



***The Financial Services Tribunal
Annual Report***

2006-2007



May 25, 2007

Honourable Carol Taylor
Ministry of Finance
Room 153, Parliament Buildings
Victoria, BC V8V 1X4

Dear Minister Taylor:

I am pleased to submit to you the Annual Report of the Financial Services Tribunal ("FST") for the fiscal year beginning April 1, 2006 and ending March 31, 2007. This report is submitted pursuant to section 242.1 (5) (d) of the *Financial Institutions Act*.

Sincerely,

J. Stewart Cunningham
Chair, Financial Services Tribunal

The Mandate of the FST

The Financial Services Tribunal (“FST”) hears appeals from institutions and individuals who want to contest enforcement decisions made by the:

- Insurance Council of British Columbia;
- Real Estate Council of British Columbia;
- Superintendent of Real Estate;
- Superintendent of Pensions;
- Registrar of Mortgage Brokers; and
- Superintendent of Financial Institutions.

The FST only has jurisdiction to hear appeals under the following British Columbia statutes*:

Financial Institutions Act ***Credit Union Incorporation Act***
Mortgage Brokers Act ***Pension Benefits Standards Act***
Real Estate Services Act ***Real Estate Development Marketing Act***

Appeals to the FST are governed by the statutes (above) that provide for an appeal to the FST, and by the *Administrative Tribunals Act*.

The *Financial Institutions Act* restricts the appeals from decisions of the FST. The statute provides that a decision of the FST, on a matter in respect of which the FST has exclusive jurisdiction, is final and conclusive and is not open to question or review in any court.

The FST does not hear appeals on certain decisions taken by the Financial Institutions Commission (“FICOM”). Certain FICOM decisions which are not appealable to the FST may be appealed to the BC Supreme Court.

The Appointment of FST Tribunal Members

On June 1, 2004, the Lieutenant Governor of British Columbia, the Honourable Iona Campagnolo, PC, CM, OBC, appointed four Tribunal Members to the FST:

- Dale R. Doan;
- John B. Hall;
- Professor Stanley W. Hamilton; and
- Robert J. Hobart.

Effective May 31, 2006, Mr. Dale Doan was reappointed to the FST for a three year term. Mr. Hobart and Professor Hamilton were reappointed effective April 18, 2007, each for four year terms.

A new Member, Mr. John Savage, was appointed to the Tribunal for a four year term on October 24, 2006.

The FST's Tribunal Members have diverse experience and expertise from academic, professional and regulatory backgrounds.

Appendix 1 contains additional information on the Members of the Tribunal.

The Administration of Appeals



In accord with section 242.1 (5) (c) of the *Financial Institutions Act*, the Chair of the FST has established FST Directives and Practice Guidelines.

The Guidelines set out the process the tribunal expects parties to follow during the course of an appeal. They address issues such as the deadline for filing a Notice of Appeal, the format documents filed at the FST should follow, and other procedural matters.

In response to stakeholder feedback and to ensure that the appeals process is as effective and efficient as possible, the staff of the FST amended the Guidelines in August 2006. These amendments dealt with a number of procedural issues that had arisen during the first years of operation of the FST.

The Guidelines are available on the FST's website at:
<http://www.fic.gov.bc.ca/fst/>

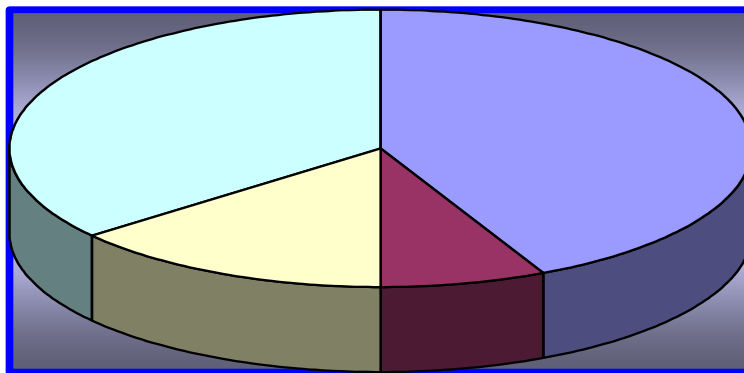
FST Appeals

Fiscal Year 2006-Fiscal Year 2007

Fourteen appeals were filed with the FST between April 1, 2006 and March 31, 2007. Of these 14 cases:

