

FINANCIAL AND
CONSUMER SERVICES
TRIBUNAL



TRIBUNAL DES SERVICES
FINANCIERS ET DES SERVICES
AUX CONSOMMATEURS

ANNUAL REPORT 2013-2014

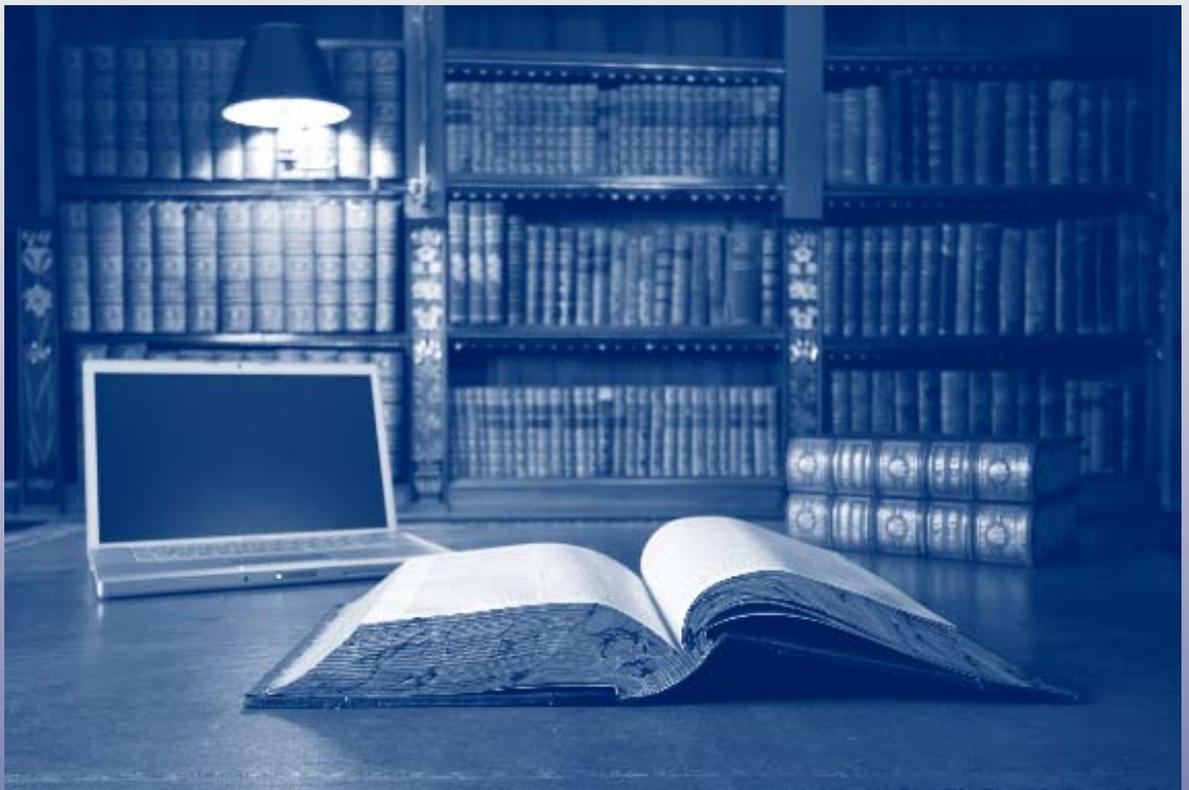


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MESSAGE FROM THE CHAIR

On behalf of the members and staff of the Financial and Consumer Services Tribunal, I am pleased to present our 2013-2014 Annual Report.

2013-2014 was a year of growth and adaptation for the Tribunal members and staff, beginning with the creation of the Tribunal on July 1, 2013 and the appointment of several new Tribunal members in the months that followed. I am looking forward to the coming years and the role the Tribunal will play in the administration of justice regarding financial and consumer services legislation.

Monica L. Barley,
Chair

ABOUT THE TRIBUNAL



Top - from left to right: Jean LeBlanc, Don Moors, John M. Hanson, Q.C.
Bottom - from left to right: Gerry Legere, Monica L. Barley, Chair, Enrico A. Scichilone

The Financial and Consumer Services Tribunal (Tribunal) is an independent adjudicative body established on July 1, 2013 pursuant to Section 29 of the *Financial and Consumer Services Commission Act*.

