

# **Financial Services Tribunal**

## 2022-23 Annual Report

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# 1.0 Message from the Chair

I am pleased to provide the 2022-23 Annual Report for the Financial Services Tribunal (FST or Tribunal). This report includes details relating to our key activities and achievements over the year.

In 2022-23, as public health measures related to the COVID-19 pandemic started to relax, the FST undertook a consultation on proposed changes to its Rules and Practice Directions. The changes are responsive to the need for added flexibility and will ensure that panel chairs have the necessary discretionary authority to determine the appropriate hearing format in the circumstances of their proceedings based on established guidelines and consultation with the parties. In addition, this consultation included proposed changes to the Tribunal's Rules to add a provision relating to frivolous and vexatious motions and to make a number of other housekeeping changes.

In 2022-23, significant progress was made on the modernization of the FST's website, and that work continues. It is anticipated that the new website will launch in the coming months and will offer an improved and streamlined user experience.

FST members and staff worked steadily throughout the year with hearing and pre-hearing activities. In 2022-23, there was an increase in new cases received - 25 new cases, up from 15 received the previous year.


To meet the expected increase in summary administrative penalty appeals arising out of increased enforcement activity by the Financial Services Regulatory Authority of Ontario in this area, the Tribunal has introduced a new Summary Administrative Penalty Appeals Practice Direction effective May 29, 2023.

To meet caseload requirements and continue to provide effective and efficient adjudicative services, the FST welcomed two new members in 2022-23 and saw the reappointment of four existing members. In addition, in response to an increase in expected summary administrative penalty appeals, the FST developed a specific summary administrative penalty appeal practice direction.

Finally, in 2023 the FST hired an Acting Registrar to fill the vacancy left by the departure of its long time Registrar in late 2022.

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 on 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.

I look forward to continued success during the remainder of this year and to our ongoing progress in 2024.



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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 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*;
- *Prepaid Hospital and Medical Services Act*; and
- *Financial Professionals Title Protection Act, 2019*

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* (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 2022-23 the FST continued to operate as an independent tribunal with respect to regulatory enforcement activities carried out by the Chief Executive Officer of FSRA under the *Financial Services Regulatory Authority of Ontario Act, 2016*, in addition to one proceeding that arose in relation to past regulatory enforcement activities by the Superintendent of Financial Services under the *Financial Services Commission of Ontario Act, 1997*.

As the challenges posed by the COVID-19 pandemic continued to subside, the FST moved from holding electronic hearings only to both in-person and hybrid hearings (combination of electronic and in-person). The Tribunal will continue to offer these formats to parties as appropriate in the circumstances. To reflect best practices as public health restrictions are relaxed, a 30-day public consultation was held in March on the following proposed changes to the FST's Rules and Practice Directions:

- Revision of the FST's Rules to expressly address frivolous, vexatious or bad faith motions under Rule 14;
- Revisions of the FST's Rules and Electronic Hearing Practice Direction to further relax the Tribunal's approach to COVID-19-related in-person hearing protocols, while maintaining the flexibility to determine hearing formats; and
- Suspension of the FST's Discretionary In-Person Hearings During COVID-19 Practice Direction.

Comments were generally supportive of the proposed changes, and the FST continues its work to finalize the amendments and will make the revised versions available to the public on its website in June/July.

In support of our commitment to modernize the FST's operations, work began in 2022-23 to update the FST's website to a more streamlined and user-friendly public interface. It is anticipated that the modernized website will be functional in fiscal 2023-24.

With respect to the FST's core activities, the Tribunal remained committed to providing an impartial hearing process and adjudicating cases in a transparent, fair and timely manner. Specifically, there were a total of 25 new cases received in 2022-23, in comparison to 15 new cases received in 2021-22. At the same time, the number of cases pending at the end of the year was 28 cases, the same number as at the end of 2021-22. While there was an increase in new cases and overall caseload, the Tribunal's scheduled activities experienced a slight decrease compared to the past year. The FST closed 25 cases across various sectors regulated by FSRA, the same number as in 2021-22.

During 2022-23 there was a total of 105 days of pre-hearings, hearings and motions heard compared to the 159 days in 2021-22. Table 3.0 summarizes the FST's activities in 2022-23.