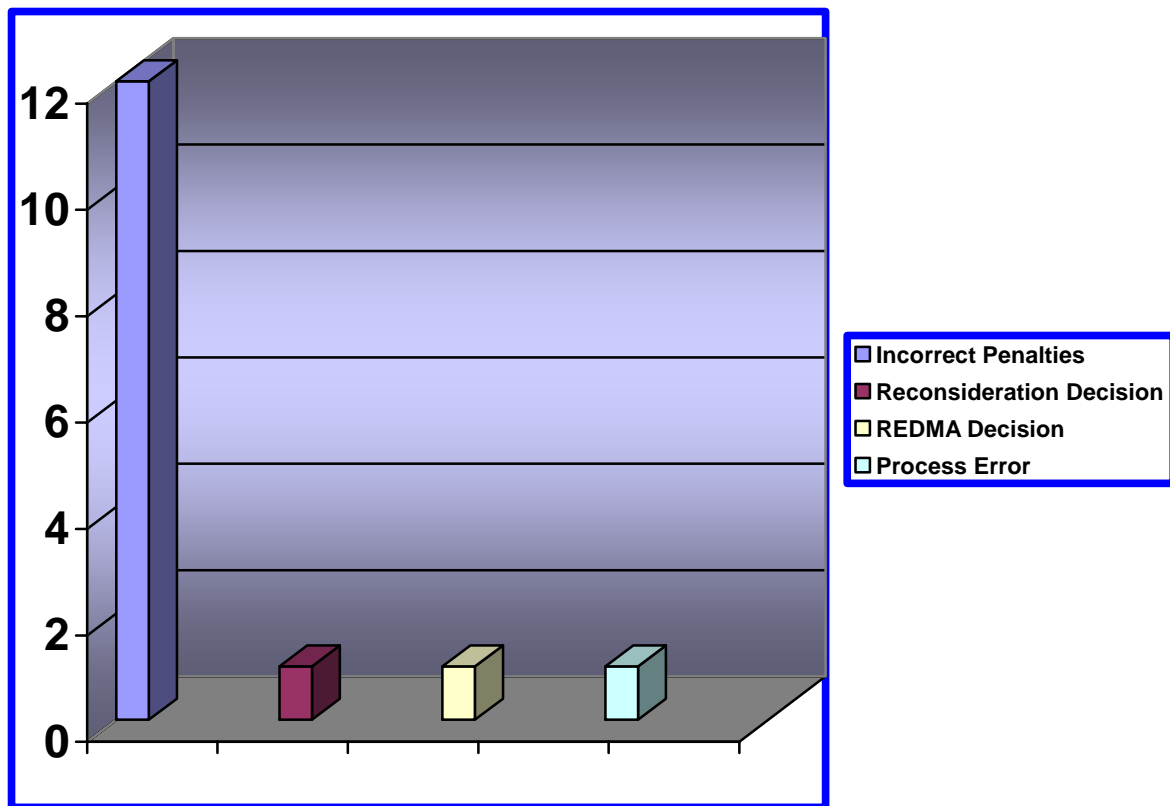
- 6 involve appeals of decisions of the Real Estate Council of BC;
- 1 involves an appeal of a decision of the Superintendent of Real Estate;
- 2 involve appeals of decisions of the Registrar of Mortgage Brokers; and
- 5 involve appeals of decisions of the Insurance Council of BC.