The Tribunal has exclusive jurisdiction to exercise the powers conferred under the *Financial and Consumer Services Commission Act* and other Acts that confer powers on or assign duties to the Tribunal. The Tribunal has exclusive jurisdiction to decide all questions of fact or law that arise in any proceeding before it.

The Tribunal hears appeals and reviews of decisions, as well as enforcement proceedings under the following Acts:

- the *Auctioneers Licence Act*;
- the *Collection Agencies Act*;
- the *Co-operative Associations Act*;
- the *Cost of Credit Disclosure Act*;

- the *Credit Unions Act*;
- the *Direct Sellers Act*;
- the *Insurance Act*;
- the *Loan and Trust Companies Act*;
- the *Pension Benefits Act*;
- the *Pre-arranged Funeral Services Act*;
- the *Real Estate Agents Act*; and
- the *Securities Act*.

The *Mortgage Brokers Act* and the *Cost of Credit Disclosure and Payday Loans Act* received Royal Assent on May 21, 2014. When these Acts are proclaimed, the Tribunal will also hear matters in relation to those Acts.

The Tribunal hears matters in both official languages. The Tribunal fully embraces and recognizes its obligations under New Brunswick's *Official Languages Act*. All Tribunal staff are fully bilingual. In addition, when requested, the Tribunal offers simultaneous interpretation for parties and their legal counsel. The Tribunal requires that the panel members hearing a matter be fully capable of understanding, without the assistance of interpretation, the matter before it, in the official language of choice of the parties.

In addition, all Tribunal decisions are translated and posted on the Tribunal's website in both official languages.

MAKEUP OF THE TRIBUNAL

The Tribunal consists of a chair and the number of other members the Financial and Consumer Services Commission recommends, which shall not be less than four nor more than 14 members.

As at March 31, 2014, the Tribunal was comprised of seven members, which included lawyers, accountants, and individuals from the business community. A short biography of each member is included below.

Monica L. Barley, Tribunal Chair

B.Sc., LL.B.

Residence: Moncton

Monica Barley was appointed the Chair of the Tribunal on March 13, 2014 for a term of three years.

Ms. Barley joined Actus Law Droit in 2010 and became a partner in 2012. In her practice, she focuses on dispute resolution, which includes civil litigation, employment law, contract law, administrative law and criminal law.

A native of Rexton, she was called to the bar in 2002 after graduating from the Université de Moncton with a Bachelor of Law degree in 2001. Previously, she earned a Bachelor of Science degree (physics, mathematics) from the Université de Moncton. Prior to joining Actus Law Droit, Monica worked as a federal prosecutor, conducting criminal prosecutions enforcing federal laws, acquiring considerable knowledge in court procedure, trial advocacy and rules of evidence.

Ms. Barley chairs the Elder Law Section of the New Brunswick Branch of the Canadian Bar Association and sits on the board of directors of Enterprise Greater Moncton. Previously, she was president of Crossroads for Women Inc., a shelter for women and children victims of family violence, and was vice-president of Downtown Moncton Centre-ville Inc.

John M. Hanson, Q.C.

B.A., LL.B., LL.M.

Residence: Fredericton

Mr. Hanson was appointed a member of the Tribunal on January 22, 2014 for a term of five years.

Mr. Hanson has a Masters of Law Degree and has extensive experience in Corporate Commercial law. Prior to retiring from private practice, he practiced law for over 40 years and was appointed Queen's Counsel in 1986. His practice consisted of corporate, commercial, securities and business law throughout the Province. He also has experience with various tribunals, boards and government dealings where he counselled both corporate and individual clients in relation to negotiations, contractual and statutory matters.

Since retiring from private practice, Mr. Hanson has been legal counsel for a public-private partnership in the transportation industry. Mr. Hanson has been a Chair since 2008 for the Canada Pension Plan Appeal Tribunal, an independent administrative tribunal for those appealing a pension plan decision.

Jean LeBlanc

Residence: Dieppe

Mr. LeBlanc was appointed a member of the Tribunal on January 22, 2014 for a three year term.

Mr. LeBlanc is the founder and now Division Manager of Lantech Drilling Services Inc., a wholly owned subsidiary of Orbit Garant Drilling and a contract drilling company specializing in Mineral exploration and geo-environmental investigations.

