

Guidance

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Mortgage Agent and Mortgage Broker Licensing Suitability

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Purpose

This Guidance outlines the Financial Services Regulatory Authority’s (“FSRA’s”)^[1] interpretation of licensing suitability requirements under the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (MBLAA) and its regulations and FSRA’s approach to assessing an applicant’s, mortgage agent’s or mortgage broker’s suitability to hold a mortgage agent or mortgage broker licence.

The Guidance is a reference for applicants, prospective applicants, mortgage agents and mortgage brokers to understand how past and current conduct may affect their suitability to hold a mortgage agent or mortgage broker licence.

For mortgage brokerages and principal brokers, it serves as a guide for screening applicants, mortgage agents and mortgage brokers for suitability and what FSRA considers to be a reasonable system for the oversight of broker and agent compliance.

Scope

This Guidance applies to:

- licensed mortgage agents and brokers, including principal brokers

¹ Both the Chief Executive Officer (“CEO”) of FSRA and FSRA may exercise regulatory authority under the *Act*. However, for the purposes of this Guidance, reference will only be made to FSRA as the CEO exercises such authority in his capacity as FSRA’s chief executive (and not in his personal capacity) and may delegate authority to FSRA employees, as permitted by s. 10(2.3) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the “*FSRA Act*”).

- applicants for a mortgage agent or mortgage broker licence
- mortgage brokerages

This Guidance affects the following stakeholders:

- consumers

In this Guidance,

- “agent” refers to a mortgage agent
- “broker” refers to a mortgage broker
- “brokerage” refers to a mortgage brokerage, and all such terms are defined in the MBLAA

Rationale and background

Assessing suitability is a fundamental control to agent and broker licensing. Screening applicants and licensees for suitability helps protect consumers. It ensures that an agent’s and broker’s integrity, independence and competence are considered in addition to educational and technical qualifications.

In assessing suitability, FSRA reviews the past and current professional, business and financial conduct and other activities of applicants, agents and brokers. This review helps FSRA assess the risk that a licensed agent or broker will not comply with requirements, commit prohibited acts, or act in ways that lead to unfair outcomes for consumers (i.e., borrowers, lenders and/or investors).

FSRA relies on brokerages to screen and monitor their licensed staff on an ongoing basis. FSRA holds brokerages and principal brokers accountable for these obligations. This Guidance provides FSRA’s interpretation of brokerages’ and principal brokers’ responsibilities. Brokerages have flexibility in deciding how they comply with the outcomes-focused requirements outlined in the interpretation section of this Guidance.

The “Interpretation” section of this Guidance outlines FSRA’s interpretation of:

- suitability requirements under the MBLAA
- circumstances that may lead to suitability concerns
- key factors FSRA considers in assessing the suitability of applicants, agents and brokers

The “Approach” section of this Guidance outlines FSRA’s supervisory process for assessing suitability.

Principles

FSRA’s approach to assessing licensing suitability is:

- **Consumer-centric:** FSRA’s approach to regulating individuals and entities focuses on the impact on consumers.
- **Risk-based:** FSRA directs its resources to the regulated individuals and entities that pose the highest risk of harm. FSRA’s risk assessment considers the size, complexity and nature of the regulated entity, and where non-compliance or the inability to achieve the desired outcomes will result in the most harm to consumers or pose the greatest threat to FSRA’s ability to execute against its statutory objects.

Interpretation

Licensing suitability under the MBLAA

In Ontario, “a person who solicits for real property loans, provides borrower information to potential lenders, assesses borrowers, negotiates or arranges mortgages for others, or solicits, buys, sells, exchanges mortgages for themselves or others”^[2] is required to be licensed as an agent or broker in Ontario authorized to deal or trade in mortgages for compensation.^[3] Licensed

² MBLAA, s. 2, 3.

