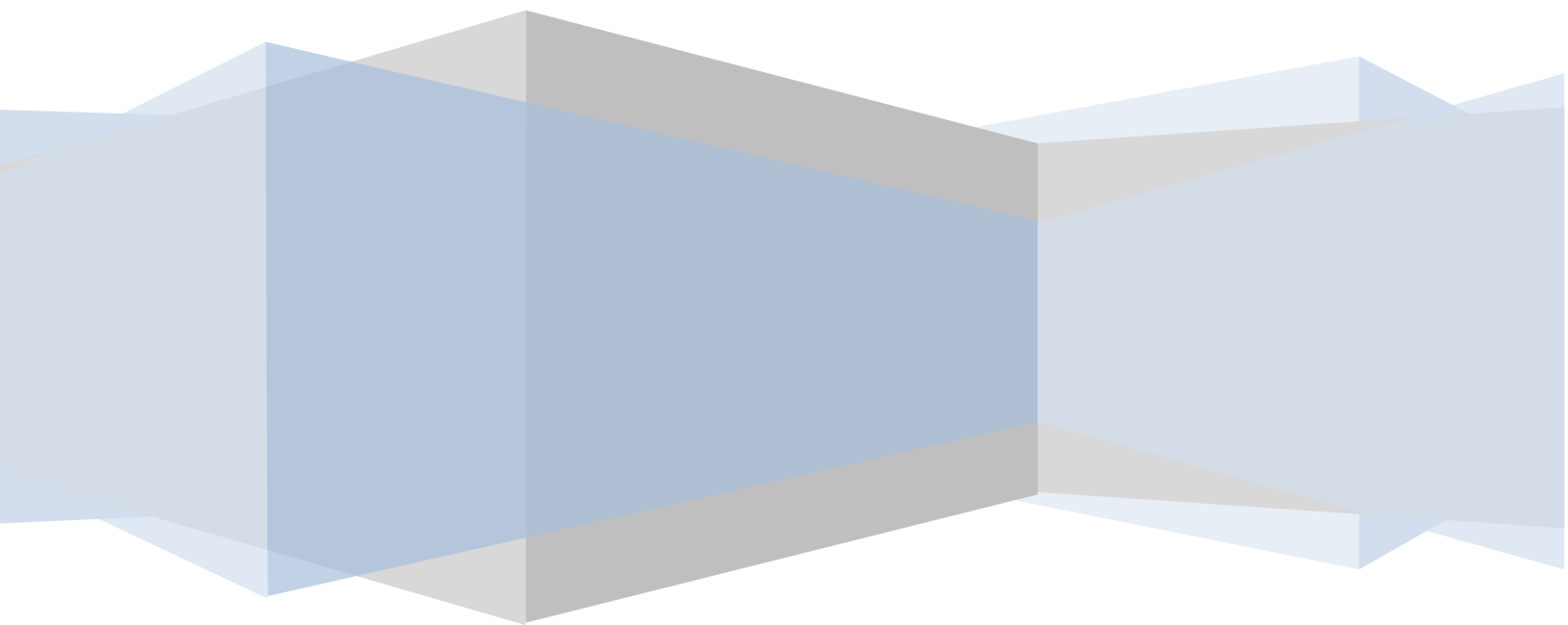




Financial Services Tribunal 2011-2012 Annual Report



April 30, 2012

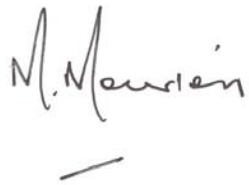
The Honourable Kevin Falcon
Minister of Finance
Room 153, Parliament Buildings
Victoria BC V8V 1X4

Dear Minister Falcon:

Re: Financial Services Tribunal 2011-2012 Annual Report

I am pleased to submit to you the Annual Report of the Financial Services Tribunal ("FST") for the fiscal year beginning April 1, 2011 and ending March 31, 2012. This report is submitted pursuant to section 242.1 (5) (d) of the *Financial Institutions Act*.

Sincerely,



Maurice R. Mourton
Chair
Financial Services Tribunal

Enclosure

Message from the Chair



While the volume of cases appealed over the past year was small, the Financial Services Tribunal continues to provide an important function within the financial regulatory scheme in British Columbia. By providing an avenue of appeal for those parties that remain dissatisfied with decisions made by the entities for which we have a responsibility, the Financial Services Tribunal constitutes an important and effective element of accountability.