An experienced businessman and entrepreneur, he has performed senior management roles across Canada. He has worked in British Columbia, Ontario, Quebec and throughout the Atlantic Provinces. He was formerly a National Sales Manager for a large multinational based in North Bay, Ontario as well as an Executive Vice-President for an international drilling contractor and manufacturing firm based in Rouyn-Noranda, Quebec.

He is a former Mayor of the City of Dieppe, has served on several boards including the New Brunswick Branch of the Canadian Institute of Mining and Metallurgy, the Chamber of Mineral Resources of Nova Scotia and is a past President of the Canadian Diamond Drilling Association. He is a member in good standing of the New Brunswick Society of Engineering Technologists. He graduated from the New Brunswick Institute of Technology's Civil Technology program and has studied for the professional accounting designation in the CMA program of the Society of Management Accountants.

Gerry Legere

CGA

Residence : Bathurst

Mr. Legere was appointed a member of the Tribunal on January 22, 2014 for a term of four years.

Mr. Legere is an Accountant with extensive experience working in private practice, as well as owning his own accounting practice. In addition to his accounting experience, he was part owner of a mid-sized company that manufactured windows and doors.

Mr. Legere has been the Chair for the Employment Income Appeal Board of Referees and a board member for a number of foundations and associations, such as Canadian Business Development Corporation (CBDC) and Insulated Glass Manufacturing Association of Canada (IGMAC). He has volunteered extensively with community groups. He was Municipal Returning Officer for Bathurst and Bertrand by-election in 2012. As well, he has traveled internationally to participate in trade missions.

Don Moors

FCCM

Residence : Quispamsis

Mr. Moors was appointed a member of the Tribunal on January 22, 2014 for a three year term.

Mr. Moors is the Founding Principal of First Strategy, a management consulting and executive advisory services firm. Previously, he was a Partner with PriceWaterhouseCoopers LLP. In his most recent role with PwC, he led the firm's Management Consulting Practice in Atlantic Canada. Mr. Moors has extensive experience with large public and private sector organizations, having acted on behalf of senior executive-level officials in both sectors. He has served as a Board and Audit Committee member of an Investment Corporation. Mr. Moors received the President's Award for Excellence from the Atlantic Chapter of the Canadian Institute of Management Consultants and was named a Fellow of CMC Canada.

Enrico A. Scichilone

H.S.D., B.Sc., LL.B.

Residence : Moncton

Mr. Scichilone was appointed a supplementary member of the New Brunswick Securities Commission on November 21, 2012 for a three year term. Mr. Scichilone was deemed to be appointed a member of the Tribunal on July 1, 2013 pursuant to subsection 79(1) of the *Financial and Consumer Services Commission Act*.

A fluently bilingual native of Tracadie-Sheila, Mr. Scichilone has been practicing law for over ten years and is a partner in the law firm of Actus Law Droit, focusing on the areas of litigation, employment, administrative, corporate and commercial law. He is a member of the Law Society of New Brunswick and the Canadian Bar Association. He is a past Council member of the Moncton Area Lawyers Association during which time he chaired their continuing legal education committee. Also a dedicated community volunteer, Mr. Scichilone is a past member of the Moncton Branch of the Red Cross and is currently the past-chair of the Board of Directors of the Moncton Boys and Girls Club, having been a board member with this organization since 2005.

Denise LeBlanc, Q.C.

B.P.E., LL.B., M.P.A.

Residence : Moncton

Ms. LeBlanc was appointed for a second three year term as a supplementary member of the New Brunswick Securities Commission on July 15, 2011 and was deemed to be appointed a member of the Tribunal on July 1, 2013 pursuant to subsection 79(1) of the *Financial and Consumer Services Commission Act*.

Ms. LeBlanc has been practicing law for over 25 years and is a partner and a former Regional Manager for New Brunswick in the law firm of McInnes Cooper, focusing on the areas of asset recovery, insolvency, and corporate and business law. She is a member of the Law Society of New Brunswick and the Canadian Bar Association. Ms. LeBlanc is an accredited arbitrator/adjudicator in the Society of Ontario Adjudicators and Regulators. Ms. LeBlanc is an adjudicator pursuant to the *Mental Health Act* and is an adjudicator in the New Brunswick Small Claims Court. Ms. LeBlanc is a past-president of the Canadian Bar Association, New Brunswick Division, as well as a lecturer at the Bar Admission Course and the Faculty of Law of Université de Moncton. She sits on the boards of several community organizations.