³ MBLAA, s. 8(2), s. 9(2).

agents and brokers must meet requirements established under the MBLAA, its regulations, and FSRA rules, including the requirement that an agent or broker be suitable to hold a licence.^[4]

Mortgage brokerage responsibilities regarding licensing suitability of authorized individuals

FSRA assesses whether applicants, agents and brokers are suitable for licensing in accordance with the MBLAA, its regulations, and FSRA guidance and rules, and takes appropriate action where they are not suitable. Brokerages and Principal Brokers also have legal obligations to screen and monitor agents and brokers for suitability. These obligations include:

- screening applicants to ensure they are suitable to act as agents and brokers^[5]
- establishing and implementing policies and procedures that are reasonably designed to ensure that the brokerage and its brokers and agents comply with the MBLAA^[6]
- reporting to FSRA if the brokerage has reasonable grounds to believe that an agent or broker who acts on its behalf is not suitable for licensing^[7]

FSRA has broad authority to determine matters that are relevant to whether a mortgage agent or broker is suitable to be licensed under s. 14(1) and 16(4) of the MBLAA.

Under s. 14(1) and s. 16(4) of the MBLAA, FSRA issues or renews a licence to applicants who satisfy the requirements for licensing, including whether the applicant is suitable to be licensed. If FSRA believes, on reasonable grounds, that an applicant, agent or broker is not suitable to be licensed, FSRA may refuse, revoke or suspend^[8] the individual's licence.^[9]

⁴ MBLAA, s. 14(1); Ontario Regulation (O. Reg.) 409/07, s. 10.

⁵ O. Reg. 188/08 (Mortgage Brokerages: Standards of Practice), s. 43(1)-(3).

⁶ O. Reg. 188/08, s. 40(1) and O. Reg. 410/07, s.2(1) and s.3.

⁷ O. Reg. 188/08 (Mortgage Brokerages: Standards of Practice), s. 43(3).

⁸ MBLAA, s. 18(1).

⁹ FSRA may offer to issue a licence with conditions or impose conditions on an existing licence where suitability concerns can be mitigated.

14(1): “The Chief Executive Officer shall **issue** a licence to an applicant who satisfies the prescribed requirements for the licence **unless the Chief Executive Officer believes, on reasonable grounds, that the applicant is not suitable to be licensed having regard to such circumstances as may be prescribed and such other matters as the Chief Executive Officer considers appropriate.**” [emphasis added]

16(4): “The Chief Executive Officer shall **renew** the licence of an applicant who satisfies the prescribed requirements for renewal of the licence **unless the Chief Executive Officer believes, on reasonable grounds, that the applicant is not suitable to be licensed having regard to such circumstances as may be prescribed and such other matters as the Chief Executive Officer considers appropriate.**” [emphasis added]

In addition to focusing on the applicant/registrant, FSRA may also sanction a brokerage and its principal broker where they have poor or failed to follow policies and procedures, which resulted in an inability to appropriately vet/supervise applicants/licensees or to report to FSRA when learning that a person is unsuitable to hold a licence.

Ontario Regulation (O. Reg.) 409/07: Mortgage Brokers and Agents: Licensing under the MBLAA sets out qualifications for licensing and circumstances that FSRA considers when assessing suitability. These include, among other things, whether^[10]:

- the individual’s past conduct^[11] suggests reasonable grounds to believe that they will not deal or trade in mortgages according to the law and with integrity and honesty
- the individual is carrying on activities that do not comply or will not comply with the MBLAA or its regulations if the individual is licensed
- the individual has made a false statement or has provided false information to FSRA with respect to the application for the licence

¹⁰ O. Reg. 409/07, s. 10.

¹¹ In this Guidance, conduct means any action, behaviour or occurrence, past or present, whether as a licence holder or not.

Further, s. 14(1) and s. 16(4) of the MBLAA allow FSRA to rely on “such other matters as the Chief Executive Officer considers appropriate”, providing FSRA with broad discretion in assessing licensing suitability for agents and brokers, informed by FSRA’s objects in the *FSRA Act*. Such broad discretion in assessing licensing suitability is necessary for FSRA to effectively satisfy its statutory objects and to quickly adapt to change and innovation in the mortgage sector, while protecting consumers.

