

FINANCIAL SERVICES TRIBUNAL



**Annual Report
2007-2008**





April 18, 2008

Honourable Carole Taylor
Minister of Finance
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, 2007 and ending March 31, 2008. This report is submitted pursuant to section 242.1 (5) (d) of the *Financial Institutions Act*.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. S. C. Cunningham". The signature is fluid and cursive, with the first name "J. S. C." written in a more formal, blocky style and the last name "Cunningham" in a highly stylized, cursive script.

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 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 a one year term.

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, legal, financial services 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 FST 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, FST Registry staff amended the FST Guidelines in February 2008. These amendments dealt with a number of procedural issues and legislative changes to the *Administrative Tribunals Act*.

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

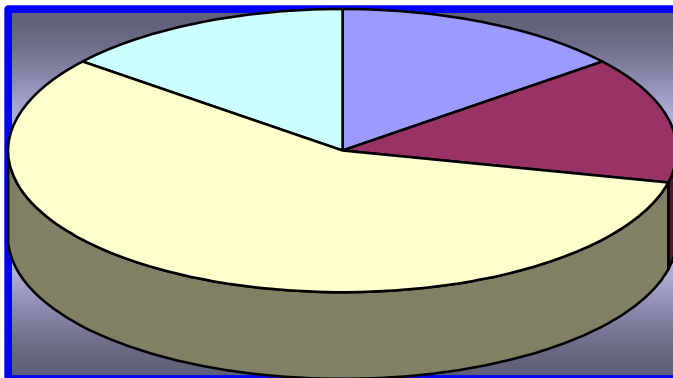
FST Appeals

Fiscal Year 2007 - Fiscal Year 2008

Seven appeals were filed with the FST between April 1, 2007 and March 31, 2008. Of these 7 cases:

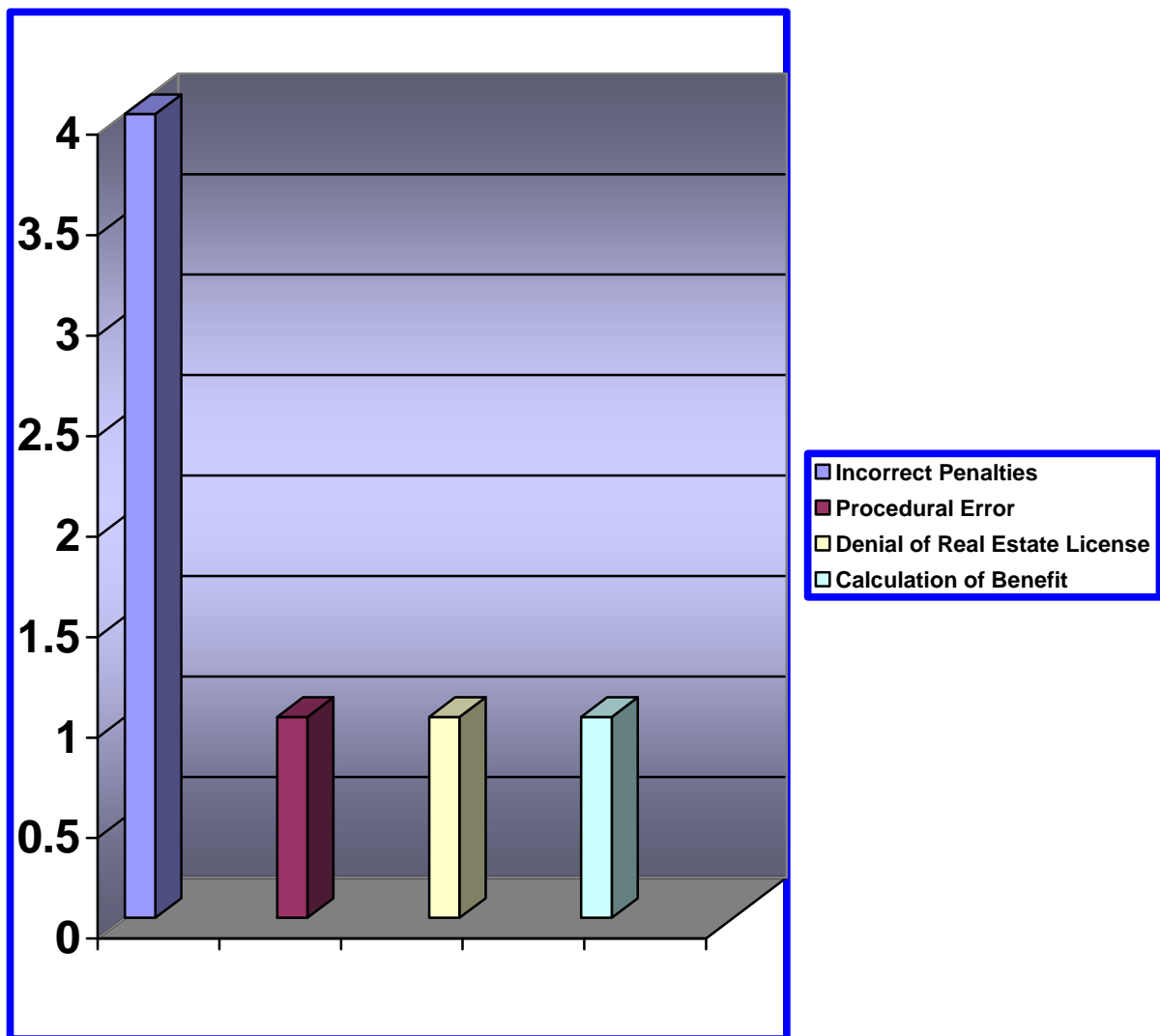
- ✦ 4 involve appeals of decisions of the Registrar of Mortgage Brokers;
- ✦ 1 involves an appeal of a decision of the Superintendent of Pensions;
- ✦ 1 involves an appeal of a licensing decision of the Real Estate Council of BC;
- ✦ 1 involves an appeal of a decision of the Superintendent of Financial Institutions.

