



Pursuing a More Innovative Ontario Mortgage Brokering Sector: Barriers and Opportunities

Foreword

The FSRA Innovation Office was launched in 2020 to support Ontario's financial services sector in creating strong, sustainable, and competitive innovations that will benefit consumers.

Since launch, the Innovation Office has developed a new, coordinated innovation vision as defined by the [Innovation Framework](#) and the rollout of its [Test and Learn Environments](#) which are designed to help innovators test new products, services, and business models. FSRA has also made a commitment to examine how it can use its regulatory tools to better support responsible innovation.

As part of the examination of FSRA's regulatory tools, the Innovation Office has proactively reached out to stakeholders in the mortgage brokering sector seeking input on innovative opportunities in their sector. The Innovation Office has also solicited comments on what barriers they see obstructing the pursuit of innovation.

The following report outlines a summary of what FSRA heard during stakeholder outreach. This information will be used to help the Innovation Office frame the 'state of play' of innovation in the mortgage brokering sector and inform FSRA's approach to supporting innovation.

FSRA would like to stress that it sees this consultation with Ontario's mortgage brokering sector as an ongoing, open-door conversation. Please do not hesitate to reach out with your questions or comments via the [Innovation Office](#).

Executive Summary

Process

FSRA's approach to innovation is guided and defined by the new Innovation Framework.

There are two approaches to supporting innovation identified under the framework: the 'inside-out' approach and the 'outside-in' approach.

The outside-in approach involves FSRA's Innovation Office proactively reaching out to stakeholders to identify sector trends, validate new innovation opportunities, communicate FSRA's approaches, and discuss potential ways of achieving a more innovative, prosperous Ontario financial services sector.

Stakeholders should know that FSRA's doors are always open if they have questions they would like to discuss or new products, services, and business models they would like to share and validate. FSRA will work with innovators from across its regulated sectors to create a regulatory environment that supports innovation while improving and adapting regulatory responses to emerging market practices.

The inside-out approach involves FSRA's Innovation Office leading relevant FSRA teams in examining Ontario's legislative and regulatory frameworks with the goal of uncovering and implementing innovation-friendly approaches to using FSRA's regulatory tools. By leveraging the expertise and insights of teams from across the organization, FSRA will try and ensure it is using its full suite of regulatory tools and exercising regulatory discretion where appropriate.

FSRA's Innovation Office has used both approaches to investigate how it can better support innovation in Ontario's mortgage brokering sector. In addition to leading complimentary 'inside-out' research by FSRA subject matter experts, the Innovation Office organized a series of mortgage brokering stakeholder roundtables to discuss innovation and which barriers and opportunities are top of mind for the sector.

FSRA's discussions with stakeholders were fruitful, providing context around potential opportunities for innovation and how the regulator could play a role in making them a reality.

Takeaway Messages

The most important message communicated by stakeholders during these consultations centered on the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (MBLAA). They feel the Act is technology-neutral and not particularly prescriptive in its application, so FSRA does not need to exercise its regulatory tools differently or that there are any specific regulatory pain points inhibiting innovation in the sector.

However, stakeholders did have opinions on barriers to innovation in the sector and how FSRA could better support innovation. This discussion focused on four central concepts:

- opportunities for FSRA modernization and creating a 'regulator of the future'
- open banking and the use of open application programming interfaces (APIs) to facilitate greater consumer freedom and reliability in client information verification
- licensing streamlining and reform
- Test and Learn Environments (TLEs) and potential applicability.

This input helped shape FSRA's analysis, providing the 'why' that frames the path forward. It is important that the regulator be mindful of the practical realities of its mortgage brokering sector stakeholders and pursue innovation opportunities that are aligned with observed sector trends.

The Innovation Office also led an internal FSRA team to provide a quick outline of the mortgage brokering sector and some notable considerations that should be kept in mind, as well as carry out a preliminary analysis of *MBLAA* itself to identify opportunities to support innovation. This research had a broad scope, with topics ranging from the deployment of artificial intelligence (AI) in mortgage brokering decision-making, to considering how licensing may be affected by the development of fully digital business models in the mortgage brokering sector.

Like FSRA's stakeholder discussions, this review did not unearth any glaring legislative or regulatory barriers flowing from *MBLAA* that impede innovation. The main takeaway from the research and stakeholder discussions was that FSRA's Innovation Office can still support innovation by taking a

leadership role in researching, highlighting, and proactively embracing emerging innovative technologies and business models in Ontario's mortgage brokering sector.

A Path Forward

The area of focus that stakeholders encouraged FSRA to pursue was around open banking and the utility of open APIs being leveraged in the mortgage brokering process.

