanLII, and monitoring any appeals or judicial reviews of Tribunal decisions.

- 3. Providing public access** – This function includes providing the public with access to hearings and information regarding the FST’s role, hearing procedures, status of cases, hearing locations and administrative processes under all relevant statutes through its website and public inquiries, as well as providing for any accessibility needs required by parties who appear before the Tribunal. Any member of the public who wishes to participate in an electronic hearing can contact the FST registrar office for more information.

## 5.0 STRATEGIC DIRECTION AND INITIATIVES

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The FST is committed to continuous improvement to meet the needs of its stakeholders. To achieve this goal, the FST has created a strategic framework to guide the development of its Business Plan and annual operations. The framework ensures that the FST’s procedures and processes are properly aligned with government priorities. There are three key strategic directions that the FST will focus on over the coming years.



### 1. Maintain a pool of qualified members to adjudicate hearings

- The FST will continue to work with the Ministry of Finance (MOF) and the Public Appointments Secretariat to ensure the appointment of a sufficient number of qualified members to meet the Tribunal's expected caseload and expertise requirements, and to ensure that the FST has adequate staff and technical resources to continue providing efficient and effective, conflict-free adjudicative services to the regulated sectors within FSRA’s jurisdiction.

- The FST will continue to provide adequate training (internal and external resources) to ensure that Tribunal members have the appropriate skills and expertise to hear Tribunal proceedings to which they are assigned. To assist with this the FST has recently introduced a mentoring program for new appointees.

## **2. Update FST rules, practices, procedures and guidelines as needed**

- The FST will continue to review its rules, practices, procedures and guidelines as required to reflect legislative and other changes to its mandate, as needed, as well as to provide transparency to the public in relation to the conduct of its proceedings.
- The FST will continue to review and revise performance standards as needed to ensure that available resources continue to deliver effective adjudicative services.

## **3. Address ongoing challenges related to the COVID-19 pandemic on FST operations**

- In April 2020, the FST made changes to the way it conducts hearings and motions in response to the COVID-19 related health and safety measures issued by various levels of government. The Tribunal also activated its business continuity plan and posted communication materials in response to the pandemic on its website. To ensure that the FST continues to deliver on all of its critical functions, the Tribunal developed the following two practice directions and finalized them subsequent to receiving feedback from a 30-day public consultation which took place in October 2020:
  1. **Electronic hearing practice direction-** provides parties with a framework for motions/hearings to be conducted electronically (via telephone or Microsoft Teams). This practice direction is not limited to COVID-19-related circumstances and applies to any part of a proceeding to be conducted electronically.
  2. **Discretionary in-person hearing practice direction-** a COVID-19- specific practice direction that provides parties with a framework for requesting an order from the Tribunal to permit an in-person motion/hearing during the COVID-19 crisis with a focus on public health and safety conditions.
- Given the evolving nature of the COVID-19 crisis, the Tribunal will monitor the government's public health and safety guidelines, assess the impact on the Tribunal functions and service delivery, and add new measures/ revise existing ones to ensure it continues to deliver on its mandate and meet the needs of those who access its services.

## **6.0 HUMAN RESOURCES AND ADMINISTRATIVE SUPPORT**

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Effective human capital planning for the FST requires a clear understanding of strategic priorities and emerging workforce challenges. The FST ensures that its personnel practices align with the Government's overarching vision, mission and strategy. It engages in human resource planning to hire, train and manage its workforce within the limits of its budget.

The FST Act requires that the FST have a minimum of nine members. If the FST’s membership falls below nine, the FST will become improperly constituted after 90 days and will lose its jurisdiction until the minimum membership threshold is regained by the appointment of additional members. The Tribunal currently has a total of 13 part-time members, including the Chair and one Vice-Chair. The following table provides details on the current members of the Tribunal and their respective tenures.

