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Citation: *Financial and Consumer Services Commission v. McKellar et al.*, 2022 NBFCST 3

PROVINCE OF NEW BRUNSWICK  
FINANCIAL AND CONSUMER SERVICES TRIBUNAL  
IN THE MATTER OF THE *REAL ESTATE AGENTS ACT*, S.N.B. 2011, c 215, THE *MORTGAGE BROKERS ACT*,  
S.N.B. 2014, c 41, AND THE *SECURITIES ACT*, S.N.B. 2004, c S-5.5

Date: May 27, 2022  
Docket: MS-001-2021

BETWEEN:

**Financial and Consumer Services Commission,**

Applicant,

– and –

**John Albert McKellar and 668054 N.B. LTD.,**

Respondent.

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**ORDER**

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**WHEREAS:**

1. The Financial and Consumer Services Commission (“Commission”) filed a motion on May 20, 2022 requesting that the merits hearing scheduled for June 6 to 8, 2022 be adjourned to a date after July 1, 2022,
2. The Commission intends to call Mike Guitard, senior investigator with the Commission and lead investigator assigned to this matter, as a witness in these proceedings. Mr. Guitard has been on medical leave since February 22, 2022 and his family physician extended his medical leave to July 1, 2022,

3. Mr. Guitar's current medical condition prevents him from testifying at the June 6 to 8, 2022 hearing,
4. The merits hearing in this matter was initially scheduled for January 11 to 13, 2022,
5. The merits hearing in this matter has been adjourned twice:
  - a) On January 5, 2022, the Tribunal sought the parties' positions on the adjournment of the merits hearing due to the rising number of COVID-19 cases. The parties consented to this adjournment and the hearing was adjourned to February 15 to 17, 2022,
  - b) On February 9 and 10, 2022, the Commission requested that the hearing format be changed from an oral hearing to a hearing in writing, with evidence by way of Affidavit, because their witness Helen Rae Patterson had just been released from hospital. The Tribunal denied the Commission's request to change the hearing format, but adjourned the hearing due to Ms. Patterson's inability to provide oral testimony. The merits hearing was adjourned to June 8 to 10, 2022,
6. On February 28, 2022, the hearing dates were varied to June 6 to 8, 2022 due to the unavailability of Tribunal Staff,
7. The Commission's case is prejudiced without the testimony of Mr. Guitar,
8. The Respondents have consented to the Commission's request for an adjournment, and
9. Granting the adjournment will not prejudice the Respondents.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The merits hearing is adjourned to October 18 to 20, 2022.

**DATED** this 27<sup>th</sup> day of May, 2022.

*Mélanie McGrath*  
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Mélanie McGrath  
Tribunal Chair