

Financial Services Tribunal

Chair, Vice-Chair and Member Position Description

Introduction

The Financial Services Tribunal (the “FST”) is an expert and independent adjudicative tribunal established under the *Financial Services Tribunal Act, 2017* (the “Act”).

Section 7 of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (the “ATAGAA”) requires every adjudicative tribunal to develop a Member (“Member”) accountability framework which, under subsection 7(2), includes a description of the functions performed by Members, including the Chair and Vice-Chairs, and a “description of the skills, knowledge, experience, other attributes and specific qualifications required of a person to be appointed as a Member of the tribunal.”

These position descriptions are set out in the attached Appendices.

Alternative Formats/Contact Information

If you require these position descriptions in an accessible format, please contact the FST Registrar at contact@fstontario.ca.

Adoption

These position descriptions will be reviewed every three years along with the other documentation required by the ATAGAA.

These position descriptions were adopted by the Members, on August 3, 2021.

APPENDIX “A”

Financial Services Tribunal Chair Position Description

Appointment and Accountability

The Chair of the Financial Services Tribunal (the “FST”) is a member of the FST (“Member”) appointed as Chair or Acting Chair by the Lieutenant Governor in Council pursuant to the *Financial Services Tribunal Act, 2017* (the “Act”). The Chair performs the role on a part-time basis.

The Chair is responsible for the performance by the FST of its mandate as an independent quasi-judicial agency to carry out specified adjudicative functions. These adjudicative functions are in relation to appeals or reviews of the decisions or proposed decisions of the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (“FSRA”) in relation to the financial sectors regulated by FSRA.

The Chair is responsible for carrying out the authorities and responsibilities assigned to the Chair by Management Board of Cabinet Directives, the Act, and related statutes/regulations, and the Memorandum of Understanding between the Minister of Finance and the Chair.

Purpose

To act as the Chair of the FST and provide overall strategic leadership/direction and operational oversight so that the FST operates in accordance with its mandate as defined by legislation and within approved governance and accountability requirements of the government.

Key Duties of Chair

A. Leadership and Agency Governance

The Chair leads the operations of the FST which is ordinarily comprised of the Chair, up to two Vice-Chairs, and a sufficient number of other Members to maintain a total of at least nine Members. The FST also includes the Registrar and the Assistant Registrar. The Chair directs the affairs of the FST so as to fulfill its mandate, as defined by the Act and related statutes.

The Chair carries out the responsibilities of a Member as outlined in the Member Position Description, in the broad areas of law and procedure and integrity and fair practices.

In addition, the Chair shall:

- Lead the process to set the goals, objectives and strategic direction of the FST;
- Lead the design and establishment of the FST's adjudicative process and case assignment/management processes and assign Members of the FST to panels to hear matters referred to the FST;
- Provide oversight of the FST's rules of practice and procedure, and the policies and procedures that ensure efficiency, quality and timeliness in the rendering of decisions, and establish a risk management framework and mitigation strategy to provide a level of assurance that service delivery objectives are met;
- Oversee the preparation of (and make available to the public) the rules governing the practice and procedures for proceedings before the FST;
- Preside over meetings of the FST to discuss emerging issues, build support for policy and process changes, engage in professional sharing and development, and promote clarity and predictability in the exercise of independent decision-making;
- Provide oversight of (through acting as Chair of, participating in or providing guidance in respect of) tribunal panels/hearings, especially panels/hearings that are complex or high profile, which involve new or novel considerations of law, multiple parties or stakeholders, or that have significant public interest consequences;
- Issue case decisions/orders and prepare tribunal decision reports; and
- Appoint hearing panels having regard to required expertise in the financial sectors regulated by FSRA and the FST's rules and practices.

B. Strategic Leadership

- Provide leadership and a framework for orientation, training and guidance to Members in consultation with the Vice-Chair(s).
- Encourage professional development and evaluate Members' services/decisions in a manner consistent with best practices for Ontario's adjudicative agencies.
- Represent the FST and be the key liaison/spokesperson in dealings with the government, the public and sector stakeholders to maintain constructive relationships with each group.
- Promote independence of adjudicative functions by setting standards of interaction with the government, the public and sector stakeholders.
- Oversee strategic plans and ongoing operations for the FST that are fiscally prudent, reflect the FST's mandate, and take into account protection of the public interest, risk identification and mitigation, and opportunities to implement needed change.

- Respond to changes in demand for services, public expectations, legislative or regulatory change and government directives.
- Remain current in developments in administrative law and related matters in Ontario, Canada and other jurisdictions, act with integrity and honesty, and be guided by the best interests of the FST's mandate and the public in actions taken.

