

MEMORANDUM OF UNDERSTANDING

Between the:

The Minister of Finance and Treasury Board (the Minister);

And

The Deputy Minister of Finance and Treasury Board (the Deputy Minister);

And

**The Financial and Consumer Services Commission (the “Commission”)
(Represented by the Chair and the Chief Executive Officer)**

(each a “Party”)

PREAMBLE

WHEREAS the Financial and Consumer Services Commission (the Commission) is a body corporate without share capital established under the *Financial and Consumer Services Commission Act* (the *Act*) and comprised of a Chair and members appointed by the Lieutenant-Governor in Council; and

WHEREAS the Commission is an agent of the Crown in right of New Brunswick (s.3(4) of the *Act*) and is listed as a Crown Corporation in Part IV of the *Public Service Labour Relations Act*; and

WHEREAS the Commission is responsible for the administration of the *Act*, regulations and rules (s.49 of the *Act*) and is authorized to make rules under the *Act* (s.59 of the *Act*) and under certain financial and consumer services legislation; and

WHEREAS the Commission has the capacity, rights powers and privileges of a natural person for the purposes of carrying out its functions and duties under the *Act* (s.3(5) of the *Act*);

WHEREAS pursuant to the *Act*, the Minister of Finance and Treasury Board is responsible for of the Financial and Consumer Services Commission and accountable to the Legislative Assembly; and

WHEREAS the Commission Chair is the accountability link between the body corporate and the Minister; and

WHEREAS the Chief Executive Officer is responsible for the general direction, supervision and control of the business and affairs of the Commission and is accountable to the Commission; and

NOW THEREFORE the parties hereafter enter into this memorandum of understanding (MOU).

DEFINITIONS

In this Agreement, unless the context otherwise requires:

“*Act*” means the *Financial and Consumer Services Commission Act*;

“Agreement” means this Memorandum of Understanding and all preambles, recitals and schedules hereto, along with any amendments hereto and thereto;

“By-laws” means the by-laws of the Commission;

“Chair” means the Chair of the Commission as per the *Act*;

“Department” means the authorized agents and representatives of the Minister within the Department of Finance and Treasury Board;

“Chief Executive Officer” means the Chief Executive Officer of the Commission as per the *Act*;

“Finance and Treasury Board” means the Department of Finance and Treasury Board of New Brunswick;

“Minister” means the Minister of Finance and Treasury Board, who is responsible for the Commission;

“MOU” means this Memorandum of Understanding; and

“Province” means the Crown in right of the Province of New Brunswick;

PURPOSE

The purpose of this MOU is to provide a framework to enhance the parties’ abilities to meet their respective legislative and policy objectives in a collaborative and effective manner. It is further understood and agreed that the terms and conditions of this MOU are intended to clarify the parties’ roles and responsibilities and to ensure complete and full disclosure of information, all in support of this objective.

TERM

This Memorandum will be in effect for the period commencing on January 31, 2020 and shall be reviewed, renewed, amended, or replaced three years from the date on which it was implemented and every three years thereafter unless one of the parties advises the other that renegotiations are necessary.

The parties will begin negotiating a successor MOU not less than six (6) months prior to the expiry of the Term.

MANDATE

In addition to the *Act*, the Commission’s mandate is set out in the mandate letter provided to the Commission by the Government through the Minister annually. In the event of conflict arises between the *Act*, regulations and mandate letter, the *Act* and regulations shall prevail.

The Commission and the Minister agree that the Commission operates independently and at arm’s length from the Province in the delivery of the Commission’s services.

ACCOUNTABILITY RELATIONSHIPS

1. The Minister is accountable to the Legislative Assembly for the fulfillment of the statutory mandate of the Commission and for reporting to the Legislative Assembly on the affairs of the Commission.
2. The Commission, through the Chair, is accountable to the Province through the Minister.
3. The Chief Executive Officer is accountable to the Commission through the Chair.

ROLES AND RESPONSIBILITIES OF THE PARTIES

Minister

The Minister is responsible for the following:

- fulfilling all the assigned duties as established in the *Act*, as well as other applicable legislation;
- informing and advising the Commission of the government's strategic priorities, decisions and public policy that may impact the Commission;
- informing and advising the Commission of performance targets, objectives and expectations that may impact the Commission;
- monitoring the performance of the Commission to ensure that it can fulfill its mandate;
- reviewing and approving the business plan submitted in accordance with s.24 of the *Act* and providing such approval within 30 days to the extent possible;
- meeting with the Chair and/or the CEO as necessary each quarter to discuss progress, plans and issues relating to the effective discharge of the Commission's mandate and the need for services or support to be provided by the Department to the Commission; and
- recommending to Executive Council the appointment or reappointment to the position of Commission Chair, Commission member, Tribunal Chair or Tribunal member, an available individual who best meets the requirements laid out in the selection criteria and meets the requirements of the Commission's Code of Conduct and Conflict of Interest Rule and policies.

Deputy Minister

The Deputy Minister supports and acts as the designate of the Minister and is responsible for activities which have been delegated by the Minister under the *Act*.