Appeals by Origin - Original Decision-maker



Appeals - By Cause

With respect to the seven appeals filed, the issues under consideration included: **4** appeals based primarily on the grounds of incorrect penalties being imposed by the original decision-maker; **1** appeal based primarily on an alleged procedural error at the hearing; **1** appeal regarding the denial of a real estate license to an applicant; and **1** appeal of a decision regarding the calculation of a benefit in a pension plan.

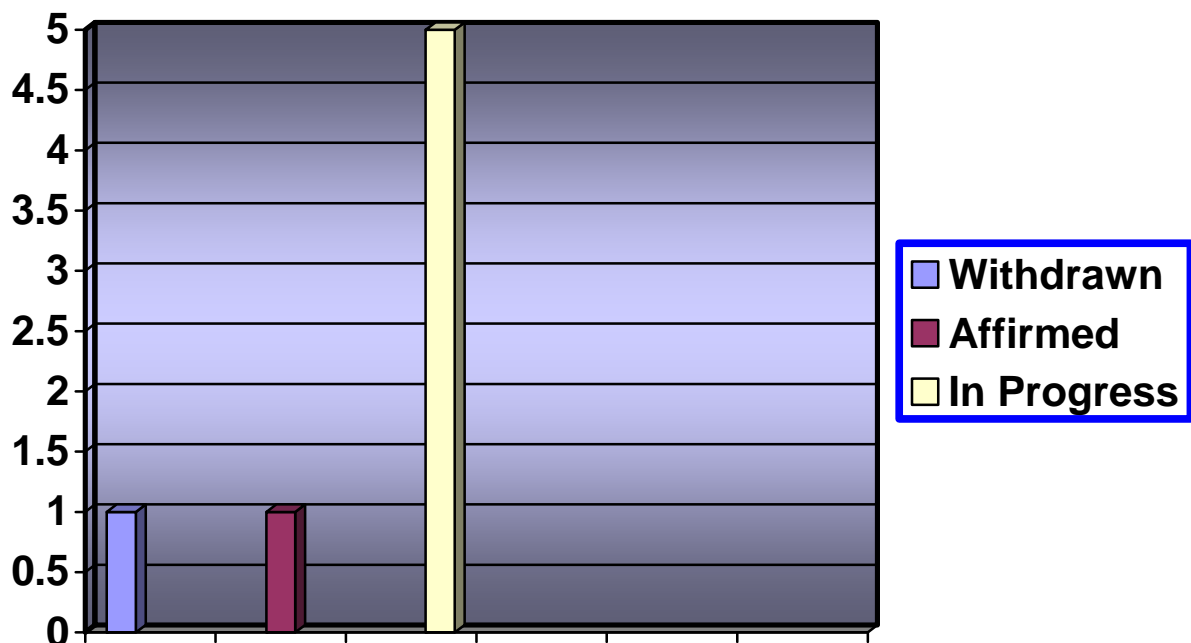


FST Decisions

With respect to decisions in these 7 cases:

- ✦ 1 appeal was withdrawn voluntarily by the appellant;
- ✦ 1 appeal affirmed the jurisdiction of the FST to hear the appeal, and affirmed notice procedures at the lower tribunal level;
- ✦ 5 appeal cases were in progress as of March 31, 2008. Final decisions in these cases are pending.

Appeal Decisions (as of March 31, 2008)



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

FST Operations

The FST is administered by two employees on a part-time basis: a Deputy Registrar and an Administrative Assistant. Both 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 07/08, the FST received **\$13,700** in revenues. Expenses for the FST exceeded the FST's revenues by **\$105,858**.

FST Statement of Financial Performance (for the fiscal year ended March 31, 2008)

Operating Result	2006/2007*	2007/2008
	- \$	- \$
Recoveries	17,000	13,700
Expenses	(152,359)	(119,558)
Net	(135,359)	(105,858)
Recovery/Expenditure Ratio	(11.2%)	(11.5%)

Direct Expenses	2006/2007*	2007/2008
	\$	\$
Salaries and Benefits	76,286	46,587
Travel	339	136
Professional Services	29,980	33,832
Building Occupancy	10,744	10,055
Amortization	2,538	2,707
Information Systems	3,680	2,251
Board Fees and Expenses	25,071	18,836
Chair and Vice Chair Expenses	-	-
Other	3,721	5,156

* 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	FY 2007/08