C. Agency Governance

- Establish and monitor controls so that the FST has sound governance practices. Lead the establishment of FST policy and procedures within the legal, political and economic framework of the government.
- Notify the Minister of current and upcoming Vice-Chair and Member appointment vacancies and make appointment or re-appointment recommendations pursuant to the Management Board of Cabinet processes.
- Advise FST appointees of their obligations and the requirement that they act in compliance with government rules. Establish and implement a process for disclosure of conflict of interest and wrongdoing in keeping with the requirements set out in the *Public Service of Ontario Act, 2006* (the "PSOA"). Serve as the Ethics Executive for Members under the PSOA for conflicts of interest and disclosure of any wrongdoing. Document any declared or apparent conflicts of interest of the Chair, Vice-Chairs or Members and advise the Conflict of Interest Commissioner of unresolved conflicts in an expeditious manner.
- Oversee the development, monitoring and reporting of the FST's annual budget, and establish an effective system for the retention of formal FST documents with public availability as appropriate.
- Establish and implement a process to respond to and resolve complaints from the public and FST stakeholders.
- Establish FST performance measures/targets, monitor the FST's performance, and address any performance issues. Direct corrective action on the function or operations of the FST, if needed.
- Review and approve claims for Member per diems and expenses.
- Consult, as appropriate, with stakeholders on the FST's goals, objectives and strategic directions.
- Prepare agendas for quarterly FST Member meetings.

Qualifications

The Chair will typically have all of the qualifications of a Member plus the following:

- Knowledge of administrative law, civil litigation, statutory interpretation, and the administrative justice system.
- Membership in good standing with the Law Society of Ontario or equivalent authority.
- Experienced leader with the ability to set strategic direction; articulate and work towards a vision and oversee the implementation of plans and strategies to deliver efficient, effective and high-quality services.
- Comprehensive knowledge of the legislation/regulations/statutes administered by FSRA, and related laws and legal processes.
- In-depth knowledge of the financial sectors regulated by FSRA, and the professional, institutional, policy and community context in which FSRA operates.
- Knowledge of the continuum of dispute resolution practices, with superior knowledge of the adjudication practices, settlement, mediation skills, analytical and decision-making skills required to chair tribunal panels, make effective decisions, and resolve complex matters involving multiple interests, under public scrutiny.
- Effective communication, interpersonal and presentation skills to positively influence and communicate with Members, stakeholders and the public, and to make presentations to the Minister and the Legislature or committees, as required.
- Excellent legal analytical and written communication skills to understand the content of cases and prepare written decisions.
- Understanding of government values and a commitment to work within the government accountability structure.
- Understanding of sound financial and operational business processes and practices.
- Commitment to the protection of the public interest within the mandate of the FST.
- Commitment to respect diversity and to maintain fair, transparent processes that meet the high professional standards and values of the government.
- Knowledge of and commitment to sound governance practices.

APPENDIX “B”

Financial Services Tribunal Vice-Chair Position Description

Appointment and Accountability

A Vice-Chair of the Financial Services Tribunal (“FST”) is a member of the FST (“Member”) appointed as Vice-Chair or Acting Vice-Chair by the Lieutenant Governor in Council or by the Chair (Acting Vice-Chair appointment only) pursuant to the *Financial Services Tribunal Act, 2017* (the “Act”). A Vice-Chair performs the role on a part-time basis.

A Vice-Chair is responsible for supporting the Chair of the FST in the oversight role for the performance, by the FST, of its mandate to carry out adjudicative functions in connection with appeals or reviews of the decisions and proposed decisions of the Chief Executive Officer of the Financial Services Regulatory Authority (“FSRA”) in relation to the financial sectors regulated by FSRA.

A Vice-Chair is responsible for carrying out the authorities and responsibilities as assigned by Management Board of Cabinet directives, the Act, and related statutes/regulations, and the Memorandum of Understanding between the Minister of Finance and the Chair of the FST.

Purpose

To act as a Member, and chair meetings of the FST in the absence of the Chair. To participate in setting the FST’s goals, and in designing/establishing FST adjudicative processes and performance review/reporting measures.

Key Duties of Vice-Chair

A. Leadership and Agency Governance

A Vice-Chair carries out all responsibilities of a Member as outlined in the Member Position Description in the broad areas of law, procedure, integrity and fair practices.

