

ANNUAL REPORT 2015-2016

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FINANCIAL AND
CONSUMER SERVICES
TRIBUNAL



TRIBUNAL DES SERVICES
FINANCIERS ET DES SERVICES
AUX CONSOMMATEURS

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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 2015-2016 Annual Report.

I was appointed the chair of the Tribunal on February 18, 2016. My appointment to this position was announced on March 31, 2016 and my functions began on this date.

In 2015-2016, Tribunal members and staff again devoted considerable effort to improving the Tribunal's processes in addition to conducting hearings under financial and consumer services legislation.

In particular, the process of adoption of new procedural rules and forms for proceedings was continued. The Tribunal also created a new website with a view of improving access to justice in enforcement proceedings and appeals and reviews of regulators' decisions.

Louise Caissie,
Chair

ABOUT THE TRIBUNAL MEMBERS

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 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 April 1, 2015, the Tribunal was comprised of six members, which included lawyers, accountants, and individuals from the business community. On August 28, 2015, the Tribunal's chair resigned to pursue other opportunities. The Tribunal was without a chair until February 18, 2016 when Ms. Louise Caissie was appointed as the second chair of the Tribunal for a term of five years. Enrico Scichilone's term also expired and he was replaced by member Raoul Boudreau on February 18, 2016. A short biography of each member is included below.

Louise Caissie, Tribunal Chair (As of February 18, 2016)

B.A., LL.B.

Ms. Caissie was appointed the chair of the Tribunal on February 18, 2016 for a term of five years.

She was admitted to the Law Society of New Brunswick in 2003 after graduating from the Université de Moncton. The first part of her legal career was focused on litigation. In the last six years, she has focused her practice on administrative law including labour and employment, human rights, and pensions. She is a member of the Law Society of New Brunswick and the Canadian Bar Association.

Ms. Caissie is fluently bilingual and obtained the Qualified Arbitrator designation from the ADRIC National Introductory Arbitration Course. She has experience with various other administrative tribunals including being chairperson.

Monica L. Barley, Past Tribunal Chair (resigned August 28, 2015)

B.Sc., LL.B.

Monica Barley was the chair of the Tribunal from March 13, 2014 to August 28, 2015, when she resigned to pursue other opportunities.

Raoul Boudreau (as of February 18, 2016)

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

Mr. Boudreau was appointed a member of the Tribunal on February 18, 2016 for a term of five years.

After being called to the bar in 2005, Mr. Boudreau has practiced law mostly as a sole practitioner, focusing mainly on family law, real estate law, estate law, corporate law as well as criminal law. He has worked as an ad hoc Crown Attorney since 2006 in both criminal and family proceedings.

Mr. Boudreau is fluently bilingual and is a member of the Law Society of New Brunswick and the Canadian Bar Association. Mr. Boudreau also has a bachelor of applied business administration and a master's degree in business administration. Mr. Boudreau is a lifelong resident of Memramcook and is also the owner and operator of the LeBlanc Restaurant in Memramcook.

John M. Hanson, Q.C.

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

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 was Chair for the Canada Pension Plan Appeal Tribunal from 2008 to 2014, when his term expired.

Jean LeBlanc

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.

Mr. LeBlanc is fluently bilingual and is a former Mayor of the City of Dieppe. He has served on several boards including the New Brunswick Branch of the Canadian Institute of Mining, Metallurgy and Petroleum, 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 Technicians and 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

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. He is also fluently bilingual.

Mr. Legere has been the Chair for the Employment Insurance 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

B.A., M.A., FCMC

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

Mr. Moors recently obtained a certificate in Adjudication from the Society of Ontario Adjudicators and Regulators and Osgoode Professional Development.

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.

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*. His term expired on November 21, 2015, however he continued as a member of the Tribunal until February 18, 2016 when a replacement was appointed. After the appointment of his replacement, he continued to chair a proceeding of which he had been seized.

THE TRIBUNAL'S HEARING POWERS

The Tribunal hears appeals and reviews of decisions, applications, as well as enforcement proceedings under the financial and consumer services legislation.

