

FINANCIAL AND  
CONSUMER SERVICES  
**tribunal**  
DES SERVICES FINANCIERS ET  
DES SERVICES AUX CONSOMMATEURS



**Annual Report**  
**2017 | 18**

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# Chair's Message

Pursuant to section 47 of the *Financial and Consumer Services Commission Act*, I am pleased to present the Annual Report of the Financial and Consumer Services Tribunal for the year ending March 31, 2018.

Since my appointment as Chair in the fall of 2016, it has been my objective to bring both stability of structure and consistency to decision-making, as are owed to all parties appearing before the Tribunal within the scope of the evolving regulatory and consumer protection world. Processes that are inherent to the administrative tribunal created under Part II of the *Financial and Consumer Services Commission Act* of 2013 continue to be perfected.

To that end, several initiatives have been undertaken with some having been realized during the 2017-2018 fiscal year.

## Initiatives

On January 23, 2018, the Tribunal adopted its new *Rules of Procedure*. These *Rules* reflect the various types of proceedings conducted by the Tribunal and are adapted to the Tribunal's ever-growing mandate. The *Rules* also provide tighter timelines for certain milestones in proceedings and overall provide for consistency of process and increased efficiencies.

The meaningful participation of self-represented parties in proceedings before the Tribunal continues to be a priority. In the past year, 100% of the Tribunal's proceedings involved self-represented parties. During the past year, the Tribunal undertook two major active adjudication initiatives to facilitate meaningful participation of self-represented parties. First, the mandatory use of forms was implemented. These forms are drafted in plain language and guide parties in providing the Tribunal with the necessary information to adjudicate the matter.

The second was the preparation of a *Guide for Preparing Your Affidavit*, which explains how to prepare an Affidavit.

The *Act Respecting the Financial and Consumer Services Tribunal* received Royal Assent on December 20, 2017. It awaits Proclamation. This Act bolsters the efficiency, processes and adjudicative independence of the Tribunal. Consistent with the legal premise that administrative tribunals are «Masters of their own Procedure», the *Act* allows the Tribunal Chair to adopt rules of procedure for the Tribunal, harmonizes appeal periods across financial and consumer services legislation and creates a vice-chair position. This will cure past operational difficulties and ensure the Tribunal can continue hearing matters in the most efficient manner.

While the number of hearing days for the fiscal year 2017-2018 decreased in relation to the preceding year, the complexity of the matters continues to increase. An analysis of the hearing days and an overview of the decisions are discussed in further detail in this Report.

In the past year, the Tribunal also started holding its hearings at the Federal Court in Fredericton whenever possible rather than on Commission premises. The use of these facilities comes at no cost to the Tribunal. The choice of this location was predicated by the need for a more neutral hearing venue better able to satisfy the requirement of independent adjudication. This has proven a wonderful hearing venue which satisfies the Tribunal's need for neutral ground, along with the necessary breakout rooms for parties and separate, secure space for the Tribunal members to meet and deliberate.

## Competent Adjudication

I would be remiss to not make mention of the changing diversity of the Tribunal's membership. When I first took over as Chair, I was the only female adjudicator on a six member Tribunal. During the current fiscal period, three of the six Tribunal members are women. All are professionals with experience in administrative law. All members of the Tribunal are equally dedicated to furthering training in the various regulatory areas falling under the jurisdiction of the Tribunal.

With the purpose of ensuring the continued delivery of professional and competent adjudication, particular focus was placed on the continuing education of Tribunal members and staff. Notably, in the past fiscal year, all Tribunal members as well as the Registrar registered for the *Canadian Securities Law and Practice Course* offered by *Osgoode Professional Development*. Tribunal members, as a group, also received training on the new *Rules of Procedure* and forms. Two members attended the Advanced Administrative Law course offered by the Canadian Institute. Both the Chair and the Registrar also attended the Canadian Council of Administrative Tribunal's 33<sup>rd</sup> Annual Symposium entitled "On the Edge between Sea and Sky, New Horizons on Administrative Justice" and also took the course *Charter Claims and Values* offered by Canadian Council of Administrative Tribunals. The Registrar also followed the *Cultural Competencies* course offered by the Foundation of Administrative Justice. The Chair further attended the CSA Biennial Commissioner meeting, participated in the session "*Comment démontrer l'atteinte au droit à l'égalité en matière linguistique: Analyse de la jurisprudence*" offered by the Canadian Bar Association and l'Association des juristes d'expression française du Nouveau-Brunswick, and participated in the 5-day *Interactive Course on Adjudication* offered by the Canadian Council of Administrative Tribunals. It is important to note that Tribunal members do not receive per diem allowances for out of office training or meetings.