Suitability is an ongoing requirement under the MBLAA. FSRA assesses suitability when a new application for licensing is submitted, when a licence renewal or reinstatement is sought, and at any time FSRA deems appropriate.^[12]

FSRA’s assessment of suitability is also guided by its statutory mandate

FSRA’s assessment of suitability is informed by its statutory mandate, including to:

- protect the rights and interests of consumers
- contribute to public confidence in the mortgage brokering sector
- promote high standards of business conduct
- deter deceptive or fraudulent conduct, practices and activities; and
- co-operate and collaborate with other regulators.^[13]

FSRA prioritizes protecting the public and enhancing public confidence in the sector when determining whether an applicant should be granted a licence and whether an agent’s or broker’s licence should be revoked.

¹² MBLAA, s. 13(1), 16(4) and s.18(1).

¹³ FSRA Act, s. 3(1) and s. 3(2).

Misconduct impacts mortgage agent, mortgage broker and applicant suitability for licensing

In assessing an applicant's, agent's or broker's suitability, FSRA will consider whether the individual's conduct or activities, past or present, may make them unsuitable to be licensed. Conduct or activities that create a risk that an agent or broker may fail to comply with the law or to treat customers fairly, contrary to legal and regulatory obligations, may demonstrate that an applicant, agent or broker is not suitable for licensing.

The following are examples of conduct and circumstances that may make an applicant, agent or broker unsuitable. They include, without limitation:

- criminal charges, convictions or guilty pleas (ongoing, pending or past)
- breaches of laws, regulations or rules administered by FSRA or other regulatory or licensing bodies (particularly if there are ongoing, pending or past regulatory enforcement actions, sanctions, investigations or proceedings)^{[14],[15]}
- bankruptcy, consumer proposals or other insolvency matters (ongoing or previously discharged)
- acting in a manner inconsistent with FSRA Interpretation Guidance, including any harmonized multi-jurisdictional principles/guidance/code that FSRA has adopted¹⁶ through its Guidance (e.g., the [Mortgage Broker Regulators' Council of Canada's \(MBRCC's\) Code of Conduct for the Mortgage Brokering Sector](#), where any requirements align with the MBLAA, regulations or [FSRA Rules](#))
- making false statements or providing false information (including nondisclosure on an application), or other dishonesty to FSRA

¹⁴ Including fines and other monetary penalties.

¹⁵ Including federal, provincial, municipal or other regulatory bodies.

¹⁶ [Mortgage Broker Regulators' Council of Canada Code of Conduct for the Mortgage Brokering Sector](#).

- failure to diligently carry out the individual's duty to the authorizing brokerage — for example, an agent or broker must not do or omit to do anything that might reasonably be expected to result in the brokerage contravening or failing to comply with a requirement established under the MBLAA
- any other behaviour relevant for the purposes of assessing licensing suitability

[Appendix A](#) provides more detail about the type of conduct that may demonstrate that an applicant, agent or broker is not suitable for licensing.

Key factors in FSRA's framework for assessing the impact of conduct and activities on licensing suitability for applicants, agents and brokers

When FSRA becomes aware of conduct and circumstances that are relevant to licensing suitability, FSRA evaluates the impact of the conduct on licensing suitability according to its interpretation outlined in this Guidance, having regard to the key factors, which are provided in [Appendix B](#).

FSRA may consider additional factors, and all factors are weighed based on available evidence to ensure that the decision is based on reasonable grounds. A combination of circumstances may provide reasonable grounds to support a determination that an applicant is unsuitable – for example, concerns regarding an individual's disciplinary record with another regulator may be compounded by a failure to provide full disclosure to FSRA at the time of licensing.

Conduct that makes an applicant, agent or broker unsuitable may result in revocation, suspension or refusal of a licence, or the imposition of licensing conditions. It may also amount to contraventions of the MBLAA, its regulations and/or FSRA rules. This could result in an administrative monetary penalty, a provincial offence charge, or another sanction, in addition to a licensing action.^[17]

¹⁷ FSRA publishes [Enforcement Actions](#) as outlined in FSRA's Guidance: [Transparent Communication of FSRA Enforcement Action](#).

False statements or false information

The obligation to complete a licensing application truthfully is a fundamental part of the licensing process. A false statement or false information (including nondisclosure on an application), or other dishonesty to FSRA in the application is a basis for FSRA to determine that an applicant, agent or broker is not suitable.^[18]

The questions FSRA asks on mortgage agent and broker licensing applications are relevant to suitability, and the answers to those questions play an important role in FSRA's decision regarding whether to issue a licence. Accordingly, the onus is on applicants to ensure their application fairly and transparently discloses all matters which may be of interest to FSRA in considering a licensing application (in particular, any matters covered by this Guidance), and applicants should take great care in providing information to FSRA and clarify any questions they do not understand.