'Open banking' describes a framework where consumers can authorize third parties to digitally access their financial information and transaction data. 'Open APIs' are sets of publicly available, non-proprietary, defined rules that govern communication between computers and/or applications, functioning as intermediary layers between applications and web servers that process data transfer between systems. Simply put, open APIs enable open banking.

Open banking requires participating financial institutions to standardize their consumer data and, once consumer consent is secured, to share it per the consumer's consent with relevant third parties such as fintechs. These third parties can then use this information to build innovative consumer products and services.

The Government of Canada has begun the development of an open banking system that will be mandatory for federally regulated banks and optional for other financial institutions. This development could have significant impacts across FSRA's regulated sectors including the mortgage brokering sector. Anticipating open banking's potential cross-sectoral impacts and exploring its utility will be crucial to effectively regulating FSRA's regulated sectors in the coming years.

Another key takeaway is that the mortgage brokering sector is very open to dialogue and innovation-focused consultation with FSRA. Stakeholders repeatedly mentioned how excited they were to be asked about the future of their sector and how comforting it was for them to see FSRA living up to its aspirations as a dynamic, principles-based regulator. The FSRA Innovation Office will ensure that it continues to develop and deepen its relationships with stakeholders in a shared pursuit of an innovative, thriving Ontario mortgage brokering sector. FSRA will remain focused on ensuring that its stakeholders feel heard and can have confidence that regulatory approaches are developed with their practical realities in mind.

What barriers to, or opportunities for innovation do you see in Ontario's mortgage brokering sector?
Please share your thoughts with the [Innovation Office](#) for consideration.

“What We Heard” – Stakeholder Perspectives

Outline

The Innovation Office initiated discussions with select mortgage brokering stakeholders to gain external perspectives on two general topics:

- identifying regulatory and practical barriers to innovation in the sector
- identifying opportunities for FSRA to support innovation in the sector

Stakeholder roundtables consisted of discussions with select members of FSRA’s Stakeholder Advisory Committee for Mortgage Brokering (SAC) and Technical Advisory Committee for Mortgage Brokering (TAC), as well as one-on-one meetings and roundtables with external stakeholders representing a range of market participants.

This outreach was praised by stakeholders from across the sector, with many noting that FSRA is developing a reputation as a progressive and pro-innovation regulator. There is strong interest from stakeholders to continue engagement with the Innovation Office and to strengthen these relationships going forward.

The input FSRA received from these discussions falls into four broad categories:

- opportunities for FSRA modernization and creating a 'regulator of the future'
- open banking and the use of open APIs to facilitate greater consumer freedom
- licensing streamlining and reform
- Test and Learn Environments (TLEs) and potential applicability

Opportunities for FSRA Modernization

Stakeholders noted that while there does not appear to be explicit barriers under *MBLAA* and its associated regulations to implementing innovative digital solutions, there can be a reluctance to be

innovative in cases where firms feel uncertain about how FSRA will treat their new innovative idea in practice were they to bring it to the market.

The lack of explicit regulatory barriers to innovation under *MBLAA* may be due to its overall objectives. The legislation sets out the framework for regulating the mortgage brokerage industry, including licensing requirements and the standards of practice for working with consumers. The standards include duties to ensure the suitability of a mortgage for the consumer and appropriately disclosing material risks associated with the transaction.

The legislation itself is technology-neutral regarding how these duties and standards are satisfied and instead focuses more on the outcome that consumers are protected. The regulatory concerns that stakeholders discussed around deploying innovative digital solutions and products are more likely derived from a perceived lack of clarity around whether FSRA will deem their new innovations as satisfying the broad duties and standards outlined under *MBLAA*, or not.

An example of where stakeholders indicated they would appreciate clarification is around the use of digital tools by mortgage brokerages to satisfy their obligations around things like verification and suitability under Ontario Regulation (O. Reg.) 188/08 (Mortgage Brokerages: Standards of Practice). Multiple mortgage brokerages noted that while they are aware that *MBLAA* is technology-neutral and there is no explicit prohibition against using a fully-digital model for satisfying these obligations, they are concerned that FSRA's use of its regulatory toolkit may be biased against digital approaches in practice.

When mortgage innovators develop ideas for new products, services, or business models but are unsure of how FSRA may react to them, they are encouraged to contact the regulator either through the [Innovation Office](#) or their usual point of contact and initiate a discussion. FSRA's door is always open.

Stakeholders also noted the importance of FSRA itself modernizing and innovating, especially around deployment of technology to drive efficiency and transparency. Brokers and lenders both noted that the process of filing annual reports for FSRA could be streamlined by adopting a centralized, digitalized document management system featuring interactive and more insightful status updates, with some stakeholders expressing interest in developing and trialing software to reduce burden on both FSRA and annual filers.

FSRA believes that many concerns around annual filings will be addressed via the rollout of the FSRAForward initiative. The FSRAForward team has been directed to ensure the regulator's new

system has the capability to allow licensees to upload data directly from their system to meet regulatory requirements.