**Table 3.0: FST Activities in 2022-23**

Activity	Pension Matters	Mortgage Matters	Insurance Matters	Credit Union Matters	Service Provider Matters	Total 2022-23	Total 2021-22	Total 2020-21
Cases Pending at Beginning of Year	10	8	9	0	1	28	38	22
New Cases Received	4	4	15	0	2	25	15	32
Cases Closed	8	7	9	0	1	25	25	16
Cases Pending at End of Year	6	5	15	0	2	28	28	38
Oral Hearing Days	3	18	0	0	0	21	32	4
Written Hearings	1	0	0	0	0	1	18	1
Other Activity Days – Including: Pre-Hearing Conferences, Settlement Conferences and Motions	8	23	46	0	7	83	109	82
Total Hearing (Oral and Written) and Activity Days before FST	<b>12</b>	<b>41</b>	<b>45</b>	<b>0</b>	<b>7</b>	<b>105</b>	<b>159</b>	<b>87</b>

**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 approximately 389.5 days.
3. Numbers may reflect activity in respect of files opened prior to 2022-23 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 *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (ATAGAA) and guidelines established by Ontario's [Public Appointments Secretariat](#).

In 2022-23 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 appointment 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 2022-23, the total remuneration for the FST members (excluding staff) was \$225,292.30. Table 3.1 below provides details on FST memberships during the reporting period.

**Table 3.1: FST Members in Fiscal 2022-23**

<b>Name</b>	<b>Position</b>	<b>Tenure (From-To)</b>
Ian McSweeney	Chair	March 11, 2015 - September 12, 2023
Paul Farley	Vice-Chair	November 18, 2021 – November 17, 2023
Bethune Whiston	Vice-Chair	December 17, 2013 - September 23, 2024
Martin Guest	Member	December 2, 2021 – December 1, 2023
Ruth Wahl	Member	December 2, 2021 – December 1, 2023
Jill Wagman	Member	December 17, 2013 - December 16, 2023
Caroline Hunt	Member	February 8, 2018 - February 7, 2025
Allan Shapira	Member	March 2, 2023 – March 1, 2025
Nicholas Savona	Member	March 18, 2020 - March 17, 2025
Edward Skwarek	Member	March 18, 2020 - March 17, 2025
Jane Waechter	Member	March 23, 2023 – March 22, 2025
Anthony Fredericks	Member	April 11, 2018 - April 10, 2025
Christopher Portner	Member	August 17, 2017 - September 12, 2025
Mohammad Faisal Siddiqi	Member	March 1, 2017 - March 20, 2026
<b>Total fiscal 2022-23 remuneration</b>		<b>\$225,292.30</b>

## 3.2 Recruitment for Acting Registrar

Late 2022 saw the departure of the FST's Registrar. Recruitment to fill this vacancy took place in early 2023 and a new Acting Registrar started in June 2023.

## 3.3 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 and mitigate some of the barriers to understanding our legal process, 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 2022-23, 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 2022-23.

**Table 4.0: FST Service Standards in Fiscal 2022-23**

Performance measures	# of cases / decisions	Target # of cases <sup>1</sup>	# of cases that met standard	Service Standard Achieved
Acknowledgement letter sent within 5 calendar days Standard: 100% of cases	25	25	25	Yes
Pre-hearing date scheduled within 35 calendar days of filing completed Request for Hearing or Notice of Appeal Standard: 90% of cases	22	20	19	No
Decision issued within 90 calendar days from final day of hearing Standard: 90% of cases	7	6	7	Yes

Notes:

<sup>1</sup> 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 scheduling a pre-hearing conference date within 35 calendar days of filing a completed Request for Hearing or Notice of Appeal, the ability to schedule these conferences may sometimes be affected by the availability of the parties during this timeframe, or the parties may request that the conference be delayed while settlement discussions are ongoing. These factors are beyond FST's control. Going forward, the FST will continue to work with the parties soon after the Request for Hearing or Notice of Appeal is filed to allow for sufficient time to schedule the conference within the timeframe.

## 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 2022-23**

Item	2022-23	2021-22
Recovery from Sectors	\$481,100.11	\$639,095.70
<b>Total Revenue</b>	<b>\$481,100.11</b>	<b>\$639,095.70</b>

**Table 5.1: FST Expenditures in Fiscal 2022-23**

Item	2022-23	2021-22
Salaries and Wages	\$130,895.01	\$157,304.83
Employee Benefits	\$18,278.36	\$22,118.57
Transportation and Communications	\$2,301.31	\$2,057.89
Services	\$325,106.46	\$457,124.16
Supplies and Equipment	\$4,518.97	\$490.25
<b>Total Expenditures</b>	<b>\$481,100.11</b>	<b>\$639,095.70</b>

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 2022-23, the FST reported \$481,100.11 in total revenues and expenditures compared to \$689,095.70 in the previous year. The expenditures are lower than fiscal 2021-22 as the previous year included expenditures related to renovations at the FST's office, and there were no such expenditures in fiscal 2022-23.