Ms. LeBlanc is a past-president of the Canadian Bar Association, New Brunswick Division, as well as a lecturer at the Bar Admission Course and the Faculty of Law of Université de Moncton. She sits on the boards of several community organizations.

Guy G. Couturier, Q.C.

B.A.A., LL.B.

Residence : Dieppe

Mr. Couturier was appointed for a second three year term as a supplementary member of the New Brunswick Securities Commission on September 18, 2010 and was deemed to be appointed a member of the Tribunal on July 1, 2013 pursuant to subsection 79(1) of the *Financial and Consumer Services Commission Act*.

Mr. Couturier practiced law in Moncton for over 35 years and was appointed Queen's Counsel in 1998. He is a former Alternate Chairperson of the Labour and Employment Board, a former Vice-chairperson of the Industrial Relations Board and former member of the Canada Pension Review Tribunal. He maintains an active Arbitration practice. Mr. Couturier has been a guest lecturer for the Université de Moncton, the New Brunswick Bar Admission Course, the Institute of Canadian Bankers, the Canadian Bar Association and the Canadian Institute. He is a Member of the Law Society of New Brunswick, the Canadian Bar, l'Association des juristes d'expression française du Nouveau-Brunswick and the Canadian Labour Law Association. He is a member and participant in numerous community and charitable organizations.

ORIENTATION AND EDUCATION FOR MEMBERS

The Tribunal places high value on continuing education. Tribunal members are provided an annual budget of \$3,000 to pursue their education, which does not include travel and accommodation costs associated with the course.

An extensive orientation was held on 25 March 2014 for the all Tribunal members. Members were provided with the following books: *Administrative Law*, the *Manual for Ontario Adjudicators*, and *Writing Reasons: A Handbook for Judges*. This mandatory training provided an overview of the sectors regulated by the Financial and Consumer Services Commission, the Tribunal's responsibilities and jurisdiction, Tribunal processes including rules of procedure and practice directions, the fundamentals of administrative law principles, hearings on enforcement matters, and conflict of interest guidelines.

In addition, Tribunal members meet for bi-annual meetings. One of the purposes of these meetings is to provide the members with recent Canadian and Tribunal decisions in the regulated sectors, as well as summaries of the matters heard by the Tribunal. The possibility of having guest speakers to address particular educational concerns has also been discussed for the future.

Tribunal staff also provides Tribunal members with a weekly e-mail setting out informative media articles regarding the regulated sectors.

REMUNERATION AND EXPENSES

Bylaw No. 3 - *Commission and Tribunal Remuneration*, of the Financial and Consumer Services Commission stipulates that the Tribunal Chair is paid an annual retainer of \$15,000, while members receive an annual retainer of \$5,000. In addition, the Tribunal Chair and members are paid a service fee of \$350 for matters done in connection with the business and affairs of the Tribunal, including but not limited to (1) the preparation or attendance at a hearing or deliberations on a decision or preparation of a decision, and (2) participation in orientation or education sessions relevant to the adjudicative functions they perform. In addition, Tribunal members receive payment for time spent travelling for Tribunal business at the rate of \$50 per 100 kilometers as further described in the *Compensation Policy for Tribunal Members*.

The costs and expenses related to the Tribunal are detailed below. These costs and expenses include the retainer, services fees paid, allotments for travel time, and expenses reimbursed and allowances. As the Tribunal only came into existence on July 1, 2013, the costs and expenses are limited to the period of July 1, 2013 to March 31, 2014.

Tribunal Members (July 1, 2013 – March 31, 2014)