Open banking

Open banking describes a framework where consumers can authorize third parties to access their financial information and transaction data through a secure online channel. It allows financial institutions, not just banks, the ability to standardize their consumer data and, once consumer consent is secured, to share it with interested third parties such as fintechs. These third parties can then use this information to build innovative consumer products and services.

According to the Canada Mortgage and Housing Corporation:

“Open banking may support the critical path for the industry to more broadly achieve fully end-to-end digital mortgages. This framework allows for increased interconnectivity between incumbent financial institutions, technology firms, and fintech challengers. As such, open banking has the potential to enable fully end-to-end digital mortgage experiences by allowing lenders to automatically compile borrower information.”

Open banking runs on open application programming interfaces (APIs). APIs are sets of defined rules that govern communication between computers and/or applications. They function as intermediary layers between applications and web servers that process data transfer between systems.

Open APIs are publicly-available APIs that provide developers with programmatic access to a proprietary software application or web service and typically have three main characteristics:

- they are available for use by developers and other users with relatively few restrictions
- they are typically backed by open data that is freely available for everyone to use and republish as they wish, without restrictions from copyright, patents, or other mechanisms of control
- they are based on an open standard

Stakeholders described the importance of open APIs and the need for data standardization across the industry, with new entrants focused on automating mortgage application processes and accelerating standardized record-keeping.

Open APIs as part of an open banking system could change the current dynamic where Canadians tend to default to a handful of major banking options that control their banking data, largely because switching to different banks and porting their banking data over is prohibitively difficult. Some stakeholders noted that proprietary back-end infrastructure can stifle front-end innovation in the sector, while open APIs could lower costs and foster efficiency with innovative brokerages using digital tools to offer greater choice, faster processes, and better rates.

One potential area for innovation is in using open APIs to simplify the mortgage application process, which some stakeholders characterized as somewhat time-consuming for consumers because it demands that they submit data and information ad hoc. This information resides in a few large databases (Canada Revenue Agency, banks and other major financial institutions, etc.), meaning that this burden could be solved by allowing mortgage applicants to consent to retrieval of their information by lenders and brokers from these databases using open APIs.

Stakeholders also highlighted that this form of direct verification could help prevent fraud in the mortgage application process, be a catalyst for greater efficiency in a digital world, and benefit the Canada Revenue Agency by allowing it to see if disclosed taxable income matches stated incomes for mortgage application purposes.

The barriers to this approach are primarily mistrust around data security, the lack of capacity of smaller firms to handle large data sets, and a lack of clarity around benefits and certainty for mortgage brokerages and borrowers. Stakeholders are convinced that applicants will choose convenience and benefits if they are apparent, but also caution that if applicants are unclear of the convenience and benefits to the consumer the focus will be more on what they are 'losing'.

Stakeholders noted that given the emerging nature of Canada's impending open banking system, industry has a desire for greater regulatory certainty and public policy parameters around open banking, not less. The message FSRA received was that it should proactively be involved in shaping the emerging Canadian open banking system as it pertains to financial services given the likelihood that its development will have profound effects on Ontario's mortgage brokering sector.

Licensing

Multiple stakeholders mentioned that an inefficient licensing process can impede innovation in the sector and impose unnecessary costs. They stress that it is critical for firms to have certainty and efficiency around the licensing process due to the significant opportunity cost of spending time navigating the process rather than focusing on the actual business of the brokerage.

Stakeholders raised some ideas for improving licensing. Two general themes raised were:

- a desire for greater transparency over the licensing decision process
- allowing more self-service to expedite non-controversial licensing decisions.

One idea that was raised by stakeholders was for FSRA to develop more specialized, function-focused licensing requirements to allow licensees to perform specific functions quickly while waiting for their ‘full’ licensing to be approved.

Stakeholders also noted that the licensing regime should do a better job of reflecting the varied roles, duties, and advice of agents and brokers. This concern was reflected under Recommendation #2 of the legislative review of *MBLAA* titled “Protecting and Modernizing Ontario’s Mortgage Broker Industry” and was the subject of a consultation on how FSRA can support the government’s direction to introduce new licensing classes for mortgage agents in Ontario and to enhance education and experience requirements for the mortgage brokering sector.

Following on from this consultation, FSRA has released [Interpretation and Approach Guidance](#) outlining the new licensing classes. The Guidance reflects the input FSRA received from the consultation and introduces enhanced education for all brokers and for any agent who wants to hold a Level 2 agent licence. These new licensing classes come into effect on April 1, 2023.

Another idea raised was that licence status verification could be improved, with lenders currently doing this ad hoc rather than having a central, instant method of doing so. Lenders can currently only view licence status manually by visiting FSRA’s website and conducting a licence search. Given the number of submissions lenders receive, this process creates a significant administrative burden.

