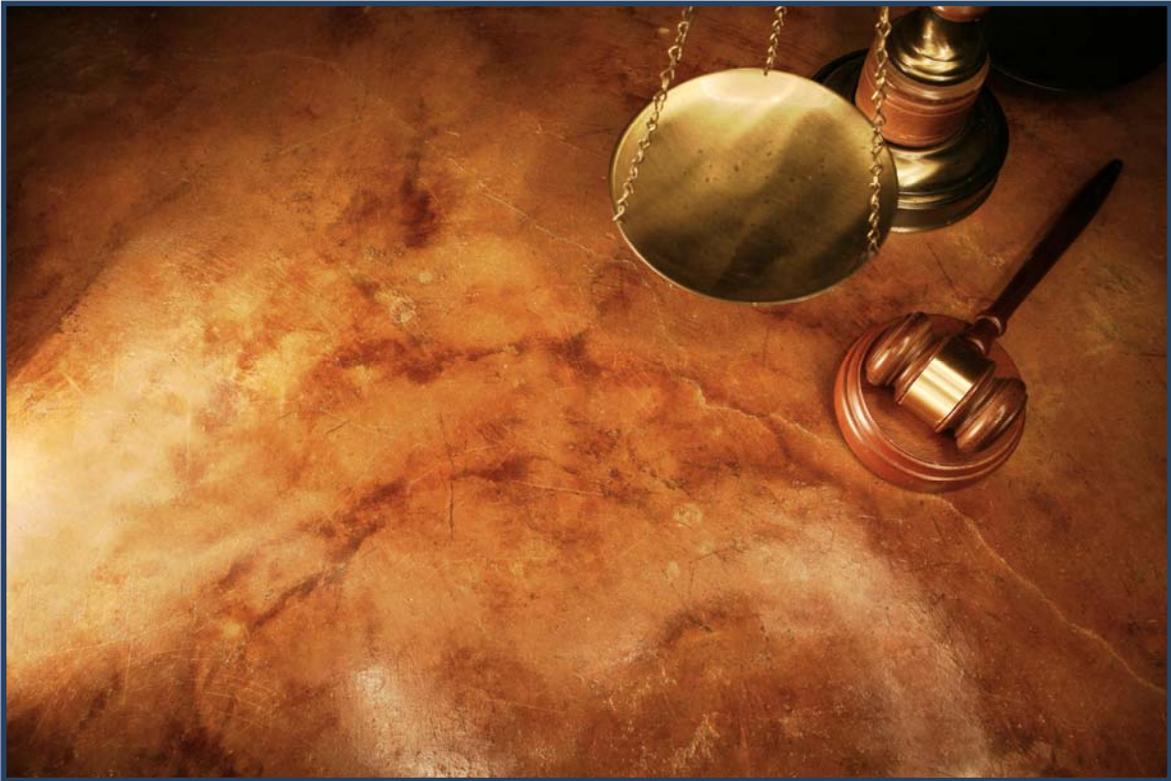


FINANCIAL AND  
CONSUMER SERVICES  
TRIBUNAL



TRIBUNAL DES SERVICES  
FINANCIERS ET DES SERVICES  
AUX CONSOMMATEURS

# ANNUAL REPORT 2014-2015



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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 2014-2015 Annual Report.

In 2014-2015, Tribunal members and staff devoted considerable effort to improving the Tribunal's processes in addition to conducting hearings under financial and consumer services legislation.

In particular, new procedural rules and forms for proceedings were developed, which should come into effect in the 2015-2016 fiscal year. A Conflict of Interest Policy and a Privacy and Document Management Procedure for Tribunal members were also adopted. Finally, particular attention was paid to continuing legal education for Tribunal members and staff.

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

### **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 Insurance 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**

B.A., M.A., FCMC

Residence : Quispamsis

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.

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.

Mr. Scichilone was recently appointed to the National Arts Centre Board of Trustees. 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 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's term ended on July 14, 2014.

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.

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

- 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. Tribunal staff are also fully bilingual to ensure parties, legal counsels and the public can interact with the Tribunal in either official language. 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. At the present time, four of the Tribunal's six members are fully bilingual.

## CONTINUING EDUCATION FOR MEMBERS AND STAFF

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 taken courses such as the Principles of Administrative Justice offered by the Foundation of Administrative Justice, the Certificate in Adjudication offered by the Society of Ontario Adjudicators and Regulators and Osgoode Professional Development, and a seminar on electronic document handling. In addition, Denise A. LeBlanc, Q.C. offered a two-day educational session to all members which focused on administrative law principles, conducting hearings and ethics.

Tribunal members also attended various educational sessions and events offered by the Financial and Consumer Services Commission including an online webinar on Learning the Ropes, the White Collar Crime Symposium, and FullSail 2015.

Tribunal members continue to meet for bi-annual 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 a weekly emails setting out informative media articles pertaining to the sectors regulated by the Financial and Consumer Services Commission.

The Tribunal Registrar recently became a member of the Council of Canadian Administrative Tribunals. This provides the Tribunal access to the most recent conference papers plus a greatly expanded selection of educational materials.

## TRIBUNAL RULES, POLICIES, DIRECTIVES AND PROCEDURES

In the past year, the Tribunal focused on improving its processes. Tribunal members and staff concentrated on three large projects: (1) re-writing the Tribunal's procedural rules applicable to proceedings and hearings, (2) developing a conflict of interest policy for Tribunal members and , and (3) researching the Tribunal's privacy and access obligations.