As of March 31, 2016, the Tribunal heard enforcement proceedings under the *Securities Act* only. It heard appeals and reviews of regulators' decisions under the following legislation:

- 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 Tribunal hears matters in both official languages and all Tribunal decisions are posted to the Tribunal's website in both official languages. In addition, when requested, the Tribunal offers simultaneous interpretation for parties and their legal counsel.

Tribunal staff are also fully bilingual to ensure parties, legal counsels and the public can interact with the Tribunal in either official language.

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. At the present time, four of the Tribunal's six members are fully bilingual.

CONTINUING EDUCATION

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.

In the past year, Tribunal members and staff have furthered their education by attending the following professional development opportunities:

- Decision Writing offered by the Foundation of Administrative Justice;
- Interpreting Legislation offered by the Foundation of Administrative Justice;
- The Interactive Course in Adjudication offered by the Council of Canadian Administrative Tribunals; and
- 31st Annual Symposium offered by the Council of Canadian Administrative Tribunals.

Certain Tribunal members also participated in the 9th Annual White Collar Crime Symposium which is an all-day session organized by the Enforcement Division of the Financial and Consumer Services Commission.

Tribunal members continue to meet for bi-annual educational meetings. These meetings focus on providing regulatory and legislative updates as well as reviewing recent Canadian decisions in the sectors administered by the Tribunal.

Tribunal staff also provides Tribunal members with weekly emails setting out informative media articles pertaining to the sectors regulated by the Financial and Consumer Services Commission.

REMUNERATION AND EXPENSES

Pursuant to section 46 of the *Financial and Consumer Services Commission Act*, the Tribunal is funded by the Financial and Consumer Services Commission. The Commission's Bylaw No. 3 - *Commission and Tribunal Remuneration* stipulates that an annual retainer of \$15,000 is paid to the Tribunal Chair, 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 (1) preparation, attendance, or deliberations in relation to hearings, (2) drafting decisions, and (3) participation in orientation or education sessions organized by the Tribunal or the Commission. Tribunal members also 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 for the period of April 1, 2015 to March 31, 2016 are detailed below.

Member	Appointed or reappointed	Term end	Retainer	Service Fees	Allotment for Travel Time	Total Remuneration	Expense Reimbursement and Allowances
Louise Caissie (Chair)	18-Feb-16	17-Feb-21	\$41.21	\$350	-	\$391.21	\$6.75
Monica L. Barley ¹ (Past Chair)	13-Mar-14	12-Mar-17	\$6,114.13	\$5,950	\$1,500	\$13,564.13	\$641.87
Raoul Boudreau	18-Feb-16	17-Feb-21	\$13.74	-	-	\$13.74	-
John M. Hanson, Q.C.	22-Jan-14	21-Jan -19	\$5,000	\$6,650	\$1,200	\$12,850	\$753.04
Jean LeBlanc	22-Jan-14	21-Jan-17	\$5,000	\$7,175	\$1,200	\$13,375	\$904.94
Gerry Legere	22-Jan-14	21-Jan-18	\$5,000	\$9,100	\$3,500	\$17,600	\$4,037.83
Don Moors	22-Jan-14	21-Jan-17	\$5,000	\$2,800	-	\$7,800	\$2,170.72
Enrico Scichilone ²	21-Nov-12	20-Nov-15	\$4,890.11	\$5,950	\$1,600	\$12,440.11	\$1,006.10

¹ Ms. Barley resigned effective August 28, 2015.

² Mr. Scichilone's term ended on November 20, 2015 but remains an active member due to his involvement in a hearing matter.

TRIBUNAL ACTIVITY

The activities of the Tribunal members for the period of April 1, 2015 to March 31, 2016 are detailed below:

Members	Chair Meetings with Registrar	In-House Professional Development Days	Tribunal Bi-Annual Meetings (includes preparation)	Hearing days	Pre-Hearing Conferences	Hearing Preparation, Deliberation and Decision Writing	Tribunal Administration
Louise Caissie	1	-	-	-	-	-	-
Monica L. Barley, Chair	3	-	2.5	5	-	6	1.5
Raoul Boudreau	-	-	-	-	-	-	-
John M. Hanson, Q.C.	-	2	2	5	-	9	2
Jean LeBlanc	-	-	2	6	-	10	2.5
Gerry Legere	-	-	2	9	-	13	2
Don Moors	-	-	2	2	-	3	2
Enrico A. Scichilone	-	-	2	6	-	7	2

In the past year, the Tribunal had 9 active proceedings: two appeals under the *Pension Benefits Act* and seven proceedings under the *Securities Act*. The Tribunal had a total of eleven hearing days. The table below provides a summary of the Tribunal's hearing activity for the period of April 1, 2015 to March 31, 2016.