Number of appeals finalized within 6 months of the filing of the Notice of Appeal	9/19	10*/14 * When counting was done, two of the fourteen appeals remained open.	2*/7 * Five of the seven 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 * When counting was done, two of the fourteen appeals remained open.	2*/7 * Five of the seven 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	0*/7 2 of the appellants in the above-mentioned open appeals have requested oral hearings. Decisions on these requests are pending.

Performance Measure	Inception to end of FY 2005/06*	FY 2006/07	FY 2007/08
Number of decisions reviewed pursuant to the Judicial Review Act (Supreme Court of British Columbia)	<p>1</p> <p>Revised - 1 appeal for a judicial review filed after completion of 2005/06 Annual Report.</p> <p>After filing, this appeal was not pursued in the BC Supreme Court.</p>	<p>2*</p> <p>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.</p> <p>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.</p> <p>* Updated with new information that was not available at the time last year's Annual Report was prepared.</p>	<p>3</p> <p>Varied: One decision was varied on review by the Supreme Court of BC.</p> <p>Quashed: Due to a fundamental error, one decision was quashed and sent back to the FST. This decision was subsequently sent back to the Real Estate Council of British Columbia with directions.</p> <p>Upheld: One decision, which was appealed from the BC Supreme Court to the BC Court of Appeal, upheld the decision of the FST.</p>
Number of decisions upheld by the Supreme Court of British Columbia	-	<p>1/2*</p> <p>One decision upheld. (Please see above) Please also see the Judicial Reviews section on the Decisions page on FST website for more information.</p> <p>The other matter was settled out of court.</p> <p>* Updated with new information that was not available at the time last year's Annual Report was prepared.</p>	<p>2/3</p> <p>Varied: One decision was varied by the Supreme Court of BC.</p> <p>Upheld: One decision, which was appealed from the BC Supreme Court to the BC Court of Appeal, was upheld.</p>