The Registrar was also asked to make a presentation regarding administrative law principles and the Tribunal to students of the Masters in Public Administration at the Université de Moncton. The students were very enthusiastic and had numerous questions on administrative law and the functioning of an administrative tribunal.

Finally, the Tribunal also undertook an exhaustive review of its hearing powers and commenced a cross-jurisdictional analysis of the powers of other quasi-judicial administrative tribunals with a view of determining whether its current structure and operations are consistent with good practices and administrative law generally. The results of this review should come to fruition in the upcoming year.

## Outlook for 2018

The 2018-2019 looks to be another busy year for the Tribunal. It is anticipated that hearing activity will increase with the expansion of the Tribunal's mandate to include the *Cost of Credit Disclosure and Payday Loans Act*. The *Credit Reporting Services Act* and *Pooled Registered Pension Plans Act* should also receive proclamation in the upcoming year, which will expand the Tribunal's mandate to 16 statutes.

On the administrative front, the *Act Respecting the Financial and Consumer Services Tribunal* should be proclaimed. The Tribunal is contemplating further legislative amendments to bolster its adjudicative independence, to continue harmonization across financial and consumer services legislation and to continue increasing efficiencies.

The Tribunal has also retained outside consultants to commence a re-branding project, which will include the modernization of the Tribunal's logo and enhancing the Tribunal's adjudicative independence. We are also developing an informational brochure, aimed at the legal community and the financial and consumer services sectors. In conjunction with this project, it is our intent to make presentations to the legal community and industry to bolster the Tribunal's visibility.

The Tribunal's processes remain a work in progress. Due to prior vacancies in the position of Chair, as well as the challenges brought forth by a newly created « super tribunal » operating within the expanded but exclusive areas of financial regulation and consumer protection, much remains to be done to ensure the Tribunal can best respond to the obligations it has been invested with.

To that end, it is also my objective to continue with the implementation of Tribunal procedures and structures which can best respond to the expansive role of the Tribunal and the requirements of procedural fairness and impartiality, principles that are critical to the proper exercise of the obligations of a quasi-judicial Tribunal.

I look forward to the challenges ahead and I am confident that with the support shown towards me by my Tribunal colleagues and the Registrar, the objectives which have been set can be reached for the benefit of all.

For any information in regards to Tribunal activities, please contact the Tribunal Registrar at #506-658-5575 or [registrar@fcnbtibunal.ca](mailto:registrar@fcnbtibunal.ca).

*Judith Keating*

Judith Keating, Q.C.  
Chair

# The Tribunal

## Introduction

The Tribunal's offices are currently located on the 3<sup>rd</sup> floor of 85 Charlotte Street in Saint John. Our website is at [www.fcnbtribunal.ca](http://www.fcnbtribunal.ca). Our website provides detailed information on (1) each type of proceeding including the steps of a proceeding, (2) the *Tribunal's Rules of Procedure* and mandatory forms, (3) a *Guide to Preparing Your Affidavit*, (4) Tribunal decisions, (5) our *Privacy Policy* and *Conflict of Interest Policy*, and (6) the parties' linguistic rights.

## Mandate

The Financial and Consumer Services Tribunal is a quasi-judicial administrative tribunal established by legislation by the Government of New Brunswick in 2013. The Tribunal's mandate is to protect the public interest and enhance public confidence in the financial and consumer services sectors. The Tribunal provides independent adjudication and oversight in the financial and consumer services sectors. Over its short existence, the Tribunal has seen an expansion of its jurisdiction which now includes authority over 14 provincial financial and consumer protection acts.