Appeals by Origin - Original Decision-maker



Appeals - By Cause

With respect to the fourteen appeals filed, the issues under consideration included: 12 appeals based primarily on the grounds of incorrect penalties being imposed by the original decision-maker; 1 appeal based on a fundamental error in the lower tribunal hearing process; and 1 appeal of a decision of the Superintendent of Real Estate prohibiting the marketing of property under the *Real Estate Development Marketing Act* (“REDMA”).

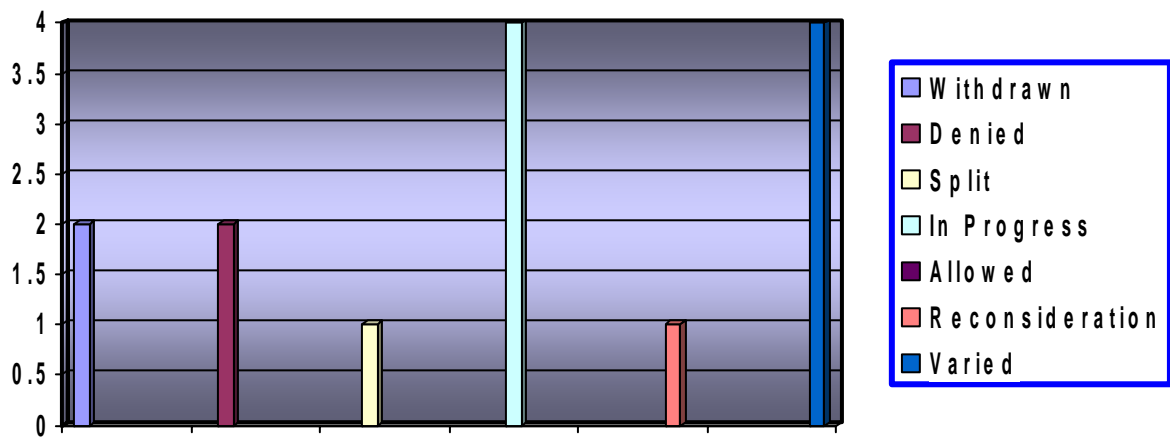


FST Decisions

With respect to decisions in these 14 cases:

- 2 appeals were withdrawn voluntarily by the appellant;
- 2 appeals were denied, in that the FST confirmed the original decision;
- 1 appeal was split, in that one part of the original decision was allowed and one part was denied;
- 1 appeal was sent back to the Insurance Council for Reconsideration;
- 4 appeals resulted in the original decision being varied; and
- 4 cases were in progress as at March 31, 2007.

Appeal Decisions (as at March 31, 2007)



For more information and a profile of the appeal cases, please see Appendix 2 in this report.

FST Operations

The FST is administered by 3 employees on a part-time basis: a Registrar, a Deputy Registrar and an Administrative Assistant. All of these employees spend only part of their time on FST matters, as they both have other duties at the Financial Institutions Commission. The offices of the tribunal are located within the premises of FICOM.

In fiscal 06/07, the FST received \$17,000 in revenues. Expenses for the FST exceeded the FST's revenues by \$135,359.

FST Statement of Financial Performance

(for the fiscal year ended March 31, 2007)

Operating Result	2005/2006*	2006/2007
	- \$	- \$
Recoveries	12,750	17,000
Expenses	(124,286)	(152,359)
Net	(111,536)	(135,359)
Recovery/Expenditure Ratio	(10.3%)	(11.2%)

Direct Expenses	2005/2006*	2006/2007
Salaries and Benefits	78,746	76,286
Travel	31	339
Professional Services	2,561	29,980
Building Occupancy	8,891	10,744
Amortization	2,848	2,538
Information Systems	2,761	3,680
Board Fees and Expenses	22,697	25,071
Chair and Vice Chair Expenses	279	-
Other	5,472	3,721

* These tables reflect actual as opposed to reported costs.