The Tribunal members felt that re-writing the Tribunal's procedural rules was necessary as its current procedural rules were adopted by its predecessor, the New Brunswick Securities Commission. Tribunal members and staff felt that completely re-writing the rules was necessary to reflect the new acts administered by the Tribunal and to improve certain processes. The procedural rules 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. These proposed procedural rules have been published for a 60-day comment period from August 14, 2015 to October 13, 2015. It is anticipated that the proposed new procedural rules will come into force in late 2015 or early 2016.

Tribunal members and staff have also been developing complementary documents to assist parties in interpreting the 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.

Tribunal members and staff adopted a formal Conflict of Interest Policy in order to assist Tribunal members in identifying potential conflicts of interest. This policy was adopted on November 13, 2014 and is posted on the Tribunal's website.

Finally, Tribunal staff 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 Tribunal members in their management of Tribunal documents or records in their possession. Tribunal staff also began drafting a policy on access and privacy for parties and witnesses with privacy concerns.

Several projects commenced in the 2014-2015 fiscal year, such as rewriting the Tribunal's procedural rules and drafting a policy on access and privacy, have been carried over into the next fiscal year.

## REMUNERATION AND EXPENSES

The Financial and Consumer Services 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, 2014 to March 31, 2015 are detailed below. These costs and expenses include the retainer, services fees paid, allotments for travel time, expenses reimbursed, and allowances.

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	\$15,000	\$18,725	\$2,200	\$35,925	\$1,418
John M. Hanson, Q.C.	22-Jan-14	21-Jan -19	\$5,000	\$5,600	\$1,200	\$11,800	\$776
Denise A. LeBlanc, Q.C.	15-Jul-08 15-Jul-11	14-Jul-14	\$1,440	\$1,400	\$200	\$3,040	\$134
Jean LeBlanc	22-Jan-14	21-Jan-17	\$4,443 <sup>1</sup>	\$4,200	\$800	\$9,443	\$561
Gerry Legere	22-Jan-14	21-Jan-18	\$5,000	\$6,475	\$2,950	\$14,425	\$2,741
Don Moors	22-Jan-14	21-Jan-17	\$5,000	\$7,175	\$150	\$12,325	\$1,719
Enrico Scichilone	21-Nov-12	20-Nov-15	\$5,000	\$7,175	\$1,300	\$13,475	\$807

<sup>1</sup> Mr. LeBlanc was on leave of absence from August 20th to October 1st 2014.

## TRIBUNAL ACTIVITY

The activities of the Tribunal members for the period of April 1, 2014 to March 31, 2015 are detailed below:

Members	Chair Meetings with Registrar	In-House Professional Development Days	Tribunal Bi-Annual Meetings	Hearing days	Hearing Preparation, Deliberations and Decision Writing	Tribunal Administration
Monica L. Barley, Chair	22.15	1	5	8	12.5	7.25
John M. Hanson, Q.C.		2	5	2	6	
Denise A. LeBlanc, Q.C.				2	2	
Jean LeBlanc			5	2	5	
Gerry Legere		2	5	5	5.5	
Don Moors		2	5	4	9	
Enrico A. Scichilone		1	5	6	8.5	

In the past year, the Tribunal had 15 active proceedings: two appeals under the *Pension Benefits Act*, one appeal under the *Credit Unions Act*, and twelve proceedings under the *Securities Act*. The Tribunal had a total of twelve hearing days. The table below provides a summary of the Tribunal's hearing activity for the period of April 1, 2014 to March 31, 2015:

Number of active proceedings during fiscal period	15
Proceedings commenced (all sectors)	8
Concluded Proceedings	8
Proceedings still ongoing	7
Requests for Review/Appeal filed <sup>1</sup>	3
Settlements approved <sup>2</sup>	3
Hearing days	12
Cease Trade Orders issued (Securities)	3
Total of administrative penalties imposed	\$27,000

<sup>1</sup>The only Request for Appeal filed was in respect of the *Pension Benefits Act*.

<sup>2</sup>Currently, only settlements concluded under the *Securities Act* require the Tribunal's approval.

## ACCOMPLISHMENTS AND ONGOING PROJECTS

In the past year, Tribunal members and staff have devoted considerable effort to improving the Tribunal's processes. Some key accomplishments include:

- The finalization of the Tribunal's new procedural rules;
- The creation of forms for use by parties, which will come into effect when the procedural rules are adopted;
- The adoption of a Conflict of Interest Policy for Tribunal members;
- The adoption of a Privacy and Document Management Procedure for Tribunal members; and
- A focus on continuing legal education for Tribunal members and staff.

In the upcoming fiscal year, the Tribunal will continue several large projects in connection with the improvement of its processes. The Tribunal will be adopting its new procedural rules. Several complementary documents and tools are being developed in conjunction with the new procedural rules. These include a Guide for parties and creating an "FAQ" section for the Tribunal's website. The Tribunal's website will also be completely redesigned to make it more accessible to the self-represented party.

Tribunal staff also intends to develop a Manual for Tribunal members which will canvass such topics as conflict of interest, procedural fairness, admissibility of evidence, conduct at a hearing, and a code of ethics.

Finally, the Tribunal is anticipating increased hearing activity and a marked increase in the number of hearing days in the upcoming fiscal year. Several multi-day hearings are scheduled for the upcoming year. Tribunal members and staff expect hearing activity in non-securities areas to increase, particularly with the projected proclamation of the *Mortgage Brokers Act*.