

# **Financial Services Tribunal**

## 2020-21 Annual Report

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# 1.0 Message from the Chair

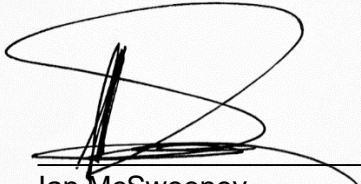
I am pleased to provide the 2020-21 Annual Report for the Financial Services Tribunal (FST/Tribunal). This report includes details relating to our key activities and achievements over the year.

The FST is an independent, adjudicative body responsible for conducting hearings and appeals arising from decisions and proposed decisions of the Financial Services Regulatory Authority of Ontario (FSRA). The Tribunal's mission includes the promotion of public confidence in the regulated sectors and the protection of the public interest in accordance with its legislated authority.

In a year full of challenges posed by the COVID-19 global pandemic, the Tribunal demonstrated agility and adaptability by activating its business continuity plan and swiftly responding to the province's health and safety emergency declarations, while continuing to deliver on all critical functions. Updates to the Rules of Practice and Procedure for Proceedings Before the Financial Services Tribunal (Rules), including issuing an Electronic Hearings Practice Direction, supported the transition to virtual hearings to allow the continuation of proceedings while protecting the health and safety of our members, staff and the general public.

In 2020-21, the FST also relocated to new office space at 25 Sheppard Ave West. The new space will support the return of in-person proceedings and will accommodate full and partial electronic participation, in recognition of the evolving needs and expectations of participants.

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* (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 FSRA, including the:

- *Pension Benefits Act*;
- *Insurance Act*;
- *Mortgage Brokerages, Lenders and Administrators Act, 2006*;
- *Credit Unions and Caisses Populaires Act, 1994*;
- *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 regulatory proposed orders and decisions.

### 2.1 Mandate

The FST is an expert, independent adjudicative body established under the FST Act 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* (SPPA) and the FST's Rules 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 regulated sectors and protects the public interest in accordance with its legislated authority. We promote public confidence through integrity, expertise and excellence, and by being accessible, accountable and responsive.

### 2.3 Vision

The FST works to provide modern adjudicative services through innovation, compassion, consistency and collaboration.

## 3.0 Key Activities and Initiatives

In fiscal 2020-21, 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* and the Deposit Insurance Corporation of Ontario under the *Credit Unions and Caisses Populaires Act, 1994*, 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 activated its business continuity plan which details strategies and actions for recovery during an incident or a disruption, such as the pandemic. Specifically, the FST undertook the following key measures to ensure delivery of its critical functions:

- In fall 2020, the FST conducted a 30-day public consultation on two new practice directions. Following the consultations, the FST adopted and posted on its website a COVID-19-Focused In-Person Hearing Practice Direction and an Electronic Hearing Practice Direction.
- The FST updated its website, forms and templates, guidelines and Rules to reflect the changes introduced in the new practice directions.
- The FST adjourned all in-person hearings until further notice commencing in April 2020 and began conducting motions/hearings in either writing or electronically via Microsoft Teams, in accordance with the newly released Electronic Hearing Practice Direction.
- The FST made alternative work arrangements for its employees and the members due to ongoing COVID-19 related public safety restrictions.

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 number of 32 new cases received in 2020-21, in comparison to 20 new cases received in 2019-20. At the same time, the number of cases pending at the end of the year also increased to 38 cases, up from 22 cases pending at the end of 2019-20. The slight increase in the new cases received and cases pending at the end of the year may be attributable to FSRA increasing its regulatory activities.

During 2020-21, the FST closed 16 cases across various sectors regulated by FSRA, compared to 65 cases closed in 2019-20. This is coupled with a significant drop in the total hearing days before the FST which dropped from 142 days in 2019-20 to 87 days in 2020-21. This can be attributed to the COVID-19 pandemic which required the FST to pivot and change its processes for dealing with its proceedings. Table 3.0 summarizes the FST's activities in 2020-21.

**Table 3.0: FST Activities**

Activity	Pension Matters (Excluding Financial Hardship)	Pension Matters (Financial Hardship)	Mortgage Matters	Insurance Matters	Credit Union Matters	Service Provider Matters	Total 2020-21	Total 2019-20	Total 2018-19
Cases Pending at Beginning of Year	5	0	11	6	0	0	22	67	49
New Cases Received	8	0	12	12	0	0	32	20	87
Cases Closed	2	0	8	6	0	0	16	65	69
Cases Pending at End of Year	11	0	15	12	0	0	38	22	67
Oral Hearing Days	4	0	0	0	0	0	4	18	13
Written Hearings	1	0	0	0	0	0	1	8	14
Other Activity Days – Including: Pre-Hearing Conferences, Telephone Conferences, Settlement Conferences and Motions	26	0	21	35	0	0	82	116	152
Total Hearing (Oral and Written) and Activity Days before FST	31	0	21	35	0	0	87	142	179

**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 410 days.
3. Numbers may reflect activity in respect of files opened prior to 2020-21 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 2020-21, a number of new members were appointed to the FST, in conjunction with the re-appointment of some existing members to meet the Tribunal's caseload requirements. 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 2020-21, the total remuneration for the FST (excluding staff) was \$168,361.05. Table 3.1 below provides details on FST memberships during the reporting period.