Performance Measures for the Tribunal

To ensure the ongoing efficiency of the tribunal's operations, as data becomes available, the FST has tracked the following performance measures for fiscal years

Performance Measure	Inception to end of FY 2005/06*	FY 2006/07
Number of appeals finalized within 6 months of the filing of the Notice of Appeal	9/19	10*/14 * Two of the fourteen appeals remain open. Counting is not possible at this time.
Number of decisions issued within 45 days of the receipt of the final submission in the appeal	11/19	9*/14 * Two of the fourteen appeals remain open. Counting is not possible at this time.
Number of appeals that required oral hearings or the application of other special circumstances	2/19 1 oral hearing on the standard of review 1 appeal of the FST decision and process to the Office of the Ombudsman of BC	0/14
Number of decisions reviewed pursuant to the Judicial Review Act (Supreme Court of British Columbia)	1/19 Revised - 1 appeal for a judicial review filed after completion of 2005/06 Annual Report	2/14 Settled: One appeal was settled out of court by the FST and the Insurance Council and the Petition to the Court was withdrawn. The parties agreed on procedures for the reconsideration of an appeal at the Insurance Council. Dismissed: One appeal was dismissed by the BC Supreme Court. The appellant subsequently filed an appeal of the BC Supreme Court decision with the Court of Appeal.

Performance Measures for the Tribunal (continued)

Performance Measure	FY 2005/06*	FY 2006/07
Number of decisions upheld by the Supreme Court of British Columbia	-	1/1 One decision upheld. Please see the Judicial Reviews section on the Decisions page on FST website for more information.
Number of decisions overturned by the Supreme Court of British Columbia	-	0/1 No decisions overturned. Please see the Judicial Reviews section on the Decisions page on FST website for more information.

* Please note that appeals are assigned to each fiscal year by date of filing.

Appendix 1

Biographical Information Chair, Vice-Chair and Members

J. Stewart Cunningham, Chair of the Financial Services Tribunal

J. Stewart Cunningham is the former President and CEO of Seaboard Life Insurance Company and its predecessor, Fidelity Life Assurance Company. He is a Fellow of the Canadian Institute of Actuaries, the Society of Actuaries, and an Associate of the British Institute of Actuaries. Mr. Cunningham is an actuarial and management consultant in Vancouver.

Dale R. Doan, Tribunal Member

Dale Doan is a partner in the law firm Cleveland & Doan in White Rock, BC. He has practiced business law for over 24 years, with a preference for secured transactions. Mr. Doan has taken secured transactions cases through all level of courts in Saskatchewan and British Columbia, and has appeared a number of times before the Supreme Court of Canada. Mr. Doan has published widely in areas of secured transactions, business and enforcement law, and was a contributing editor of *The British Columbia Personal Property Security Act Practice Manual*. He has taught Bar Admissions courses for 19 years, and lending law courses for the Canadian Banker's Association and Credit Union Central. In addition, he designed and taught a university law course at Simon Fraser University.

John B. Hall, Tribunal Member

John Hall received his Bachelor of Laws degree from the University of British Columbia in 1980. He then articulated and became an associate with the full-service Vancouver law firm of Alexander, Holburn, Beaudin & Lang. He served as Vice-Chair of the B.C. Labour Relations Board from 1985 to 1987, before returning to private practice as a partner with his former firm.

Mr. Hall was re-appointed to the Labour Relations Board as Associate Chair (Adjudication) in 1992 and was Acting Chair from July to October 1996.

He resigned to begin his current arbitration and dispute resolution practice in 1998. Since then, Mr. Hall has also received a number of part-time appointments administrative tribunals, including the Commercial Appeals Commission, the Liquor Appeal Board and the Public Service Appeal Board. He is presently a mediator with the federal Public Service Labour Relations Board, and a part-time member of the Yukon Public Service Labour Relations Board and the B.C. Financial Services Tribunal.