The Commission

The Commission, through the Chair, is responsible for the governance of the Commission and overseeing the management of the Commission's business and affairs as prescribed by the *Act*. The Commission guides the strategic direction, evaluates the performance of the Chief Executive Officer, approves and monitors the Commission's business plan, operational plan and financial results, and is ultimately accountable to the Minister through the Chair.

The Commission is responsible for the following:

- administering the province's financial and consumer services legislation;
- ensuring the provision of high-quality regulatory services that protect the public interest and enhance public confidence in the regulated sectors; and
- complying with all legislation under which they have responsibilities.

The Chief Executive Officer

The Chief Executive Officer is, subject to the direction of the Commission, charged with the general direction, supervision and control of the business of the Commission and may exercise any other powers and duties conferred on him or her by the by-laws of the Commission or by the *Act*.

The Chief Executive Officer is responsible for:

- leading the management of the Commission;
- keeping the Chair, members and departmental staff informed and up-to-date on program operations;
- preparing documents and reports as requested by the members including corporate plans and budgets, annual business plans and quarterly reports;
- maintaining documentation and proper controls to support expenditures and keep track of material variances between projected and actual expenditures; and
- providing briefings to the Minister, Deputy Minister and departmental staff as needed and at a minimum quarterly, to ensure they are properly informed of matters affecting or pertaining to the Commission.

Areas of shared responsibility

Cooperative Initiatives

The Province and the Commission will work together cooperatively on initiatives that maximize benefits for both parties. It is understood that these initiatives will be designed to work in harmony with the terms and conditions of this MOU. In the event of conflict between an initiative and a provision or provisions of this MOU, the MOU will prevail.

Human Resources

The Commission acknowledges that the Government of New Brunswick is seeking a harmonized approach to human resources management. The Commission and the Department of Finance and Treasury Board, recognizing the specialized skillsets required, will work cooperatively and share such information regarding human resource data, policies and practices as may be required for the benefit of the respective organizations.

In general, FCNB employee remuneration and benefit practices align and are generally consistent with GNB's own policies and directives regarding remuneration and benefits. However, the Commission and the Department of Finance and Treasury Board recognize the specialized skillsets required of Commission staff and the competitive job market that the Commission operates in.

Procurement

The Commission will work with Service New Brunswick, the Department of Transportation and Infrastructure and Finance and Treasury Board where appropriate to maximize economies of scale.

Commitment to Effective Communication

The Commission and the Department commit to keeping each other informed of matters that aid, influence or interfere with their respective roles and responsibilities. They will communicate with one another in a timely fashion to address any issues that may arise. The Commission and the Department will ensure that issues are forwarded to any appropriate officials, when required to address any issues effectively. When submitting reporting documents, the Commission, through the Chief Executive Officer, will address them to the Minister, copying the Deputy Minister.

Description	Responsibility	
	The Commission	The Minister, the Deputy Minister and the Department (as the case may be)
Information requests made by the public	Will respond in a timely manner to information requests made by the public regarding its activities. Government will be copied on responses to information requests that were channelled through them.	Will defer to the Commission on information requests made by the public.
Cabinet submissions – All issues	Drafts all Cabinet proposals (MECs), except for appointments in which instance the Commission	Will be the lead signatory in all Cabinet submissions.

	<p>makes recommendations to the Minister and the Executive Council Office prepares the MEC. Briefs the Deputy Minister and Minister, as required. Attends Cabinet meetings, as required. Will provide in a timely manner all information needed by Government to complete Cabinet submissions.</p>	<p>Coordinates approvals, signatures and submissions for Cabinet agenda. Reviews and analyzes all MEC's to ensure alignment with government priorities. Coordinates with the Commission as deemed appropriate.</p>
<p>Correspondence – On all subjects directed to the Minister or the Commission</p>	<p>Will respond in a timely manner to correspondence regarding its activities. Government will be copied on responses to correspondence that was channelled through them.</p>	<p>Will respond in a timely manner to correspondence relating to high level government policies but will defer to the Commission correspondence relating to the specific activities of the Commission.</p>
<p>Briefing notes</p>	<p>Will provide advance briefings on potential or emerging issues to ensure that the Minister is able to speak to the Commission's plans and actions if called upon to answer publicly for them.</p>	<p>Will communicate to the Commission, when Briefing Notes are required, and for what purposes they are required (e.g. Legislative sitting, Minister or Premier meetings, etc.)</p>
<p>Legislative Assembly</p>	<p>Will ensure the Minister has any information required in order to answer questions or respond to issues raised in the Legislative Assembly on the Commission's mandate. Will prepare and appear before the Standing Committee on Public Accounts as required.</p>	<p>Will ensure the Commission is aware of any issues to be raised in the Legislature for matters under its mandate.</p>
<p>Issues management</p>	<p>Will raise pertinent issues in a timely manner to discuss and resolve.</p>	<p>Will raise pertinent issues in a timely manner to discuss and resolve.</p>
<p>Legislative Coordination</p>	<p>Will, through the Department, bring forth any issues that may impact the legislative calendar.</p>	<p>Will communicate to the Commission, any legislative matters that may impact them.</p>

