



Financial and Consumer  
Services Tribunal

**ANNUAL REPORT**  
**2020-2021**

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## Message from the Chair

On behalf of the Financial and Consumer Services Tribunal, I am pleased to present our Annual Report for the period beginning April 1, 2020 and ending March 31, 2021. Over the past year, the Tribunal was ably lead by acting Chair Raoul Boudreau. I was honoured to become the fourth Chair of the Tribunal on April 26, 2021.

The Tribunal's mandate is to uphold the public interest and enhance public confidence in the financial and consumer services sectors by providing independent adjudication and oversight in these sectors.

The past year brought many challenges due to the COVID-19 pandemic. During the spring of 2020, the Tribunal was adapting to the evolving pandemic. At the start of the COVID-19 pandemic, we paused all hearing activity, as was the case of many administrative tribunals, due to the public health restrictions. This period of decreased hearing activity allowed us to focus on other projects, such as reviewing and revising our *Rules of Procedure* and strengthening our internal processes. As the year progressed, we transitioned to virtual hearings.

The end of the 2020-2021 year was marked by the start of several new proceedings - as a result, looking forward to 2021-2022, we expect to see a marked increase in hearing activities.

I also anticipate that some of the technological changes that were implemented due to the pandemic, such as hearing motions, settlement hearings and case management conferences virtually will remain in a post-pandemic world as they decrease costs for parties and the Tribunal.

I further expect that in the coming year we will complete the adoption of our new *Rules of Procedure*, the revision of the forms for use in our proceedings, and considerable changes to our website.

The coming year will be another transition year for the Tribunal as I step into my new role as Chair. I am confident that with the support of the Tribunal Members and Staff, the Tribunal will be able to make headway on its initiatives.

We were deeply saddened to learn of the passing of the Honourable Judith Keating, Q.C., Senator for New Brunswick, who was the Tribunal's Chair from November 3, 2016 to January 31, 2020.

We will remember Senator Keating for her tireless promotion of access to justice, language equality and reconciliation with First Nations people. She will also be remembered for her joie de vivre and love of music.

For any information in regards to the Tribunal, please visit the Tribunal's website at [www.tribunalnb.ca](http://www.tribunalnb.ca) or contact the Registrar at 506-658-5575 or [registrar-greffier@tribunalnb.ca](mailto:registrar-greffier@tribunalnb.ca).

*Mélanie McGrath*

**Mélanie McGrath**  
Tribunal Chair





# The Tribunal

## MANDATE

The Financial and Consumer Services Tribunal was created in 2013. It is currently the only “super-tribunal” in New Brunswick, resulting from the amalgamation into a single organization of the quasi-judicial decision-making functions from the securities, insurance, pensions, financial institutions, and consumer affairs sectors. Our mandate is to uphold the public interest and enhance public confidence in the financial and consumer services sectors by providing independent adjudication and oversight in these sectors.

Our goal is to ensure an accessible adjudication process for all participants in a timely and fair manner.

The Tribunal has two main hearing functions:

1. it acts as a first instance tribunal in hearing enforcement proceedings, applications and referrals;
2. it acts as an appellate tribunal in hearing appeals and reviews of regulator and other decision-makers’ decisions.

The Tribunal derives its authority from the following 16 New Brunswick financial and consumer services statutes:

- ▶ the *Auctioneers Licence Act*;
- ▶ the *Collection and Debt Settlement Services Act*;
- ▶ the *Cooperatives Act*;
- ▶ the *Cost of Credit Disclosure and Payday Loans Act*;
- ▶ the *Credit Reporting Services Act*;
- ▶ the *Credit Unions Act*;
- ▶ the *Direct Sellers Act*;
- ▶ the *Financial and Consumer Services Commission Act*;
- ▶ the *Insurance Act*;
- ▶ the *Loan and Trust Companies Act*;
- ▶ the *Mortgage Brokers Act*;
- ▶ the *Pension Benefits Act*;
- ▶ the *Pooled Registered Pension Plans Act*;
- ▶ the *Pre-arranged Funeral Services Act*;
- ▶ the *Real Estate Agents Act*; and
- ▶ the *Securities Act*.