Many of Mr. Hall's administrative law decisions have been reported nationally since 1985. He was a Director of the Council of Canadian Administrative Tribunals, the founding President and later Director of the B.C. Council of Administrative Tribunals, and has been Secretary of the B.C. Arbitrators Association since 1999. He regularly instructs a wide range of tribunal adjudicators on hearing skills and decision writing.

Stanley W. Hamilton, Tribunal Member

Dr. Stanley W. Hamilton is the Philip H. White Professor Emeritus of Urban Land Economics, Sauder School of Business, University of British Columbia and a member of the Finance Division. Dr. Hamilton has extensive teaching and research experience in the areas of real estate investments and financing, real property assessment and pensions, and is the author of several books, monographs and articles relating to real estate investments and pension investments.

Dr. Hamilton was Chair of the Board of Trustees of the UBC Faculty Pension Plan for 14 years and is past Director of the Bureau of Asset Management at the Sauder School of Business. He continues to act as a consultant in both public and private sector matters relating to real estate and pensions.

Dr. Hamilton is actively engaged in a number of community organizations including the Vancouver Economic Development Commission, the Investment Advisory Committee for the Public Guardian and Trustee of British Columbia, and the Arts Club Theatre Company.

Robert J. Hobart, Tribunal Member

Robert Hobart is a financial services consultant based in Vancouver. He provides policy and strategic advice on the effective regulation of the insurance, securities, credit union and pensions sectors.

Prior to working as a consultant, Mr. Hobart served as the Superintendent of Financial Institutions and CEO of the Financial Institutions Commission and as Superintendent of Real Estate and Registrar of Mortgage Brokers from 1989-2001. Prior to his position at the Commission, Mr. Hobart served in progressively responsible management positions in the BC provincial and federal public service.

As a consultant, Mr. Hobart has provided advisory services to the insurance industry and insurance supervisory agencies in a number of African, Asian, European and North American jurisdictions. He has also provided advisory services to credit union supervisory agencies and to credit union directors and management.

Mr. Hobart is a graduate of the University of Alberta with a Masters Degree in Business Administration.

John Savage, Tribunal Member

John Savage is a lawyer who has been in private practice since 1978 and is a partner in the Victoria firm of Crease Harman and Company. His practice is primarily focused on administrative law, and he has appeared frequently as counsel before administrative tribunals and as appellate counsel.

He has been a frequent lecturer for Continuing Legal Education and is a long-standing editorial board member responsible for the *Real Property Assessment Manual*, the chapter author "Appeal Hearings". Mr. Savage practices before various Administrative Tribunals, has sat as an Adjudicator under the *Canada Labour Code*, is a member of the Employment Standards Appeal Tribunal, and acts as an arbitrator and counsel in private disputes under the *Commercial Arbitration Act*.

Mr. Savage is Honourary Counsel for Scouts Canada in British Columbia, and was recently awarded the Queen's Golden Jubilee Medal for community service. Mr. Savage is a past Executive Director of the Greater Victoria Chamber of Commerce and Victoria Bar Association.