The Tribunal's objective is to provide timely and efficient hearings while affording procedural fairness to all parties.

## Hearing Powers

The Tribunal has two main hearing functions: (1) it acts as a first instance tribunal in hearing enforcement proceedings, preliminary motions, applications and referrals; and (2) it acts as an appellate tribunal in hearing appeals and reviews of regulators' and other decision-makers' decisions.

The Tribunal has three main roles:

1. It hears enforcement proceedings under:
  - the *Collection Agencies Act*;
  - the *Co-operative Associations Act*;
  - the *Cost of Credit Disclosure and Payday Loans Act*;
  - the *Credit Unions Act*;
  - the *Direct Sellers Act*;
  - the *Insurance Act*;
  - the *Mortgage Brokers Act*;
  - the *Pension Benefits Act*;
  - the *Pre-arranged Funeral Services Act*;
  - the *Real Estate Agents Act*; and
  - the *Securities Act*.
2. It provides independent oversight by hearing appeals and reviews of the following regulators' and decision-makers' decisions:
  - the Superintendent of Insurance under the *Insurance Act*,
  - the Superintendent of Pensions under the *Pension Benefits Act*,
  - the Financial and Consumer Services Commission under the *Financial and Consumer Services Commission Act*;

- the Director of Consumer Affairs under the *Auctioneers Licence Act*, the *Collection Agencies Act*, the *Cost of Credit Disclosure Act and Payday Loans Act*, the *Direct Sellers Act*, the *Pre-arranged Funeral Services Act*, and the *Real Estate Agents Act*,
  - the Inspector of Co-operative Associations and the Registrar under the *Co-operative Associations Act*,
  - the Executive Director of Securities or an exchange, self-regulatory organization, quotation and trade reporting system, clearing agency, auditor oversight body, trade repository and derivatives trading facility under the *Securities Act*,
  - the Director of Mortgage Brokers under the *Mortgage Brokers Act*,
  - the Superintendent of Credit Unions under the *Credit Unions Act*, and
  - the Superintendent of Loan and Trust Companies under the *Loan and Trust Companies Act*.
3. It hears applications under various pieces of legislation, including applications providing an opportunity to be heard.

## Official Languages

The Tribunal understands its obligations under the *Official Languages Act*. It has taken several steps in the past few years to ensure that it fully complies with the *Act*.

The Tribunal's website and all its public communications and documents are in both official languages. This includes decisions, orders, notices and other communications. In addition, all Tribunal decisions and orders are published simultaneously on its website and in CanLII in both official languages.

The Tribunal's website and its forms advise the parties that they are entitled to use either French or English in all matters before the Tribunal, which includes filing documents in the official language(s) of their choice, testifying in the language(s) of their choice and being heard by the Tribunal members in the language(s) of their choice. Parties are advised on the Tribunal's website to notify the Registrar of the language of their choice. In addition, the parties must select the language of their choice in forms they file with the Tribunal. This ensures the Tribunal is aware of the parties' language choice and can provide interpreters where required.

The Tribunal Chair and the Registrar ensure that all panel members hearing a matter are fully capable of understanding, without the assistance of interpretation, the matter before it, in the official language of choice of the parties and their witnesses.

With the new appointments to the Tribunal in 2017-18, 5 of the 6 Tribunal members are fully bilingual. Given the small number of members on the Tribunal and the potential for conflicts of interest, it is the intent in coming years to ensure all members are fully bilingual.

Since June 2014, the Registrar and the Assistant Registrar are also fully bilingual to ensure the parties, their lawyers and the public can interact with the Tribunal in either official language.

# Tribunal Governance

The Chair is responsible for the effective functioning of the Tribunal including the supervision of members and staff. This includes: (1) assigning members to hearing panels, based on their qualifications; (2) ensuring that decisions are issued in a timely manner; (3) ensuring members and staff have the necessary qualifications to properly fulfill their functions; (4) maintaining an open dialogue with the Financial and Consumer Services Commission and other government departments and agencies in relation to the operational and financial needs of the Tribunal; and (5) maintaining a dialogue with other administrative tribunals.