The following individuals or organizations appear before the Tribunal:

- ▶ licensees, registrants and other persons whom it is alleged have violated financial and consumer services legislation or acted contrary to the public interest;
- ▶ regulators under financial and consumer services legislation;
- ▶ decision-makers under the *Securities Act*; and
- ▶ beneficiaries of pension plans, pension plan administrators, employers, or any other person against whom an order or decision is made or who is affected by the order or decision of the Superintendent of Pensions.

Legislation and common law principles require that the Tribunal ensures procedural fairness to all persons affected by its decisions. The Tribunal's *Rules of Procedure* guide all who participate in its proceedings. In conjunction with the *Rules*, the Tribunal has forms that assist the parties, and particularly self-represented litigants, in communicating their positions to the Tribunal. The *Rules of Procedure* and the forms are available on the Tribunal's website.





## ▼ Types of proceedings

### ENFORCEMENT PROCEEDINGS

An enforcement proceeding alleges that a person has violated New Brunswick's financial and consumer services legislation or has acted contrary to the public interest. Enforcement proceedings are similar to disciplinary proceedings. An enforcement proceeding is commenced by the Financial and Consumer Services Commission, the regulator of the financial and consumer services sectors. If the Tribunal finds the allegations are proven, it can order sanctions against the respondent.

The Tribunal currently hears enforcement proceedings under:

- ▶ the *Collection and Debt Settlement Services Act*;
- ▶ the *Cooperatives Act*;
- ▶ the *Cost of Credit Disclosure and Payday Loans Act*;
- ▶ the *Credit Reporting Services 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*.

## APPEALS & REVIEWS

The Tribunal also provides independent oversight in the financial and consumer services sectors 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* and the *Pooled Registered Pension Plans 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 and Debt Settlement Services Act*, the *Cost of Credit Disclosure Act and Payday Loans Act*, the *Credit Reporting Services Act*, the *Direct Sellers Act*, the *Pre-arranged Funeral Services Act*, and the *Real Estate Agents Act*,
- ▶ the Director of Cooperatives under the *Cooperatives Act*,
- ▶ the Executive Director of Securities, an exchange, a self-regulatory organization, a quotation and trade reporting system, a clearing agency, an auditor oversight body, a trade repository and a 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*.

Legislation provides that persons have 30 days from the date of issuance of the regulator or decision-maker's decision to appeal it to the Tribunal or to seek a review by Tribunal. When hearing an appeal or review, the Tribunal will review all the evidence and arrive at its own conclusion.





## 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.



Structure

## COMPOSITION

Tribunal Members are appointed by the Lieutenant-Governor in Council for terms not exceeding five years. The *Financial and Consumer Services Commission Act* stipulates that the Tribunal can have a minimum of four and a maximum of 14 members. During the 2020-2021 fiscal year, the Tribunal had six members, inclusive of the Chair.

The Chair of the Tribunal is responsible for the effective functioning of the Tribunal as well as the supervision of Tribunal Members and staff. The Vice-Chair assumes the duties of the Chair in the case of the temporary absence, illness or incapacity to act of the Chair or if the Chair's office becomes vacant. As a result, the Chair keeps the Vice-Chair apprised of Tribunal matters.

Tribunal Members, including the Chair and Vice-Chair, participate on hearing panels by conducting hearings and making decisions. Detailed biographies of the Tribunal Members may be found on the Tribunal's website.

The Tribunal also has two staff. 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.

## MEMBERS IN 2020-2021



Raoul Boudreau  
Acting Chair for 2020-2021



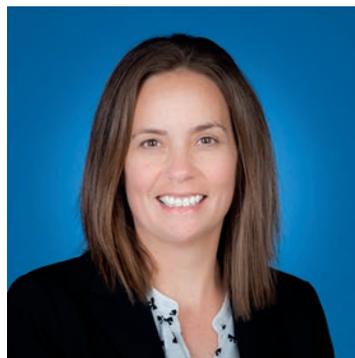
Mélanie McGrath  
Member  
Became Chair on April 26, 2021



Lucie LaBoissonnière  
Member



Gerry Legere  
Member



Chantal Thibodeau, Q.C.  
Member



J. Douglas Baker  
Member



Operations

## HEARING ACTIVITY IN 2020-2021

As can be expected, hearing activity decreased considerably in 2020-2021 due to the COVID-19 pandemic. This was in part due to a decrease in filings of new matters and the inability to conduct full merits hearings when the province was in orange, red or lockdown phases as Tribunal Members and staff live in different zones.