Where there is false or misleading information or a material omission on a licensing application or other information provided to FSRA, FSRA will, in assessing the impact on suitability, consider factors such as:

- the nature of the information/omission
- whether it was intentional
- the explanation provided
- the circumstances in which the statement was made

FSRA generally has reasonable grounds to believe an applicant is not suitable if the applicant made a material misstatement or omission in the application for the licence or other materials provided to FSRA. FSRA may conclude that any misrepresentations or omissions in the licensing application were intentional or were made with reckless disregard for the truth. FSRA considers all of the information requested in its licensing application to be material.

¹⁸ O. Reg. 409/07, s. 10.

Mortgage brokerage statutory obligations with respect to agent and broker licensing suitability

Brokerages must take reasonable steps to satisfy themselves that the individuals they authorize to deal or trade in mortgages on their behalf are eligible to be licensed as an agent or broker.^[19]

Principal brokers are responsible for initiating and renewing each of their agents' and brokers' licences, and for verifying their suitability for licensing.^[20]

A brokerage is required to report to FSRA if it believes there may be reasonable grounds that a broker or agent is not suitable to be licensed under the MBLAA.^[21]

These statutory obligations rest with the brokerage and cannot be avoided through sub-contracting or delegation. Brokerages are required under s. 40(1) of O. Reg. 188/08 to establish and implement policies and procedures that are reasonably designed to ensure that the brokerage and every broker and agent who is authorized to deal or trade in mortgages on its behalf complies with the requirements established under the MBLAA.

Principal Brokers are required to review the policies and procedures of the brokerage to determine whether they are reasonably designed to ensure that the brokerage and every broker and agent who is authorized to deal or trade in mortgages on its behalf complies with the requirements established under the MBLAA.^[22]

FRSA interprets that a reasonable step to ensure the brokerage and Principal Broker ensure compliance with the Act, includes having documented policies and procedures, and being able to demonstrate that these communicated/known by Principal Brokers and applicants/registrants.

FSRA interprets that failure to be able to provide documentation to show that the policies were in place and known, and that appropriate procedures were followed, is evidence that the relevant

¹⁹ O. Reg. 188/08, s. 43(1).

²⁰ Principal brokers are required to have effective oversight and controls. This includes ensuring the brokerage has good internal controls and supervision to identify and manage risks arising from the brokerage's and its authorized licensees' dealings with consumers.

²¹ O. Reg. 188/08, s. 43(3).

²² O. Reg. 410/07, s. 3.

brokerage and Principal Broker are not suitable for licensing and may lead to enforcement action including placing conditions on a licence, suspension/revocation of a licence and/or administrative monetary penalties.

FSRA Guidance

This Guidance reflects FSRA's view of agents' and brokers' suitability and related obligations. Brokerages can use this Guidance in screening each agent and broker for suitability.

FSRA considers the circumstances outlined in the Interpretation section of this Guidance (including [Appendices A and B](#)) to be relevant to whether an individual (or entity) is suitable to be licensed as an agent or broker under s. 14(1) of the MBLAA.

In determining suitability, FSRA also considers an agent's or broker's compliance with other applicable FSRA Guidance relevant to suitability. This means brokerages must implement policies and procedures that are designed to ensure its agents and brokers generally act consistently with such FSRA Guidance, including FSRA Guidance adopting the MBRCC [Code of Conduct for the Mortgage Brokering Sector](#).

Approach

Processes and practices

For new applicants, and agents and brokers applying to renew their licence (collectively referred to in this section of the Guidance as “applicants”), FSRA’s approach to assessing licensing suitability includes, but is not limited to, the steps outlined in Table 1 below.