Tribunal members serve on panels which conduct hearings and make decisions as an administrative tribunal. This involves preparation for hearings, hearing and reviewing evidence, deliberations, drafting decisions and, when required, chairing hearing panels. Tribunal members will also participate in meetings with the Tribunal Chair, other Tribunal members and Tribunal staff.

## Members

The Tribunal Chair and Members are term members, appointed on a part-time basis.



**Judith Keating, Q.C.**  
Chair



**Raoul Boudreau**



**John M. Hanson, Q.C.**



**Jean LeBlanc**



**Gerry Legere**



**Don Moors**



**Chantal Thibodeau,  
Q.C.**



**Lucie LaBoissonnière**

In early 2017, the terms of Tribunal members Don Moors and Jean LeBlanc ended. They remained in their functions until September 27, 2017 when the Tribunal welcomed Chantal Thibodeau, Q.C. and Lucie LaBoissonnière. They were appointed for terms of five and four years respectively. With the new appointments to the Tribunal in 2017-18, the Tribunal has achieved gender equality amongst its members.

Mr. Legere's term was also set to expire on January 22, 2018, however he remains as a member of the Tribunal pursuant to subsection 34(1) of the Act due to his involvement in two active proceedings.

Shortly after the appointment of the new members, the Tribunal began the process of looking for a temporary Tribunal member to complete the panel on a particular proceeding as the remaining Tribunal members were conflicted from hearing this matter. It has been challenging for the Tribunal to find candidates who met the qualification requirements and yet were not conflicted with the particular matter. As of 31 March 2018, the appointment of the temporary member remained outstanding.

The table below provides information on the Tribunal Members' terms.

Member	Residence	Appointed or Reappointed	Term End
Judith Keating, Q.C. (Chair)	Fredericton	Nov. 3, 2016	Nov. 2, 2021
Raoul Boudreau	Memramcook	Feb. 18, 2016	Feb. 17, 2021
John M. Hanson, Q.C.	Fredericton	Jan. 22, 2014	Jan. 21, 2019
Jean LeBlanc <sup>1</sup>	Dieppe	Jan. 22, 2014	Jan. 21, 2017
Gerry Legere	Bathurst	Jan. 22, 2014	Jan. 21, 2018
Don Moors <sup>2</sup>	Quispamsis	Jan. 22, 2014	Jan. 21, 2017
Chantal Thibodeau, Q.C. <sup>3</sup>	Moncton	Sep. 27, 2017	Sep. 26, 2022
Lucie LaBoissonnière <sup>4</sup>	Moncton	Sep. 27, 2017	Sep. 26, 2021

A detailed biography of the Chair and Members is on the Tribunal's website at [www.fcnbtribunal.ca/members](http://www.fcnbtribunal.ca/members)

## Staff

The Tribunal also has two staff: the Registrar and the Assistant Registrar. The Registrar is the public's and parties' point of contact with the Tribunal outside of the hearing room. The Registrar can address any questions they have about the Tribunal, the *Rules of Procedure*, or the hearing. The Registrar is also legal counsel to the Tribunal members and provides legal support on issues of law, policy and procedure related to Tribunal proceedings, administrative law, and the operation of an administrative tribunal. The Assistant Registrar is a senior administrative support officer whose multi-faceted role includes providing operational and administrative support to the Tribunal Chair, Members and the Registrar.

## Code of Conduct

Tribunal members and staff must abide by the Tribunal's *Code of Conduct* and *Conflict of Interest Policy* and conduct themselves in a manner that maintains and enhances public confidence in the integrity and competence of the Tribunal, the fairness and efficiency of hearings and the justice of decisions rendered.