Appendix 2

A Summary Profile of FST Appeal Cases for FY 2006 to the end of FY 2007

Year Received/ Appeal Number	Appellant(s)	Respondent(s)	Act	Issues under Consideration	FST Disposition of those Issues
06-022	Kenneth Scott Spong	Real Estate Council of British Columbia	Real Estate Act	Appeal of a reconsideration hearing decision of the Real Estate Council of British Columbia. The FST ordered a reconsideration of the original Real Estate Council of British Columbia's decision on penalty.	Varied: Penalty for the licensee increased. Original course requirements remain in effect. No costs awarded.
06-023	Donald Tymchuck	Real Estate Council of British Columbia Superintendent of Real Estate (Party by statutory right)	Real Estate Services Act	Appeal of a decision on penalty imposed by the Real Estate Council of British Columbia.	Appeal Denied: The Real Estate Council's original decision was affirmed. Costs Awarded: The Tribunal Member hearing the case determined that the appeal was vexatious and awarded costs to the Real Estate Council.
06-024	Eugenio Pugliese	Registrar of Mortgage Brokers	Mortgage Brokers Act	Appeal of a decision on penalty imposed by the Registrar of Mortgage Brokers.	Appeal Denied: The original decision of the Registrar of Mortgage Brokers was affirmed – registration was denied to the applicant. Judicial Review: Appellant filed a petition to the court appealing the decision of the FST. The appeal was dismissed, but the appellant subsequently filed an appeal of the Supreme Court decision to the Court of Appeal.
06-025	Robert Matick	Registrar of Mortgage Brokers	Mortgage Brokers Act	Appeal of a decision on penalty imposed by the Registrar of Mortgage Brokers.	Split Decision: The Member affirmed the original decision. Judicial Review: Appellant filed a petition to the court appealing the decision of the FST.
06-26	Superintendent of Financial Institutions	Raymond Edward Willie and Special Risk Insurance Brokers Insurance Council of British Columbia	Financial Institutions Act	Appeal of a decision on penalty imposed by the Insurance Council of British Columbia.	Preliminary decision on the admissibility of new pre-existing evidence. Varied: The penalty was increased. The period of suspension of the license was increased. Two new conditions added to the

Year Received/ Appeal Number	Appellant(s)	Respondent(s)	Act	Issues under Consideration	FST Disposition of those Issues
					original Insurance Council order. A new agency requirement (appointment of an arms nominee approved by Council).
06-027	Chandler Developments et al	Superintendent of Real Estate	Real Estate Development Marketing Act	Appeal of a cease marketing decision of the Superintendent of Real Estate.	Appeal voluntarily withdrawn by the appellant on September 2, 2006.
06-028	Superintendent of Financial Institutions	William Craig Blackwood Insurance Council of British Columbia	Financial Institutions Act	Appeal of a decision on penalty imposed by the Insurance Council of British Columbia.	Reconsideration: The appeal was sent back to the Insurance Council with directions on hearing process requirements.
06-029	Superintendent of Financial Institutions	Dana Gabriella Ciocan Insurance Council of British Columbia	Financial Institutions Act	Appeal of a decision on penalty imposed by the Insurance Council of British Columbia.	Varied: The penalty was varied to increase the period of suspension from 2 weeks to 60 days for the licensee.
06-030	Dale Richard Short	Real Estate Council of British Columbia Superintendent of Real Estate (Party by statutory right)	Real Estate Service Act	Appeal of a decision on penalty imposed by the Real Estate Council of British Columbia.	Appeal voluntarily withdrawn by the appellant on November 16, 2006.
06-031	Superintendent of Financial Institutions	Zhongli Wang Insurance Council of British Columbia	Financial Institutions Act	Appeal of a decision on penalty imposed by the Insurance Council of British Columbia.	Varied: The penalty was increased from two weeks to two months.
06-032	Superintendent of Financial Institutions	Yu Xuan Liu Insurance Council of British Columbia	Financial Institutions Act	Appeal of a decision on penalty imposed by the Insurance Council of British Columbia.	Varied: The penalty was increased from two weeks to two months.
06-033	Peter Buchanan	Real Estate Council of British Columbia Superintendent of Real Estate (Party by statutory right)	Real Estate Services Act	Appeal of a decision on penalty imposed by the Insurance Council of British Columbia.	Dismissed: The appeal was dismissed.
07-034	Bella Daniels	Real Estate Council of British Columbia Superintendent of Real Estate (Party by statutory right)	Real Estate Services Act	Appeal of a decision on penalty imposed by the Real Estate Council of British Columbia.	Appeal in progress.
07-035	Tak Kun Fung and Royal Pacific Realty (Kingsway) Ltd	Real Estate Council of British Columbia Superintendent of Real Estate	Real Estate Services Act	Appeal of a decision on penalty imposed by the Real Estate Council of British Columbia.	Appeal in progress.