In addition, the leadership and agency governance responsibilities of a Vice-Chair are to:

- In the absence of the Chair, chair meetings of the FST, and carry out the duties delegated by the Chair.
- Act as an additional key point of contact for appointees in the Chair’s absence and perform the responsibilities of the Chair when the Chair is not available, including

assigning cases, monitoring adjudicative quality, and providing general guidance to Members and staff.

- Provide an additional oversight role and collaborate with the Chair to develop and implement FST policies, procedures, processes and practices that support the FST's operations to enhance effectiveness and efficiency.
- Lead or participate in special projects, initiatives, and sub-committees, as assigned by the Chair, such as the development/implementation of new or revised practices.
- Take on cases or assignments that may have a higher profile, are more complex and may involve multiple parties or stakeholders.
- Prepare and issue case decisions/orders.
- Mentor new appointees and provide oversight and advice respecting the quality and clarity of FST decisions.
- Maintain current knowledge in the field of financial services regulation relevant to the FST's areas of responsibilities and participate in professional development opportunities.
- Act with integrity and honesty and be guided by the best interests of the FST's mandate and the public in actions taken.
- Perform other responsibilities as agreed with, or as delegated by, the Chair.
- Participate in determining the nature of the FST's scheduling and case management systems, and the FST's requirements for professional and support services.

Qualifications

The Vice-Chair will typically have all the qualifications of a Member plus the following:

- Knowledge of administrative law, civil litigation, statutory interpretation, and the administrative justice system.
- Knowledge of the legislation/regulations/statutes administered by FSRA, and related laws and legal processes.
- Knowledge of the financial sectors regulated by FSRA, and expertise in one or more of the regulated sectors.
- Leadership skills to participate with the Chair in the oversight of the FST's mandate, to exercise responsibilities of the Chair in the absence of the Chair, and to lead special projects, initiatives and sub-committees.

- Knowledge of adjudication practices and settlement processes.
- Mediation skills and analytical and decision-making skills to chair tribunal panels, make effective decisions, and resolve complex matters involving multiple interests, under public scrutiny.
- Effective communication, interpersonal and presentation skills to communicate with Members, stakeholders and the public.
- Excellent analytical and written communication skills to understand the content of cases and prepare written decisions.
- Understanding of government values and a commitment to work within the government accountability structure.
- Commitment to the protection of the public interest within the mandate of the FST.
- Commitment to respect diversity and to maintain fair, transparent processes that meet the high professional standards and values of the government.
- Knowledge of and commitment to sound governance practices.
- Ability to oversee the implementation of a strategic vision by putting appropriate plans into operation to deliver efficient, effective and high-quality services
- In-depth understanding of the professional, institutional, policy and community context in which the FST operates.

APPENDIX “C”

Financial Services Tribunal Member Position Description

Appointment and Accountability

A member (“Member”) of the Financial Services Tribunal (the “FST”) is appointed by the Lieutenant Governor in Council pursuant to the *Financial Services Tribunal Act, 2017* (the “Act”). The FST is composed of the Chair, one or two Vice-Chairs, and a sufficient number of other Members to maintain a total of at least nine Members. A Member performs their role on a part-time basis.

A Member is responsible for carrying out the authorities and responsibilities assigned to Members by Management Board of Cabinet directives, the Act, and related statutes/regulations, and any Memorandum of Understanding between the Minister of Finance and the Chair of the FST.

Purpose

To act as a Member of the FST, an independent quasi-judicial agency which carries out adjudicative functions in connection with appeals or reviews of the decisions or notices of proposal or notices of intended decision of the Chief Executive Officer of the Financial Service Regulatory Authority (“FSRA”) under applicable legislation.

Key Duties

To conduct pre-hearings so as to facilitate a fair, timely and effective hearing, and to chair/participate on tribunal panels to hear/consider evidence and submissions, and issue tribunal decisions/rulings. To attend and participate in FST meetings and provide services as determined at such meetings or at the request of the Chair of the FST.

A. Law and Procedure

May carry out the following responsibilities alone as a single adjudicator or as part of a tribunal panel as determined by the Chair and in accordance with applicable law including the *Statutory Powers and Procedure Act* (the “SPPA”).

- Participate in scheduled and ad-hoc meetings of the FST and the Members.
- Conduct pre-hearing conferences including reviewing materials thoroughly; dealing with and resolving all organizational, preliminary and procedural issues; identifying opportunities to resolve the issues in the proceeding before moving on to a hearing; facilitating, when appropriate, consolidation of applications or appeals; and expediting the hearing by way of achieving an agreement on the facts.