The Tribunal had one hearing day and one case conference in the past year. The case conference was in an appeal under the *Real Estate Agents Act*, while the settlement hearing concerned an enforcement proceeding under the *Pre-arranged Funeral Services Act*.

The Tribunal also resolved an enforcement proceeding by accepting an undertaking from a respondent. This marked the first time a proceeding was resolved by way of an undertaking.

In the first three quarters of the fiscal year, only one new proceeding was commenced. In the last quarter, three new proceedings were commenced.





## DECISIONS

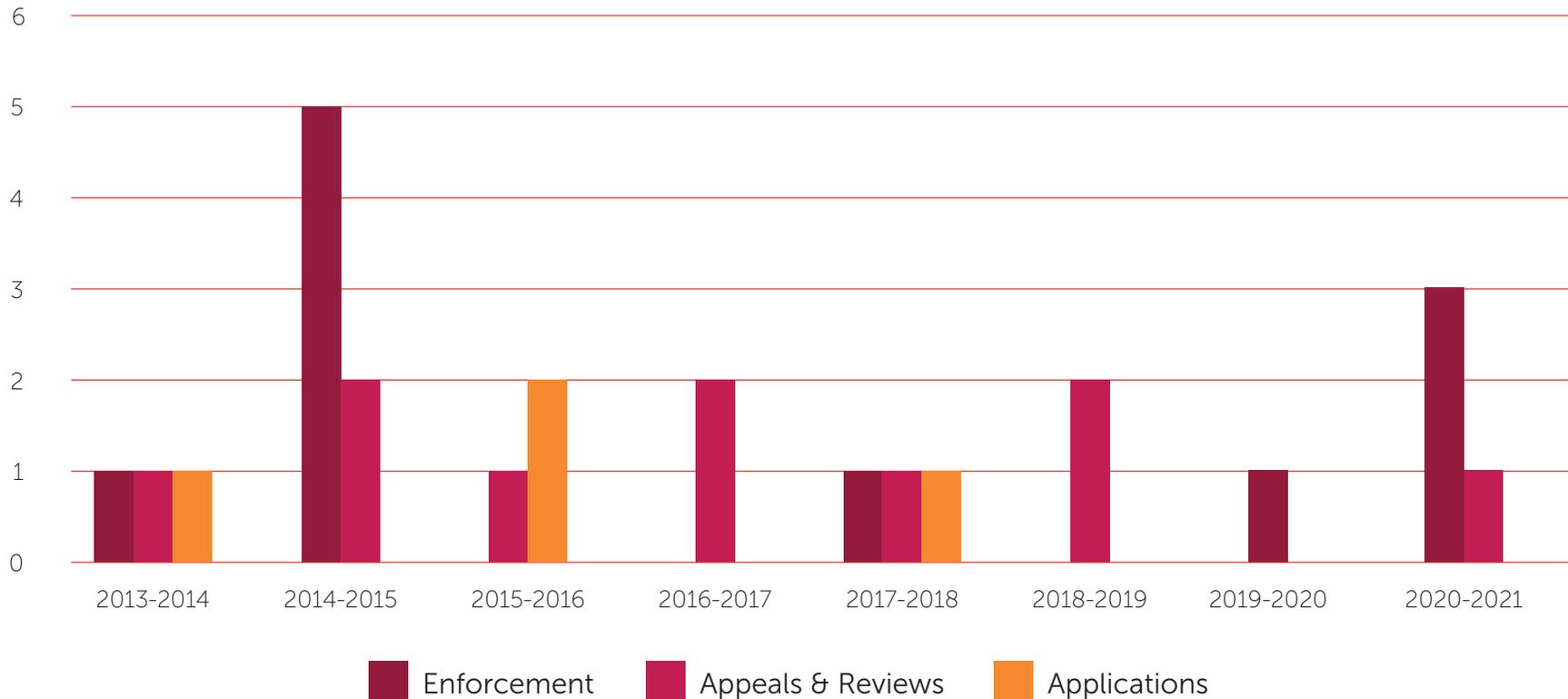
Over the past year, the Tribunal issued one decision. This was a 61-page decision in a very complex appeal from a decision of the Superintendent of Pensions.