Table 1: Process steps

Process step	Description
1. Principal Broker initiation of licence applications and renewals	Where concerns arise during the licensing application and renewal process, FSRA will advise both the principal broker and broker/agent of these concerns and confirm whether they wish to proceed with the application.
2. Application and eligibility assessment	The initial licensing or renewal application gathers information to enable FSRA to assess whether the applicant meets licensing eligibility criteria. ^[23] FSRA may request additional information or may seek clarity regarding the information that is provided, where applicable.
3. Suitability assessment	For applicants who otherwise meet eligibility requirements, FSRA assesses suitability. Considerations include: <ul style="list-style-type: none"> • relevant circumstances, including those described in the Interpretation section above

²³ O. Reg. 409/07, sections 2, 5 and 9.

Process step	Description
	<ul style="list-style-type: none"> • available data, including information supplied by applicants • the agent’s or broker’s compliance record while licensed (for renewal applications) or other suitability reviews of licensed agents and brokers • in-depth assessments, as required, which typically involve engagement with the applicant, principal broker and other relevant parties.

4. Disclosure and attestation

When an applicant discloses information that affects suitability, such information should fully and accurately detail the surrounding circumstances, including when the conduct occurred, what led to the conduct, and the corrective steps undertaken. When FSRA identifies undisclosed misconduct, FSRA may ask the same questions about the circumstances and require an explanation of the nondisclosure. These steps delay the application process.

Nondisclosure, in and of itself, may negatively impact suitability and may result in a licence refusal or revocation and/or other sanction, including an administrative monetary penalty, even if the undisclosed information would not have resulted in licence refusal or revocation or other sanction if it had been disclosed.

The questions on the licensing application are intended to facilitate FSRA’s ability to obtain full disclosure and to help applicants avoid omissions, partial disclosures and/or false statements. Applicants:

Process step	Description
	<ul style="list-style-type: none"> • review, confirm, and attest to the accuracy and completeness of the responses provided • are informed that false statements are chargeable offences • will be asked to acknowledge that any false or misleading responses could result in the application being refused and/or be the object of prosecution • will be asked to provide full and complete information to FSRA, regardless of whether the information has previously been provided to the brokerage
<p>5. Actions resulting from suitability assessments</p>	<p>If, as a result of the suitability assessment at the initial or renewal licence application stage, FSRA believes on reasonable grounds that the applicant is not suitable to hold a licence, FSRA may take action to refuse or impose conditions on the licence.</p> <p>FSRA may, in its discretion, advise the applicant of the decision and offer the opportunity to voluntarily withdraw the application.</p> <p>In some cases, FSRA may also seek to impose monetary penalties or take other enforcement action. This can be instead of or in addition to licensing action.</p> <p>If FSRA issues a notice of proposal to refuse or impose conditions on a licence, the applicant can request a hearing by the Financial Services</p>

Process step	Description
	<p>Tribunal. FSRA will advise the applicant of the process for requesting a hearing.^[24]</p> <p>Failure by a principal broker to conduct adequate suitability assessments may be a result of poor policies and procedures impacting the ability to appropriately vet/supervise applicants/licensees or to report to FSRA when learning that a person is unsuitable to hold a licence. This may negatively impact suitability and may result in sanctions by FSRA against the brokerage and/or principal broker.</p>

6. Suitability assessment during licensing term

A licensee’s suitability may be reassessed if FSRA becomes aware of potential misconduct (including false or misleading statements/information or material omission in a licensing application or other materials to FSRA). If FSRA believes on reasonable grounds that the individual is no longer suitable to hold the licence, FSRA may take enforcement action to revoke, suspend or impose conditions on the agent’s or broker’s licence. Where applicable, FSRA may also seek to impose monetary penalties or take other enforcement action.

Effective date and future review

This Guidance became effective on [TBC] and will be reviewed no later than [TBC].

²⁴ MBLAA, s. 21(2).

About this Guidance

This document is consistent with [FSRA's Guidance Framework](#).

Interpretation Guidance sets out FSRA's view of requirements under its legislated mandate (i.e., legislation, regulations and rules), so that non-compliance can lead to enforcement or supervisory action.

Approach Guidance describes FSRA's internal principles, processes and practices for supervisory action and application of CEO discretion.