## Tribunal Involvement

The Tribunal's members and the Registrar are members of the *Canadian Council of Administrative Tribunals (CCAT)*, the *Canadian Institute of Administrative Justice (CIAJ)* and the *Foundation of Administrative Justice*. These organizations help foster national and international relationships with other administrative tribunals and provide invaluable educational sessions. The Tribunal Chair is also a member of the *Access to Justice Committee of CCAT*, while the Registrar is a member of the *CCAT Professional Development Committee*. Participation in these committees allows the Tribunal to remain at the forefront in these areas and also allows the Tribunal to be aware of emerging national and international trends and issues.

<sup>1</sup> Mr. LeBlanc's term expired on January 22, 2017, but he remained as a member until his replacement was appointed on September 27, 2017.

<sup>2</sup> Mr. Moors' term expired on January 22, 2017, but he remained as a member until his replacement was appointed on September 27, 2017.

<sup>3</sup> Ms. Thibodeau was appointed on September 27, 2017.

<sup>4</sup> Ms. LaBoissonnière was appointed on September 27, 2017.

# Proceedings

## Types of Proceedings

### Enforcement Proceedings

Enforcement proceedings are in the nature of disciplinary or regulatory proceedings. These proceedings are commenced by the Financial and Consumer Services Commission alleging a breach or breaches of financial and consumer services legislation or conduct contrary to the public interest. These proceedings can be commenced against an individual or corporation, whether or not they are licensed or registered under financial and consumer services legislation. Enforcement proceedings can have serious financial and employment consequences for the respondents.

The Tribunal currently hears enforcement proceedings under 11 statutes: the *Collection Agencies Act*, the *Co-operative Associations Act*, the *Cost of Credit Disclosure and Payday Loans Act*, the *Credit Unions Act*, the *Direct Sellers Act*, the *Insurance Act*, the *Pension Benefits Act*; the *Mortgage Brokers Act*, the *Pre-arranged Funeral Services Act*, the *Real Estate Agents Act*, and the *Securities Act*. The authority to hear proceedings under the *Cost of Credit Disclosure and Payday Loans Act* was added on January 1, 2018.

### Applications

An application is a formal request made by a party to the Tribunal. The Tribunal can only hear an application if it has been granted the authority in a statute. The application starts a proceeding before the Tribunal. The Tribunal currently has the authority to hear applications on a wide range of topics under financial and consumer services legislation.

### Motions

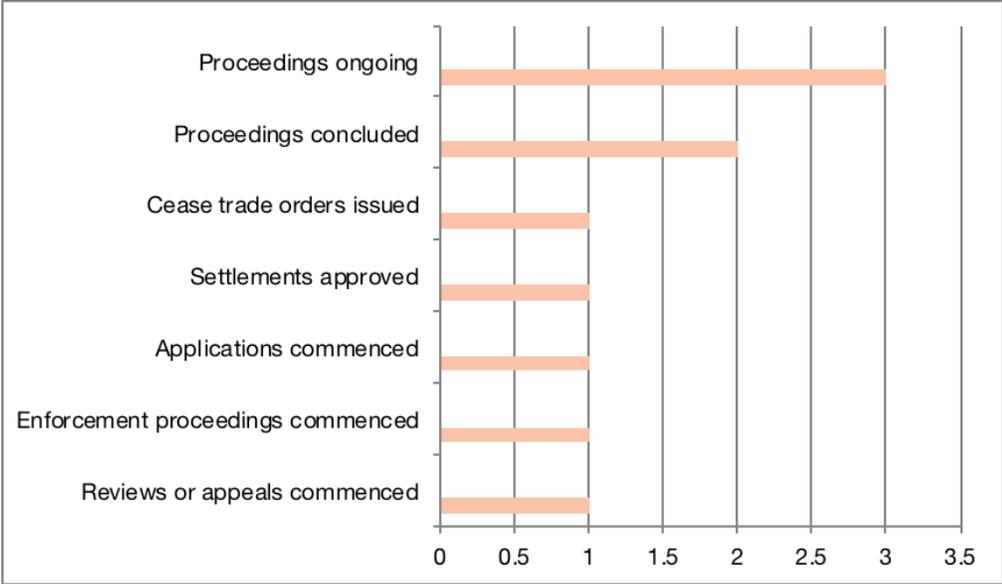
A motion is a request made by a party to the Tribunal to make a decision on a preliminary or procedural issue. A motion can start a proceeding (preliminary motion) or it can be brought during an existing proceeding (interlocutory motion).