Tribunal decisions and orders are published on the Tribunal's website and on CanLII in both official languages.

A final decision of the Tribunal may be appealed to the *Court of Appeal of New Brunswick* with the permission (leave) of a judge of the *Court of Appeal* pursuant to section 48 of the *Financial and Consumer Services Commission Act*. A party may also, in certain circumstances, seek judicial review of a final decision of the Tribunal. In the 2020-21 fiscal year, one Tribunal decision was appealed to the Court of Appeal. We await the Court of Appeal's decision.

## PROCEEDINGS COMMENCED SINCE 2013

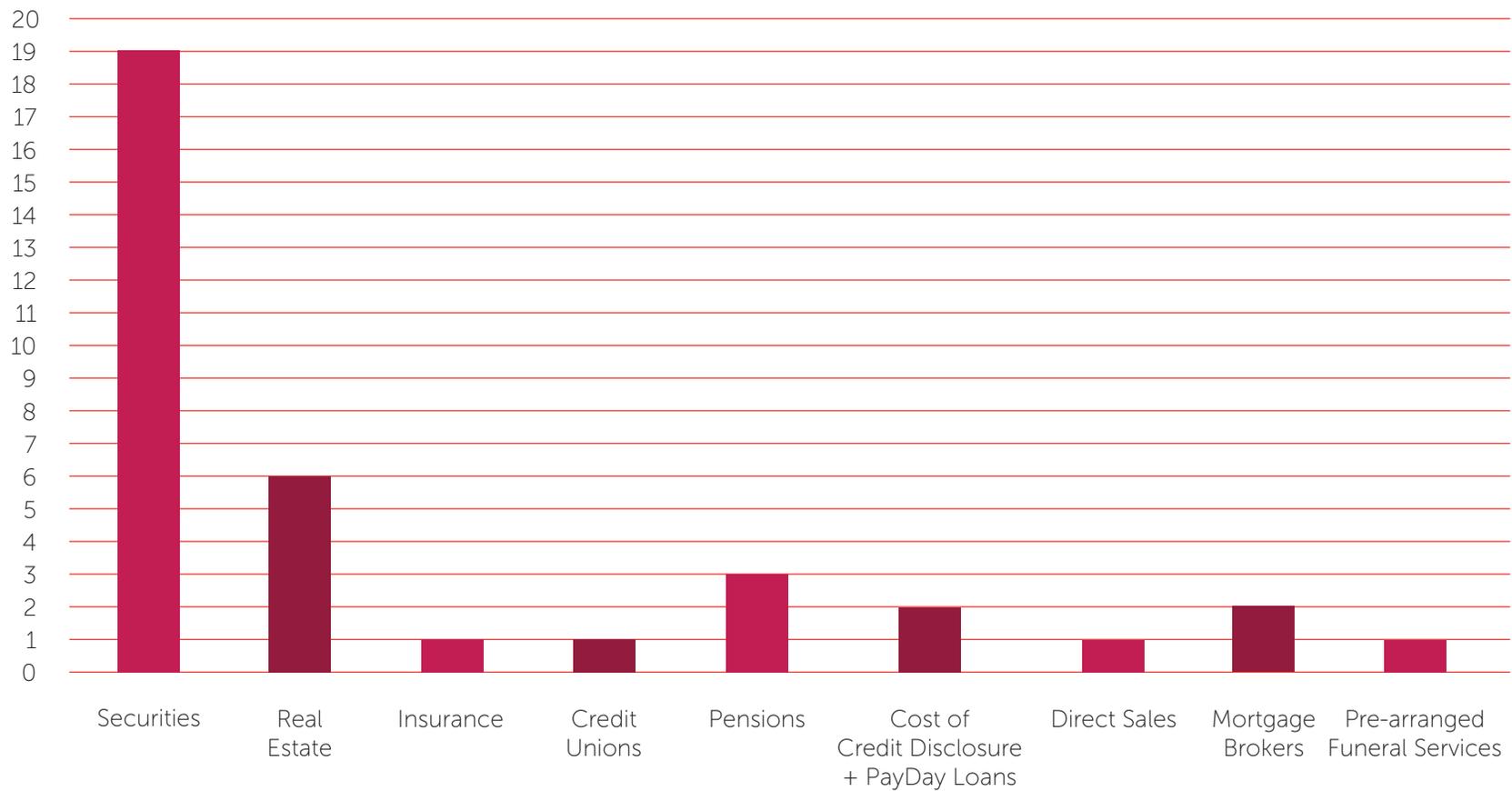
Since its inception, 25 proceedings have been commenced before the Tribunal. These include enforcement proceedings, appeals and reviews, and applications.