References

- FSRA Guidance: Transparent Communication of FSRA Enforcement Action [No. GR0011APP](#)
- FSRA's website: [Enforcement actions](#). A list of cease and desist orders, enforcement actions and warning notices.
- [FSRA Guidance: Mortgage Broker Regulators' Council of Canada Code of Conduct for the Mortgage Brokering Sector](#)
- [Mortgage Broker Regulators' Council of Canada's \("MBRCC"\) Code of Conduct for the Mortgage Brokering Sector](#)

Appendix A

Suitability concerns – the following are examples of conduct or circumstances that may impact suitability.

FSRA will review such concerns to determine the impact on suitability following the assessment factors identified in the [Interpretation section](#) and in [Appendix B](#).

- Criminal charges and/or convictions (inside or outside of Canada)
 - criminal charges or convictions or guilty pleas
 - ongoing proceedings under the *Criminal Code* of Canada or the *Provincial Offences Act* or in any jurisdiction
- History of misconduct at FSRA or other regulatory or licensing bodies^[25]
 - enforcement action or regulatory sanctions
 - fines or other monetary penalties
 - ongoing investigations or proceedings
 - material omissions or false information provided to a regulator
 - other conduct relevant to suitability
- Bankruptcy or insolvency matters, including consumer proposals
 - ongoing

²⁵ FSRA considers any enforcement action taken against the applicant, including administrative monetary penalties (AMPs) and/or licensing suspensions. Participation in unlicensed activity is also considered.

- discharged or fully performed
- Failure to adhere to FSRA guidance, including:
 - Mortgage brokering sector guidance
 - cross-sectoral guidance
 - harmonized multi-jurisdictional guidance adopted by FSRA
- False Continuing Education certificates provided to FSRA or another regulator
- Making a material omission or providing a false or misleading statement or information to FSRA

Appendix B

Key factors in FSRA’s framework for assessing the impact of conduct and activities on suitability

FSRA evaluates conduct against key factors to determine if the applicant, agent or broker is suitable to be licensed. The factors and associated considerations are noted below.^[26]

Assessment factor	Considerations
Extent to which the conduct calls into question the integrity, honesty or law-abiding nature of the applicant, agent or broker	<ul style="list-style-type: none"> • This factor is critical in assessing suitability. It indicates whether the individual’s past conduct has shown that they will not deal or trade in mortgages in accordance with the law and with integrity and honesty. • Conduct resulting in criminal proceedings or regulatory sanctions, or involving dishonesty or false statements is relevant in assessing the integrity, honesty or law-abiding nature of applicants, agents and brokers.^[27]
Closeness of the conduct to the activities the individual would be engaged in as a mortgage agent or mortgage broker	<ul style="list-style-type: none"> • Prior misconduct involving financial transactions, fraud, forgery, dishonesty or the provision of false information is relevant to mortgage brokering activities, and will have a significant impact on suitability for licensing.

²⁶ FSRA may consider additional factors, and all factors are weighed based on available evidence to ensure that the decision is based on reasonable grounds. A combination of circumstances may provide reasonable grounds to support a determination that an applicant is unsuitable – for example, concerns regarding an individual’s disciplinary record at another regulator may be compounded by a failure to provide full disclosure to FSRA.

²⁷ See Appendix A for additional detail regarding the type of conduct that may demonstrate that an applicant or agent is not suitable for licensing.

Assessment factor	Considerations
	<ul style="list-style-type: none"> Crimes of a violent or aggressive nature may indicate unsuitability for licensing, particularly where they are repeated and indicate violence, anger, or a disregard for others.^[28] Even where criminal or regulatory misconduct does not relate closely to the regulated activities, an applicant with a history of not following the law will likely be found not suitable to hold a licence.^[29]
<p>A consistent and prolonged pattern of reformed or redeeming behaviour by the applicant since the conduct occurred</p>	<ul style="list-style-type: none"> A significant factor in assessing whether an applicant is suitable, despite past misconduct, is whether the applicant has demonstrated remorse and understanding regarding their past misconduct.^[30] A lack of remorse and/or minimizing of the misconduct does not show a pattern of reformed or redeeming behaviour.^[31]
<p>Inadvertent nature of the conduct</p>	<ul style="list-style-type: none"> In most cases, individuals will be considered responsible for their misconduct. Wilful disregard or recklessness do not excuse misconduct and may indicate incompetence.