- Prepare and issue, in a timely fashion, pre-hearing memoranda that accurately set out the substance of discussions and any procedural, preliminary agreements, undertakings and orders. Advise the Registrar of any follow-up requirements.
- Chair and/or participate as a Member on hearing panels including reviewing all relevant materials in preparation for the hearing; hearing submissions and evidence presented by the parties; actively listening to comprehend issues and positions; understanding and applying relevant legislation, policies and rules; and being open-minded, even-handed, fair and courteous to all parties.
- Review and analyze all hearing evidence and submissions thoroughly, participate in an open, frank and conscientious manner in panel discussions, and work cooperatively with other panel Members on the panel to arrive at a decision.
- Make decisions that are independent and free of outside influence and based on the evidence and consideration and application of relevant law. Issue on a timely basis, clear, well-written, soundly-reasoned decisions/rulings, which are understandable and can be implemented by the parties within the time frames established by the FST.
- Provide appropriate case file management and direction to FST staff on proceeding directed issues.
- Protect the security and confidentiality of files and case information.
- Participate in initial training and stay current in the field by engaging in ongoing professional development.
- Participate on special projects, training, and/or committee work as assigned by the Chair or the Chair's designate.
- Comply with policies and practices applicable to the FST or as set out in Management Board of Cabinet directives to meet financial accountability and administrative requirements.
- Work constructively and contribute to a collegial atmosphere at the FST by sharing knowledge, time and experience with other Members and staff.
- Maintain positive, productive and appropriate relationships with stakeholders and all parties appearing before the FST.
- Participate in setting the FST's goals, in designing and establishing the FST's adjudicative process and in establishing measures of service quality and performance for the FST.
- Meet established performance measures.
- Perform all assigned responsibilities.

B. Integrity and Fair Practices

- As a hearing chair, conduct hearings in accordance with the Act, and regulations, and other applicable laws, as well as within relevant FST policies, procedures and rules of practice; implement equal access, fair treatment and due process in hearing practices; maintain control of the hearing, swear in all witnesses, and maintain a list of the hearing exhibits for the Registrar following completion of the hearing.
- Recognize and deal appropriately with situations that may involve an issue of alleged bias or declared apparent conflict of interest in accordance with the FST's Rules of Practice and Procedure and Conflict of Interest rules and guidelines.
- Deal with conflicting and diverging interests while maintaining decorum, due process and professional and respectful interactions among all participants.
- Act with integrity and honesty and act in the best interests of the FST's mandate and the public interest.

Qualifications

A Member requires the following abilities, skills and knowledge in order to carry out their responsibilities effectively:

- Experience in interpreting and applying legislation with specific knowledge of the Act and related legislation/regulations.
- Good understanding of the mandate of the FST.
- Understanding of the professional context within which the FST operates.
- Understanding of the justice system, administrative law, adjudicative processes including the SPPA and common law concepts of natural justice and fairness.
- Knowledge of the FST's Rules of Practice and Procedure.
- Demonstrated analytical and legal comprehension skills.
- Aptitude for adjudication including fairness, good listening skills, open mindedness, good judgement, tact and the ability to communicate clearly and effectively.
- Awareness and sensitivity to the various issues represented at hearings.
- Ability to understand and interpret legislation and to organize and analyze evidence; familiarity with precedent decisions; and the ability to formulate reasoned decisions.
- Knowledge of adjudication practices and settlement processes; mediation skills; and analytical and decision-making skills to chair tribunal panels, make effective

decisions, and resolve complex matters involving multiple interests, under public scrutiny.

- Impartiality and sound judgement to fairly assess cases involving issues regarding conflicting verbal/written evidence and the assessment of credibility.
- Excellent writing skills and the ability to prepare a clear well-reasoned decision that takes into account the evidence, the submissions, the law and policy.
- Commitment to ongoing professional development to enhance expertise and remain current in the field.
- Good organizational skills to manage a heavy workload with complex, ongoing processes.
- Self-confidence, self-control and sensitivity to the diverse interests of parties in order to maintain effective control in confrontational and stressful situations.
- Commitment to respect diversity, and to maintain fair, transparent processes that meet high professional standards.
- Computer literacy.
- Ability to work effectively in a team environment.
- Ability and willingness to travel, and a willingness to participate in FST meetings and non-hearing related matters (e.g., committee work, training, and projects for the development/review of FST policies, rules, procedures).
- Commitment to public service and to the FST and its mandate/work, and commitment to high ethical standards and personal/professional excellence.