### Reviews and Appeals

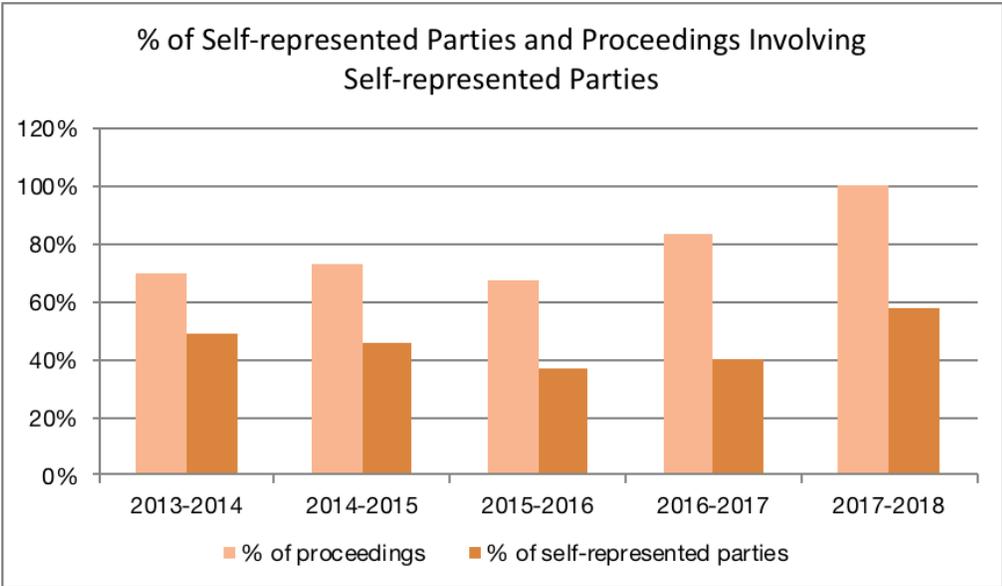
The Tribunal hears appeals and reviews of decisions of the following decision-makers: (1) the Director of Consumer Affairs, (2) the Director of Mortgage Brokers, (3) the Inspector and Registrar of Cooperatives Associations, (4) the Superintendent of Credit Unions, (5) the Superintendent of Insurance, (6) the Superintendent of Pensions, (7) the Superintendent of Loan and Trust Companies, (8) the Financial and Consumer Services Commission, (9) the Executive Director of Securities, and (10) an exchange, a self-regulatory organization, a quotation and trade reporting system, a clearing agency, an auditor oversight body, a trade repository or a derivatives trading facility under the *Securities Act*.

# Hearings in 2017-2018

In the past year, the Tribunal had five active proceedings: two enforcement proceedings under the *Securities Act*, an appeal under the *Real Estate Agents Act*, a review under the *Securities Act* and an application under the *Real Estate Agents Act*. The Tribunal had a total of six hearing days and two pre-hearing conferences. These hearing days are broken down as follows: one settlement hearing, two motions in a review, two hearings in writing, and one application. The table below provides a summary of the Tribunal’s proceedings for the period of April 1, 2017 to March 31, 2018:



Of these proceedings, 100% in the past fiscal year involved self-represented parties and 60% of all parties that appeared before the Tribunal were self-represented. The table below depicts the participation of self-represented parties in Tribunal proceedings.



# Decisions

Below is a short summary of each decision and order issued by the Tribunal during this fiscal period. These decisions and orders can be found on our website at [fcbtribunal.ca/decisions](http://fcbtribunal.ca/decisions). The Tribunal's decisions and orders are also published on CanLII.

## ***Real Estate Agents Act***

1. *Director of Consumer Affairs, Re*, 2017 NBFCST 3 (July 27, 2017): The Tribunal ordered that a sum of money from a bond declared forfeited by the Director of Consumer Affairs be paid over to an individual.