²⁸ *Alves v Ontario (Superintendent Financial Services)*, 2008 ONFST 10.

²⁹ *Bajwa v Ontario (Superintendent Financial Services)*, 2019 ONFST 6, at para 33.

³⁰ *Vettese v Ontario (Superintendent Financial Services)*, 2016 ONFST 20, at para 47(i).

³¹ *Joshi v Ontario (Superintendent Financial Services)*, 2015 ONFST 16, at para 22(i); *MSF Group Inc v Ontario (Superintendent Financial Services)*, 2016 ONFST 16, at para 54.

Assessment factor	Considerations
	<ul style="list-style-type: none"> • However, evidence to demonstrate that the prior misconduct was not intentional will be considered, and may support a determination of suitability for licensing with appropriate supervision and measures to protect the public.^[32] • Where there is a history of insolvency, FSRA will consider whether the circumstances lessen the impact on suitability.
<p>Length of time since conduct occurred</p>	<ul style="list-style-type: none"> • Length of time since the conduct occurred is considered alongside other factors, such as seriousness of the conduct and the existence of redeeming behaviour. • Any misconduct will be weighed and considered. Where time has passed, conduct in the intervening period will be relevant. (See “reformed or redeeming behaviour”, above.) • An applicant or licensee who has had a FSRA or Financial Services Commission of Ontario (FSCO) licence refused or revoked will only be considered for licensing if they are able to demonstrate that they are now suitable with reference to the original concerns. Any sanctions imposed or terms established in a prior settlement with FSRA must also be satisfied.

³² *Malhotra v Ontario (CEO of FSRA)*, 2020 ONFST 2, at para 35.

Assessment factor	Considerations
<p>Prolonged or repetitive nature of the conduct</p>	<ul style="list-style-type: none"> • Considerations include: <ul style="list-style-type: none"> • Whether the conduct took place over a significant period of time • Whether the conduct was isolated or repeated – for example, multiple instances of misconduct impacting a single victim or conduct that impacted multiple victims^[33] • Multiple or repeated regulatory or criminal offences or charges may indicate unsuitability for licensing. <p>If the conduct was severe, harmful or otherwise impactful, even a single occurrence may lead to an applicant being found unsuitable.</p>

Any unusual and severe pressure the individual was under at the time of the misconduct that would explain the misconduct but is unlikely to reoccur

- Evidence is required to establish that there was unusual and severe pressure that led to the conduct, and that the circumstances that led to the pressure are unlikely to reoccur.
- Where the conduct occurs over a prolonged period, it is less likely that the applicant has been under severe pressure for the entire time.^[34]

³³ *Metro Financial Planning and Dinesh Khanna v Ontario (Superintendent Financial Services)*, 2017 ONFST 4 para 283(b); *Khanna v Ontario (CEO of FSRA)*, 2022 ONFST 10, para 35(b).

³⁴ *Prince v Ontario (CEO of FSRA)*, 2022 ONFST 6, para 89(d) and 128.

Assessment factor	Considerations
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The following factors are applicable where past conduct resulted in a regulatory or criminal proceeding or sanction.

The seriousness with which the disciplinary body treated the conduct, as reflected in the severity of the sanction it imposed

- FSRA considers the severity of the sanction or penalty imposed to reflect the seriousness of the misconduct.
 - Penalties such as licence suspension or revocation, or a significant monetary penalty, demonstrate the seriousness of the misconduct.
 - A prison sentence, even if served in the community, reflects serious misconduct.^[35]

The fairness of the process followed in the disciplinary proceeding

- A failure to understand or agree with charges or legal process does not indicate that the process was unfair.^[36]
- A claim that a regulatory process was unfair must be supported by evidence. FSRA will also consider whether the applicant or licensee pursued their procedural rights in the other process.
- FSRA generally will not question the fairness of a prior disciplinary proceeding if the proceeding is concluded and outside the appeal period during which the applicant or licensee could have raised concerns.

³⁵ *Martin v Ontario (Superintendent Financial Services)*, 2016 ONFST 2, para 32.

³⁶ *CDN Financial and Mortgages Inc. v. Ontario (Superintendent Financial Services)*, 2014 ONFST 10, para 26.