**Table 3.1: FST Members in Fiscal 2020–21**

<b>Name</b>	<b>Position</b>	<b>Tenure (From-To)</b>
Ian McSweeney	Chair	March 11, 2015 - September 12, 2021
Bethune Whiston	Vice-Chair	December 17, 2013 - September 23, 2022
Paul Farley	Member	January 5, 2015 - March 11, 2022
Anthony Fredericks	Member	April 11, 2018 - April 10, 2022
Caroline Hunt	Member	February 8, 2018 - February 7, 2022
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, 2022
Mohammad Faisal Siddiqi	Member	March 1, 2017 - March 20, 2023
Edward Skwarek	Member	March 18, 2020 - March 17, 2022
Carlo Spadafora	Member	April 16, 2020 - April 15, 2022
Cyndee Todgham-Cherniak	Member	May 7, 2020 - May 6, 2022
Jill Wagman	Member	December 17, 2013 - December 16, 2021
<b>Total fiscal 2020-21 remuneration</b>	<b>\$168,361.05</b>	

### **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 biographical sketches of current FST members.

### **3.3 Relocation to New Premises**

In February 2021, the FST relocated to the new office space at 25 Sheppard Avenue West, North York, ON where it will continue to co-locate with FSRA while maintaining its status as an independent adjudicative body.

The co-location of the FST and FSRA supports operational efficiency, as FSRA participates in all FST hearings. While the FST has moved to the new office location, some work remains outstanding, as COVID-19 impacted the original move dates as well as the capacity to complete all elements of the project. The FST staff continues to work with the Ministry of Finance and Infrastructure Ontario to ensure the remaining components are completed in a timely manner.

## 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 2020-21, 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 2020-21.

**Table 4.0: FST Service Standards in Fiscal 2020-21**

Performance measures	# of cases / decisions	Target # of cases	# of cases that met standard	# of cases that did not meet standard	Service Standard Achieved
100% of cases in which the Tribunal sends the letter of acknowledgement within 5 calendar days	32	32	11	21	34%
90% of cases in which the pre-hearing date is scheduled within 35 calendar days of filing a completed Request for Hearing or Notice of Appeal	27	24	13	11	54%
90% of cases in which the Tribunal has issued a decision within 90 calendar days from the final day of the hearing	8	8	8	0	100%



Service excellence remains a top priority for the FST. Service standards for fiscal 2020-21 fell below the benchmarked service standards for the Tribunal. There were numerous operational challenges during this period that were beyond the FST's control. In particular, the FST's service standards were largely impacted by the government's emergency/stay-at-home orders, FST's relocation to the new office space, and changes to staff, all of which disrupted the FST's normal course of operations and negatively impacted its ability to meet its service standards. As these operational challenges are normalized, the FST is well-positioned to meet its service standards going forward.

## 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 2020-21**

Item	2020-21	2019-20
Recovery from Sectors	\$863,413.63	\$591,750
<b>Total Revenue</b>	<b>\$863,413.63</b>	<b>\$591,750</b>

**Table 5.1: FST Expenditures in Fiscal 2020-21**

Item	2020-21	2019-20
Salaries and Wages	\$125,608.55	\$142,703
Employee Benefits	\$20,271.09	\$16,956
Transportation and Communications	\$2,415.75	\$4,769
Services	\$714,954.75	\$424,703
Supplies and Equipment	\$163.49	\$2,619
<b>Total Expenditures</b>	<b>\$863,413.63</b>	<b>\$591,750</b>

Notes:

1. FST's financials prior to 2019-20 are included in the FSCO Annual Reports.
2. 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 2020-21, the FST's revenues and expenditures totalled to \$863,413.64. The expenditures are higher in fiscal 2020-21 as compared to the prior year as a result of a one time, \$0.389 million expenditure to relocate the FST to 25 Sheppard Avenue where it is co-locating with FSRA. This increase is partially offset by a \$0.034 million decrease in FST member per diems, and other related operational cost decreases due to fewer FST activities as a result of the COVID-19 pandemic.