One fix that was proposed was the creation of an automated licence status verification tool where lenders can input licensee information from individuals who have submitted applications. This repository would interface with all provincial registrars daily to verify a licensee's status. If there was a change in a licensee's status, the repository would send an automated notification to all lenders working with the individual in question.

Licensing is a priority for FSRA in its FSRAForward initiative, and interim updates to processes and systems have been made to address licensing issues. FSRA's new Licensing Compliance Unit is part of FSRA's broader plan to increase licensing efficiency. FSRA has made some progress on this front, including:

- making it faster and easier to access licensing information and services by automating processes or launching online portals that licensees can use at their convenience
- reducing service outages by improving the stability of its systems
- being transparent and keeping the industry informed about service levels by posting weekly application review status updates and announcing service standards every quarter

Strong public engagement goes a long way to generating excitement and goodwill, which made the consultation on the new licensing classes all the more vital. As always, FSRA is committed to ensuring that the sector is well-apprised of its work to make licensing more efficient and adaptive to industry needs and realities.

Mortgage Digitalization and Test and Learn Environments (TLEs)

A mortgage-focused TLE does not currently exist. Despite this, multiple stakeholders have expressed interest in advising on implementing, and potentially participating in a future mortgage-focused TLE in order to test innovative new mortgage products in a regulatory sandbox environment. These stakeholders outlined that such a TLE should be digitalization-themed with a focus on open APIs, digital notarization, and other digital solutions.

Stakeholders noted that there are fully-digital, end-to-end digital mortgage models operating in comparator international jurisdictions like the United States that are presumed by some participants in Ontario's mortgage brokering sector to be prohibited under *MBLAA* and its associated regulations.

Under some of these digital models, applicants with straight-forward borrower profiles can use apps to go from application to full approval in a matter of minutes rather than days or weeks. Such models claim to provide consumers with greater flexibility and agility in navigating a fast-paced, competitive real estate market.

Stakeholders encouraged FSRA to clarify its position on these AI-driven, fully-digital models with attention to whether they are generally permissible under the current framework and, once adopted, what responsibilities and liabilities would exist for human officers with regard to harm flowing from AI decision-making. Testing these questions and exploring what such digital mortgage models could look like in Ontario was outlined as a potentially appropriate use of FSRA's TLEs.

Parsing responsibilities and liability flowing from AI decision-making is a complicated issue due to the lack of statutory and common law in this regard, with the state of play likely to be in flux for the foreseeable future as AI decision-making becomes more autonomous and pervasive.

Despite this, stakeholders noted that eventually FSRA may have to explore what liability directors and officers of mortgage brokerages would face under subsections 48(5) and 48(6) of *MBLAA* if they "... directed, authorized, assented to, acquiesced in, or participated in the commission of the offence, or who failed to take reasonable care to prevent the corporation from committing the offence" where the offence was caused by AI decision-making. This may be increasingly pressing as AI decision-making becomes more autonomous and opaque to directors and officers.

Regarding the utility of using a potential FSRA TLE to facilitate mortgage brokering innovation, stakeholders stressed that firms' participation in TLEs will depend on the value proposition for innovators. Some also indicated a desire to receive regulatory advisory or incubation services, or some other form of tangible, significant benefits for participation in FSRA TLEs.

Conclusion

This Opportunities Report provides a summary of what FSRA has heard from stakeholders about barriers and opportunities for innovation in the mortgage brokering sector. The regulator continues to work internally on researching the views and ideas expressed during these consultations in order to confirm where the Innovation Office can follow up with further initiatives to support mortgage brokering innovation.

In the meantime, the Innovation Office sees an opportunity for FSRA to actively champion innovation and play a role in supporting the sector's innovators.

In keeping with the 'outside-in' approach to supporting innovation, FSRA remains committed to open dialogue with the mortgage brokering sector. The enthusiasm and excitement with which stakeholders shared their ideas and engaged when called upon has not gone unnoticed. FSRA looks forward to continuing these discussions and encourages stakeholders to reach out to the [Innovation Office](#) with their innovation-related comments and questions.

FSRA is particularly interested in your thoughts on the following questions:

- What innovations and trends are you seeing in the mortgage brokering or mortgage administration business that could benefit consumers or improve business efficiency for industry players?
- What are the consumer benefits that are intended for these innovations and trends?
- What notable consumer risks are foreseeable from implementation or embrace these innovations and trends?
- Is Ontario's regulatory environment currently conducive to the adoption of these innovations or trends? If not, what barriers do you see?
- Would your firm have interest in participating in a FSRA Test and Learn Environment to pursue an innovation opportunity, and if so, what sort of work would you want to pursue?