Performance Measure	Inception to end of FY 2005/06*	FY 2006/07	FY 2007/08
Number of decisions overturned by the Supreme Court of British Columbia	-	0/2* No decisions overturned. Please see the Judicial Reviews section on the Decisions page on FST website for more information. * Updated with new information that was not available at the time last year's Annual Report was prepared.	1/3 One decision was overturned by the BC Supreme Court and sent back to the FST. The FST subsequently sent the matter back to the Real Estate Council of British Columbia with directions.

* Please note that appeals are assigned to each fiscal year by date of filing. In 2005, two appeals were terminated and re-filed and assigned new case numbers due to a legal filing error.

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 of 1996.

He resigned to begin his current arbitration and dispute resolution practice in 1998. Since then, John Hall has also received a number of part-time appointments to 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.

Robert 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 2007- 2008

Year Received/ Appeal Number	Appellant(s)	Respondent(s)	Act	Issues under Consideration	FST Disposition of those Issues
07-036	Frank Iantorno and Evergreen Mortgage Corporation	Registrar of Mortgage Brokers	Mortgage Brokers Act	Jurisdiction of the FST to hear the appeal; procedural fairness; and a possible violation of privacy regarding the posting of Notices of Hearing at the lower tribunal.	<p>Affirmed: The FST Tribunal Member affirmed that the FST had the jurisdiction to hear the appeal.</p> <p>With respect to the publication of hearing notices, procedural fairness and the possible violation of privacy, the Member found that hearings before the Registrar were public hearings, and that it was appropriate to publish notices of such hearings.</p> <p>He also found that there was no requirement to publish rejoinders or responses from persons who were subject to such hearings. However, he did find that, in his opinion, a prominent disclaimer should be published noting that the allegations in such cases were unproven.</p> <p>No costs were awarded.</p>
07-037	Board of Trustees of the Interior Lumbermen's Pension Plan	Superintendent of Pensions	Pension Benefits Standards Act	Appeal of a decision regarding the calculation of a benefit under the plan.	<p>Preliminary decision on the admissibility of new evidence on December 14, 2007.</p> <p>Appeal in progress</p>
07-038	Baljit (Sam) Kumar Seera	Registrar of Mortgage Brokers	Mortgage Brokers Act	Appeal of a decision on penalty imposed by the Registrar of Mortgage Brokers.	<p>Appeal voluntarily withdrawn by the appellant on December 10, 2007. No appeal decision was issued in this case.</p>
08-039	Lee Douglas Bussey and 0707543 BC Limited dba 1st Landmark Mortgage ("Verico") Corporation	Registrar of Mortgage Brokers	Mortgage Brokers Act	Appeal of a decision of the Registrar dated January 8, 2008.	<p>Appeal in progress</p>

Year Received/ Appeal Number	Appellant(s)	Respondent(s)	Act	Issues under Consideration	FST Disposition of those Issues
08-040	GET Acceptance Corporation and Keith Bryan Westergaard and Frank Iantorno and Evergreen Mortgage Corporation (Combined appeal, as permitted under section 37 of the Administrative Tribunals Act)	Registrar of Mortgage Brokers	Mortgage Brokers Act	Appeal of two decisions of the Acting Registrar of Mortgage Brokers dated January 25 and February 18, 2008.	Appeal in progress
08-041	Scott Russell Bancroft	Real Estate Council of British Columbia	Real Estate Services Act	Licensing application denied. Appeal of a decision of the Qualification Committee of the Real Estate Council dated January 21, 2008.	Appeal in progress
08-042	North York Community Credit Union Ltd.	Superintendent of Financial Institutions	Financial Institutions Act	Appeal of a decision of the Superintendent concerning the contravention of a previous order (October 27, 2005) to cease conducting unauthorized deposit taking business in BC.	Appeal in progress