**Table 6.1: Current Tribunal Members and their Tenures**

|     | Name                    | Title      | Appointment Duration                   |
|-----|-------------------------|------------|--|
| 1.  | Ian McSweeney           | Chair      | March 11, 2015 – September 13, 2021    |
| 2.  | Bethune Whiston         | Vice-Chair | December 17, 2013 – September 23, 2022 |
| 3.  | Paul Farley             | Member     | January 5, 2015 – March 12, 2022       |
| 4.  | Anthony Fredericks      | Member     | April 11, 2018 – April 10, 2022        |
| 5.  | Caroline Hunt           | Member     | February 8, 2018 – February 7, 2022    |
| 6.  | Audrey Mak              | Member     | November 2, 2016 – November 1, 2021    |
| 7.  | Christopher Portner     | Member     | August 17, 2017 – September 12, 2022   |
| 8.  | Mohammad Faisal Siddiqi | Member     | March 1, 2017 – March 21, 2021         |
| 9.  | Jill Wagman             | Member     | December 17, 2013 – December 17, 2021  |
| 10. | Ed Skwarek              | Member     | May 18, 2020 - May 18, 2022            |
| 11. | Nicolas Savona          | Member     | March 18, 2020 - March 18, 2022        |
| 12. | Carlo Spadafora         | Member     | April 16, 2020 - April 15, 2022        |
| 13. | Cyndee Todgham-Cherniak | Member     | May 7, 2020 - May 6, 2022              |

All Tribunal members are appointed by Cabinet through an Order-in-Council. The Chair and Vice-Chair are responsible for agency governance and relations with MOF. MOF will continue to provide the FST with two full-time equivalents (FTEs) support staff (who are MOF employees), consisting of one Registrar and one Assistant Registrar.

**Table 6.2: Estimated Ministry FTEs Staff Provided to the Tribunal**

|            | 2021-2022 | 2022-2023 | 2023-2024 |
|------------|-----------|-----------|-----------|
| FTEs staff | 2         | 2         | 2         |

MOF will also continue to provide the FST with working space, information technology resources, and other administrative and organizational support.

## 7.0 FINANCIAL REPORTING

### Revenues

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.

## Expenses

The expenses and expenditures of the FST are charged to MOF'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 7.1: Estimated Costs (in \$ thousands) Associated with Supporting the Tribunal**

| Expense Type                     | 2021-2022     | 2022-2023     | 2023-2024     |
|----------------------------------|---------------|---------------|---------------|
| Salaries and Wages               | 171.4         | 173.1         | 174.9         |
| Employee Benefits                | 22.3          | 22.5          | 22.7          |
| Services                         | 552.6         | 514.9         | 488.4         |
| Transportation and Communication | 12.3          | 11.3          | 11.3          |
| Supplies and Equipment           | 1.7           | 1.7           | 1.7           |
| <b>Total</b>                     | <b>760.30</b> | <b>723.50</b> | <b>699.00</b> |

Estimated expenses for 2021-22 are anticipated to be reflective of the first non-transitional operating year, pending impacts from COVID-19. In 2020-21, the COVID-19 pandemic led to significantly lower than anticipated case hearings, and thus much lower than anticipated *per diem* payments to FST members. The Ministry anticipates that this cost will increase significantly over the next few years, returning to historic, or higher than historic levels, as the FST increases the number of hearings to address any potential backlogs.

## **8.0 PERFORMANCE MEASURES AND TARGETS**

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In accordance with the OPS Service Directive, the FST has service standards to meet the Directive's requirements, as shown in the table below. For a full listing of FST service standard results, please visit the FST service standards webpage page at <https://www.fstontario.ca/en/>.

**Table 8.1: Performance Measures and Targets**

|    | Performance Measures  | Target |
|----|---|--------|
| 1. | % of cases in which the Tribunal sends the letter of acknowledgement within 5 calendar days   | 100%   |
| 2. | % of cases in which pre-hearing date is scheduled within 35 calendar days of filing a completed Request for Hearing or Notice of Appeal | 90%    |
| 3. | % of cases in which the Tribunal has issued a decision within 90 calendar days from the final day of the hearing                        | 90%    |

Note: Performance targets are the same for the next three years

The FST's long-term objective is that its decisions will provide clarity in the application of requirements related to financial services, pension plans, licensing and market conduct regulation, resulting in greater confidence in the financial services sectors and the independent adjudicative process. The FST has developed [Rules of Practice and Procedure](#) for hearings before the Tribunal, a Guide to Regulatory Proceedings, practice directions and conflict of interest guidelines, which are regularly reviewed and posted on the FST's website. In addition, the FST has a number of internal policies associated with governance best practices, public access to adjudicative records and its decision-making process.