COMMISSION AND TRIBUNAL COMPOSITION AND APPOINTMENTS

The Commission and Tribunal composition is established in the *Act*. As per its Governance Policy, the Commission is responsible for:

- notifying the Minister of upcoming vacancies in order-in-council appointments to the Commission and Tribunal;
- preparing the selection criteria and identifying the skills required of new appointees;
- coordinating with the Executive Council Office the method of posting of vacancies;
- receiving applications and vetting candidates for Commission and Tribunal vacancies;
- identifying qualified applicants who best meet the requirements laid out in the selection criteria and meet the requirements of the Commission's Code of Conduct and Conflict of Interest Rule and policies; and
- providing the Minister with a recommendation on suitable candidates to fill Commission and Tribunal vacancies and providing all supporting information and documents obtained as part of the selection process.

The Department is responsible for ensuring the Commission's recommendations are submitted through the appropriate channels for the proper consideration of candidates who meet the required qualifications.

CORPORATE PLANNING AND REPORTING CYCLE

Each year, the Minister shall provide to the Commission a Mandate Letter in accordance with the *Accountability and Continuous Improvement Act* articulating the mandate objectives that will inform the annual plan for the subsequent year.

Once every fiscal year, and as required by the Minister, the Commission will submit to the Minister for approval a business plan including a proposed budget and management objectives for the next three (3) fiscal years and any other information the Minister requests.

Prior to December 31 of each year, the Commission will submit to the Department for information a proposed budget with estimates of the amounts needed for the operation of the Commission and the Tribunal for the following fiscal year.

FINANCIAL ARRANGEMENTS

One of the principles of regulation is that industry, not the taxpayer, covers the cost of regulation. The Commission is self-financed, as required by the Act. Its operations are funded by revenues derived from various fees and assessments related to the sectors it administers. The Commission has the authority under paragraph 59(1)(a) of the Act to make rules prescribing the fees payable to the Commission, including but not limited to, fees for services provided by the Commission or an employee of the Commission or other fees in connection with the administration of financial and consumer services legislation. The Department will assist the Commission as needed with the steps needed for it to be able to implement its fees rules.

In setting the rates for these fees, charges, and assessments, the Commission shall ensure that the rates charged to market participants are fair and competitive with the rates charged in other jurisdictions and that the revenues of the Commission are adequate to fund the operations of the Commission and the Financial and Consumer Services Tribunal appropriately.

In accordance with subsection 21(1) of the Act, the Commission must maintain in its own name one or more accounts for the purposes of subsection 17(1) of the *Financial Administration Act*. However, all money received by the Commission through the conduct of its operations or otherwise are to be deposited to the credit of the account(s) maintained under subsection 21(1) of the Act and shall be administered by the Commission exclusively for the purposes of financial and consumer services legislation (s.21(2)).

In accordance with 21(7) of the Act, the Commission will pay into the Consolidated Fund such of its surplus funds subject to the approval of the Treasury Board

Amounts received by the Commission from administrative penalties under financial and consumer services legislation will be used only for endeavours or activities that, in the opinion of the Commission, enhance or may enhance the financial market place or consumer protection and not for the normal operating expenditures of the Commission.

AMENDMENTS

The parties may agree to amend the terms of this MOU from time to time as needed in response to legislative changes or judicial decisions that materially affect either party's responsibilities; or to maintain effective and efficient business practices for the Commission, in a fair and open manner with Government.

An amendment becomes part of this MOU when it has been recorded in writing, dated, signed by all parties, and attached to this MOU.

PUBLIC DOCUMENT

The parties agree that this MOU, including the schedules and appendices hereto, and any amendments, shall be made available to the public by either party upon request to that party by any member of the public and that each party will post the MOU, schedules and any amendments to that party's website within 30 days of the date of execution.

In accordance with subsection 7(1) of the *Accountability and Continuous Improvement Act*, a Crown entity "may refuse to disclose any information required to be disclosed under the Act that would reveal commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to (a) harm the competitive position of the Crown entity, or (b) interfere with contractual or other negotiations of the Crown entity."

Additionally, subsection 7(2) states that “if subsection (1) is inconsistent with or in conflict with a provision of the *Right to Information and Protection of Privacy Act*, subsection (1) prevails.” In addition, Section 53 of the *Act* states “If a provision of this Act is inconsistent or in conflict with a provision of the *Right to Information and Protection of Privacy Act*, the provision of this Act prevails.”

Date - 31 January 2020

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“original signed by”

“original signed by”

Hon. Ernie L. Steeves
Minister
Finance and Treasury Board

Peter Klohn
Chair
Financial and Consumer Services Commission

“original signed by”

“original signed by”

Cheryl Hansen
Deputy Minister
Finance and Treasury Board

Kevin Hoyt
Chief Executive Officer
Financial and Consumer Services Commission