Member	Appointed or reappointed	Term end	Retainer	Service Fees	Allotment for Travel Time	Total Remuneration	Expense Reimbursement and Allowances
Monica L. Barley (Chair)	13-Mar-14	12-Mar-17	\$792	\$1,400	\$200	\$2,392	\$147
Guy Couturier, Q.C.	18-Sep-08 18-Sep-10	17-Sep-13	\$1,250	\$350	-	\$1,600	-
John M. Hanson	22-Jan-14	21-Jan-19	\$958	\$700	\$200	\$1,858	\$258
Denise A. LeBlanc, Q.C.	15-Jul-08 15-Jul-11	14-Jul-14	\$3,750	\$2,275	\$400	\$6,425	\$2,338
Jean LeBlanc	22-Jan-14	21-Jan-17	\$958	\$700	\$200	\$1,858	\$294
Gerry Legere	22-Jan-14	21-Jan-18	\$958	\$700	\$400	\$2,058	\$455
Don Moors	22-Jan-14	21-Jan-17	\$958	\$700	-	\$1,658	\$49
Enrico Scichilone	21-Nov-12	20-Nov-15	\$3,750	\$4,775	\$200	\$8,725	\$28
Anne La Forest ¹	n/a	n/a	n/a	\$1,400	n/a	\$1,400	\$100
Céline Robichaud-Trifts ¹	n/a	n/a	n/a	\$1,225	\$200	\$1,425	\$90
Sheldon Lee ¹	n/a	n/a	n/a	\$175		\$175	\$92
Ken Savage ¹	n/a	n/a	n/a	\$1,575	\$200	\$1,775	\$110

¹ These members of the New Brunswick Securities Commission were paid in accordance with subsection 75(3) of the *Financial and Consumer Services Commission Act* which allows that a member of a hearing panel constituted prior to the creation of the Tribunal be compensated in accordance with the law as it existed prior to July 1, 2013.

The activities of the Tribunal members are detailed below².

Members	Chair Meetings with Registrar	Orientation	Adjudicative Committee Meetings	Hearing days	Hearing Preparation, Deliberations and Decision Writing
Monica L. Barley, Chair	2	1	1		
Guy G. Couturier, Q.C.					1
John M. Hanson, Q.C.		1	1		
Denise A. LeBlanc, Q.C.		1	1	3	1
Jean LeBlanc		1	1		
Gerry Legere		1	1		
Don Moors		1	1		
Enrico A. Scichilone		1	1	3	2 ½
Céline Robichaud-Trifts ³				2	3
Sheldon Lee ³					½
Anne La Forest ³				2	2
Kenneth Savage ³				3	2

²Panel chairs spend more time on the decision-writing process than other panel members and as such have more service fees than other panel members for any given matter.

³Under subsection 75(1) of the *Financial and Consumer Services Commission Act*, hearing panels of the New Brunswick Securities Commission were authorized to complete a hearing or review that began before the creation of the Tribunal on July 1, 2013 and, any decision, ruling, order or temporary order of that hearing panel would be deemed to be a decision, ruling, order or temporary order of the Tribunal.

TRIBUNAL ACTIVITY

July 1, 2013 – March 31, 2014

Proceedings commenced (all sectors)	3
Number of active proceedings during fiscal period	11
Concluded Proceedings	4
Proceedings still ongoing	7
Requests for Review/Appeal filed ⁴	1
Settlements approved ⁵	1
Hearing days	4
Cease Trade Orders issued (Securities)	2
Total of administrative penalties imposed	\$2,000

For the fiscal year of July 1, 2013 to March 31, 2014, of the 11 active proceedings before the Tribunal, all except one related to the securities sector. The other matter related to the pensions sector.

It is anticipated that the coming fiscal year will see the tribunal's activity diversify as the public becomes more aware of the existence of the Tribunal and their recourses under financial and consumer services legislation.

⁴The only Request for Appeal filed was in respect of the *Pension Benefits Act*.

⁵Currently, only settlements concluded under the *Securities Act* require the Tribunal's approval.

ACCOMPLISHMENTS AND ONGOING PROJECTS

Fiscal year 2013-2014 has been a year of growth for Tribunal staff and Tribunal members alike.

A website was developed for the Financial and Consumer Services Tribunal. The website was launched in March 2014.

Several new Tribunal members were appointed in January 2014 and a Tribunal Chair was appointed in March 2014. In late March 2014, Tribunal staff held an orientation session for the Chair and all newly appointed Tribunal members. Current members also participated at this session.

In addition, a number of projects have been commenced by Tribunal staff and members and will continue into the upcoming fiscal year. These projects include:

- a complete revision of the procedural rules;
- the creation of forms for use by parties;
- the finalization of the conflict of interest guidelines for Tribunal members;
- the development of a FAQ's section for the website;
- the development of a Guide for Self-Represented Parties; and
- onsite education sessions for members.

The upcoming fiscal year will be another year of growth for the Tribunal, with several large projects coming to fruition.