## ***Securities Act***

2. *Crandall v. Investment Industry Regulatory Organization of Canada*, 2017 NBFCST 4 (September 21, 2017): On a motion, the Tribunal ordered IIROC to produce the totality of its disclosure from the IIROC proceedings in paper format to the Respondent by a certain date.
3. *New Brunswick (Financial and Consumer Services Commission) v. Emond and Drapeau*, 2017 NBFCST 5 (September 26, 2017): The Tribunal adjourned the proceeding indefinitely pending the appointment of new members to the Tribunal having the necessary linguistic skills to be assigned to this matter.
4. *Crandall v. Investment Industry Regulatory Organization of Canada*, 2018 NBFCST 1 (January 19, 2018): The Tribunal severed the ground for review dealing with disclosure from the remaining grounds for review and ordered that the severed ground will proceed to a hearing before the remaining grounds of review.
5. *New Brunswick (Financial and Consumer Services Commission) v. Howse*, 2018 NBFCST 2 (February 2, 2018): The Tribunal approved the settlement between the parties. The respondent was ordered, inter alia, to cease trading in securities and derivatives for a period of 10 years. As the respondent had provided an undertaking not to trade in securities and had honored that undertaking, the Tribunal ordered the cease-trade order to commence from the date the undertaking was provided.

# Appeals of Tribunal Decisions

In the 2017-18 fiscal year, no Tribunal decisions were appealed to the Court of Appeal.

# Financial Information

The Tribunal's approved operating budget for the 2017-2018 fiscal year was \$732,350. The Tribunal's actual expenses for the year were \$389,253, 46.8% below its allotted budget. This savings is explained by a lower than anticipated number of hearings, resulting in lower service fees paid to the Tribunal Members and lower hearing-related expenses, such as transcriptions and interpreters. The Tribunal is still in a transitional period. However, we do not expect this trend to continue as the mandate of the Tribunal continues to expand and it is felt that hearing activity will greatly increase in the coming years. The table below compares the Tribunal's approved budget with its actual expenses.

## Direct Expenses and Variances for the Year Ending March 31, 2018 (Unaudited)

	2017-18 Budget	2017-18 Actuals	VARIANCE \$	%
<b>REMUNERATION</b>				
Employee Salaries	\$151,851	\$150,609	\$1,242	0.8%
Employee Benefits	\$33,478	\$30,930	\$2,548	7.6%
Tribunal Members Retainers	\$40,000	\$40,109	(\$109)	0.3%
Tribunal Members Services Fees	\$267,500	\$61,525	\$205,975	77%
Tribunal Members Benefits	\$7,890	\$3,761	\$4,129	52.3%
<b>OTHER DIRECT OPERATING EXPENSES</b>				
Travel	\$71,139	\$20,902	\$50,237	70.6%
Continuing Education	\$28,500	\$17,402	\$11,098	38.9%
General Office Costs	\$0	\$350	(\$350)	350%
Translation Costs	\$24,000	\$22,816	\$1,184	4.9%
Transcription Costs	\$40,000	\$1,613	\$38,387	96%
Interpreters	\$40,000	\$0	\$40,000	100%
Professional Memberships	\$2,525	\$5,706	(\$3,181)	126%
Printing & Production	\$4,000	\$416	\$3,584	89.6%
Consulting Services	\$15,000	\$22,753	(\$7,753)	(51.7%)
Software, IT, Website	\$6,467	\$4,191	\$2,276	35.2%
<b>TOTAL EXPENSES</b>	<b>\$732,350</b>	<b>\$389,253</b>	<b>\$343,097</b>	<b>46.8%</b>

The Tribunal Chair is paid an annual retainer of \$15,000 while other 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. 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*.

Service fees disbursed during the 2017-2018 fiscal period were in relation to the following activities:

1. Meetings in relation to the administration of the Tribunal;
2. Orientation, continuing education and other meetings of Tribunal Members;
3. Preparation for and attendance at pre-hearing conferences and hearings;
4. Deliberations and decision writing; and
5. Travel time.

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