The Tribunal's jurisdiction has continually increased since 2013 with the adoption of new legislation in the financial and consumer services sectors. We expect this trend to continue and for the number of proceedings and hearings to increase in the coming years.

## PROCEEDINGS BY SECTOR SINCE JULY 1, 2013

The Tribunal's proceedings are distributed amongst financial and consumer services legislation as shown below. In the Tribunal's early years, the bulk of proceedings were in the securities sector. The past couple of years have seen an increase in proceedings in the consumer services sectors.



# Financial Information

The Tribunal's approved operating budget for the 2020-2021 fiscal year, going from April 1, 2020 to March 31, 2021 was \$647,556. When the budget was submitted for approval in September 2019, COVID-19 was unknown. The fiscal year began, however, with the COVID-19 pandemic. The Provincial government declared a State of Emergency on March 19, 2020, which impacted all aspects of life. Our actual expenses for the year were \$395,497, 39% below our allotted budget. This savings is explained by a marked decrease in hearing activity and in travel and educational opportunities due to the COVID-19 pandemic. We expect expenses to be higher in the coming fiscal year due to an increase in new matters commenced at the end of the 2020-2021 fiscal year and the start of the 2021-2022 fiscal year. The table below compares the Tribunal's approved budget with its actual expenses.

|  | 2020-21<br>Budget | 2020-21<br>Actuals | Over/Under<br>variance (\$) | Over/Under<br>variance (%) |
|--|-------------------|--------------------|-----------------------------|----------------------------|
| <b>REMUNERATION</b>  |                   |                    |                             |                            |
| Employee salaries  | \$176,621         | \$178,508          | \$1,887                     | 1.1%                       |
| Employee benefits  | \$38,897          | \$40,720           | \$1,823                     | 4.7%                       |
| Tribunal member retainers                                  | \$40,000          | \$39,052           | \$948                       | 2.4%                       |
| Tribunal member services fees                              | \$142,000         | \$43,850           | \$98,150                    | 69.1%                      |
| Tribunal member benefits                                   | \$6,354           | \$3,293            | \$3,061                     | 48.2%                      |
| <b>OTHER DIRECT OPERATING EXPENSES</b>                     |                   |                    |                             |                            |
| Travel   | \$61,364          | \$6,494            | \$54,870                    | 89.4%                      |
| Continuing education for members and staff                 | \$38,000          | \$7,615            | \$30,385                    | 80%                        |
| Translation, interpretation, stenographer, process servers | \$59,300          | \$23,941           | \$35,359                    | 59.6%                      |
| Consultants  | \$25,000          | \$0                | \$25,000                    | 100%                       |
| Professional memberships                                   | \$7,180           | \$3,295            | \$3,885                     | 54.1%                      |
| Printing & production                                      | \$12,000          | \$3,514            | \$8,486                     | 70.7%                      |
| Software, IT, website                                      | \$5,383           | \$4,559            | \$824                       | 15.3%                      |
| Other office expenses (including office lease)             | \$35,457          | \$40,656           | \$5,199                     | 14.7%                      |
| <b>TOTAL EXPENSES</b>                                      | <b>\$647,556</b>  | <b>\$395,497</b>   | <b>\$252,059</b>            | <b>38.9%</b>               |



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