



## **Financial Services Tribunal**

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## **Tribunal des services financiers**

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## **FINANCIAL SERVICES TRIBUNAL OF ONTARIO**

### **PRACTICE DIRECTION - APPEALS OF ORDERS OF SUMMARY ADMINISTRATIVE PENALTIES MADE UNDER THE *MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT*, 2006, S.O. 2006, C. 29 (“*MBLAA*”), THE *INSURANCE ACT*, R.S.O. 1990, C. I.8 (“*IA*”) AND THE *PENSION BENEFITS ACT*, R.S.O. 1990, C. P.8 (“*PBA*”)**

Ce document est également disponible en français

### **Background**

1. Under Rule 2.04 of the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal (the “Rules”), the Tribunal may issue practice directions pertaining to certain types of proceedings or with respect to any matter the Tribunal deems appropriate.
2. In anticipation of an expected increase in Financial Services Regulatory Authority (“FSRA”) enforcement orders relating to summary administrative penalties under the MBLAA, IA and PBA, as well as the summary nature of the proceedings arising out of the appeal of such orders through a Form 2 - Notice of Appeal filing, the Tribunal considers it appropriate to adopt this Practice Direction.

### **Scheduling**

3. The Tribunal will designate one day each month for multiple summary administrative penalty pre-hearing conferences at 60-minute intervals. The actual duration of the scheduled pre-hearing conference for a proceeding will be determined at the discretion of the panel chair.
4. Due to the nature and quantum of summary administrative penalties, the Tribunal anticipates that many parties requesting a summary administrative penalty appeal may be self-represented in which case they should be directed to

the Tribunal's Guide to Regulatory Proceedings posted on the Tribunal's website, in addition to the Rules, according to the Tribunal's normal practice in such circumstances.

### **Events Triggered by Filing Form 2 - Notice of Appeal**

5. Appellants must file a Form 2 – Notice of Appeal with the Registrar to commence an appeal proceeding pursuant to Rule 15.
6. In accordance with Rule 40.01 and Rule 40.02, upon receiving a Form 2 - Notice of Appeal the Registrar shall request from FSRA a Record for the appeal. Within 15 days of receiving this request, FSRA shall file its Record with the Registrar and serve the Record on the appealing party.
7. A Notice of pre-hearing conference will be issued by the Registrar for a designated pre-hearing conference date that is at least 45 days from the date of the Form 2 - Notice of Appeal filing in accordance with Rule 17.

### **Parties Encouraged to Explore the Possibility of Settlement Prior to the First and Any Subsequent Pre-Hearing Conference**

8. According to the Tribunal's normal practice, the parties are encouraged to explore the possibility of settlement at any time during the proceeding, including prior to the first pre-hearing conference. Anything discussed by either party during any such settlement discussions will be without prejudice, i.e., will remain confidential.
9. If a settlement is reached, the Registrar must be advised by the filing of Form 5 - Withdrawal/Discontinuance, otherwise the parties will attend the pre-hearing conference.
10. According to the Tribunal's normal practice under Rule 16.06, any member of the Tribunal who has conducted a pre-hearing conference in which some or all of the substantive issues were settled, or were attempted to be settled, shall not sit on the panel conducting the hearing unless the parties consent in writing.

### **Parties Encouraged to Explore Reaching an Initial Agreed Statement of Facts Prior to the First Pre-Hearing Conference**

11. The parties are encouraged to exchange relevant documents and reach an initial agreed statement of facts prior to the first pre-hearing conference, to be filed with the Registrar at the time the parties file their pre-hearing briefs in accordance with paragraph 14 below.
12. The initial agreed statement of facts should reflect the parties' best efforts to agree on as many of the facts as possible which are relevant to the issues in the

proceeding.

### **Pre-Hearing Conference**

13. According to the Tribunal's normal practice, the pre-hearing conference will be governed by
  - (a) the Rules;
  - (b) the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22;
  - (c) this Practice Direction, as well as the Tribunal's Practice Direction on Electronic and Discretionary In-Person Hearings, and any other practice direction, as applicable, (the "Practice Directions"); and
  - (d) the relevant provisions of the MBLAA, IA or PBA and other applicable legislation.
  
14. FSRA's pre-hearing brief shall be filed with the Registrar and served on the appealing party at least 15 days prior to the pre-hearing conference date. The appealing party may file a pre-hearing brief at least 15 days prior to the pre-hearing conference date.
  
15. At the first Pre-Hearing Conference:
  - (a) the parties shall be prepared to settle the appeal issues and set a timetable for the appeal hearing, including the setting of dates for hearing, disclosure, party discussions relating to the possibility of reaching agreement on an agreed statement of facts/agreed book of documents, witness lists and witness statements/affidavits for evidence in-chief, and written submissions. Timelines should be consistent with those set out in the Rules;
  - (b) the Tribunal will canvass hearing formats with the parties and may, where appropriate, determine whether the hearing should be conducted in writing pursuant to Rules 20.02 and 20.03; and
  - (c) when appropriate, the Tribunal may direct the parties to file evidence-in-chief by way of affidavit (Rule 30.05).
  
16. A pre-hearing conference may be adjourned to an alternate designated day to allow a party to retain legal counsel or facilitate settlement discussions or for any other purpose, at the discretion of the Tribunal.
  
17. If issues arise regarding the steps directed at the first pre-hearing conference, FSRA and the appellant will attempt to resolve the issues and agree in writing to any necessary extensions to deadlines to be requested from the Tribunal. Either party may seek a further pre-hearing conference at an upcoming designated date, if there is a need to seek an adjournment or otherwise obtain the Tribunal's directions.

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