Number of active proceedings during fiscal period	9
Proceedings commenced (all sectors)	3
Concluded Proceedings	5
Proceedings still ongoing	4
Requests for Review/Appeal filed	1
Settlements approved	0
Hearing days	11
Cease Trade Orders issued (Securities)	2
Total of administrative penalties imposed	0

ACCOMPLISHMENTS AND ONGOING PROJECTS

In the past year, the Tribunal again focused on improving its processes. Tribunal members and staff concentrated on six large projects:

- (1) continuing the project of re-writing and adopting the Tribunal's new procedural rules applicable to proceedings and hearings,
- (2) creating a new website;
- (3) developing Guides for parties for each type of proceeding;
- (4) researching its obligations under the *Right to Information and Protection of Privacy Act*;
- (5) adopting a Code of Conduct for Tribunal Members; and
- (6) developing a Manual for Tribunal Members which canvasses such topics as conflict of interest, procedural fairness, admissibility of evidence, and conduct at a hearing.

The Tribunal's proposed new *Rules of Procedure* were drafted in plain language as it is anticipated that the number of self-represented litigants appearing before the Tribunal will increase in the coming years. The Tribunal's new proposed *Rules of Procedure* were published for a 60-day comment period from August 14, 2015 to October 14, 2015. Comments were received from various stakeholders and a summary of comments has been prepared. The Tribunal anticipates formally adopting the new *Rules of Procedure* in late 2016.

Tribunal members and staff have also been developing complementary documents to assist parties in interpreting the proposed new procedural rules. Forms have been developed for certain key documents, such as pleadings that start a proceeding, an Affidavit of Service, an Affidavit, a Notice of Motion, a Summons to Witness, and a Notice of Withdrawal. These forms are drafted in plain language with a view of assisting parties to provide the required information to the Tribunal.

Tribunal staff dedicated considerable time to the creation of a new website focussed on improving access to justice. As part of this project, *Guides for Parties* were created for each type of proceeding. These Guides aim to provide the parties with information on all procedural phases of an enforcement proceeding, an appeal, or a review.

Tribunal staff also undertook extensive research on its obligations under the *Right to Information and Protection of Privacy Act*. This resulted in the adoption of a Privacy and Document Management Procedure for Tribunal members, which is meant to provide assistance to Tribu-

The Tribunal also adopted a policy entitled Information for Parties with Privacy Concerns. The purpose of this policy is to:

1. Provide information to parties about the public's access to documents filed with the Tribunal as well as the public's access to Tribunal hearings; and
2. Provide information to parties about the protection of their personal information in a proceeding before the Tribunal.

A Code of Conduct for Tribunal Members was also adopted. The purpose of this Code of Conduct is to set out the rules of conduct of the members of the Tribunal and maintain and enhance public confidence in the integrity and competence of members, the fairness and efficiency of hearings, and the justice of decisions rendered.

Finally, a Manual for Tribunal Members was developed. This Manual canvasses such topics as :

- The Tribunal's hearing powers;
- Identifying and dealing with conflicts of interest;
- The duty to act fairly;
- Maintaining control of the hearing process;
- Evidence and witnesses;
- Interpreting legislation;
- Conduct at a hearing; and
- Deliberations and decision-making.

In the upcoming fiscal year, the Tribunal will continue several large projects in connection with the improvement of its processes, such as formally adopting its new procedural rules.

Finally, the Tribunal is anticipating increased hearing activity and a marked increase in the number of hearing days in the upcoming fiscal year. Tribunal members and staff expect hearing activity in non-securities areas to increase, particularly with the proclamation of the *Mortgage Brokers Act* on April 1, 2016 and the adoption of Bill 45: *An Act Respecting the Enforcement of Financial and Consumer Services Legislation* on July 8, 2016.