I would be pleased to respond to any questions the reader may have of this report.

A handwritten signature in black ink that reads "M. Mourton". The signature is written in a cursive, slightly stylized font. Below the signature is a short horizontal line.

Maurice R. Mourton
Chair

Mandate

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 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; and,
- Real Estate Development Marketing Act.

Tribunal Membership

At the start of this reporting period the FST board membership consisted of:

<i>TRIBUNAL MEMBER</i>	<i>ROLE</i>	<i>TERM EXPIRY</i>
Maurice M. Mourton	Chair	November 23, 2013
Paula Barnsley	Member	November 23, 2012
Patrick Lewis *	Member	August 12, 2011

*temporary appointment by Chair under sections 6 and 7 of the *Administrative Tribunals Act*.

BIOGRAPHIES FOR THE TRIBUNAL MEMBERSHIP AT THE END OF THE REPORTING PERIOD ARE AS FOLLOWS:

MAURICE M. MOURTON, CHAIR

Maurice has over 45 years experience in the banking industry and held a variety of senior executive positions. He was head of Human Resources for the Bank of Montreal and subsequently held senior positions in Quebec, Ontario, U.K., and British Columbia. Joining the HSBC Group in 1986, he served in a variety of senior executive positions including being a member of the Executive Committee. He retired from the HSBC Group in 2000 as Executive Director Brasil. From 2004 to 2007 he served as Chair of the Ubiquity Bank of Canada.

Always active in the community he has served on numerous boards. He has chaired the Children's Miracle Network Telethon, the Children and Women's Health Center of BC, the Canadian International Dragon Boat Festival, the Canadian Bankers Association of BC, the Canadian Genetic Diseases Network (a National Center of Excellence), the Arthritis Society of BC, the BC Transplant Society and the Child and Family Research Institute. In addition he has been a director of the International Finance Center, Endeavor, the Vancouver Opera, the BC Children's Hospital Foundation, the Vancouver Foundation, the College of Physicians and Surgeons of BC and Community Living B.C. Currently he is a director of the Northern Trust Company, and a member of the Health Professions Review Board. He is a Governor of B.C. Children's Hospital Foundation.

PAULA BARNSLEY, MEMBER

Paula Barnsley retired from full time private practice of law in July 2006 and continued her association with Cundari Seibel Law Corporation in Kamloops on a part time basis until retiring to Vancouver Island in 2011. She has been a part time member of various adjudicative tribunals since moving to Kamloops in 1998 and maintains a keen interest in administrative law, which started when she clerked for the Supreme Court of Nova Scotia – Trial Division. She holds a Bachelor of Laws from Dalhousie University, and a Master of Laws from UBC. Her graduate work focussed on equality in tax policy. She has been called to the Bar in Nova Scotia, New Brunswick and British Columbia. She also holds a Masters of Education (Educational Psychology) from Memorial University in Newfoundland, and worked in private practice as a registered psychologist for 14 years before entering law school in 1988.

Tribunal Member Training

The membership of the FST changed late in the previous reporting period with the appointment of a new Chair and member at the end of November 2010. In order to ensure that the FST is able to provide quality adjudicative services and optimally fulfill its mandate the tribunal engaged in a number of professional development activities during the current reporting period.

On June 16, 2011 the FST held a General Meeting of the membership, legal counsel and staff to discuss general tribunal business and consider substantive issues including:

- Role and mandate of the FST
- Standard of Review the FST applies on appeal of a regulatory decision
- Lessons learned from recent FST decisions
- Access and privacy issues

The Chair and member also took advantage of the annual Education Conference provided by the BC Council of Administrative Tribunals in October 2011, which provided workshops on topical administrative law issues such as ethical considerations, advocacy and expert evidence, transforming administrative justice with technology and recent developments in administrative law.

Operations

Effective April 1, 2010, the administrative support functions of the FST were moved from the Financial Institutions Commission (FICOM) in Vancouver and consolidated with the Environmental Appeal Board/Forest Appeals Commission Appeals Office (“Appeals Office”) in Victoria.

In addition to the FST, the Appeals Office provides administrative support to five other tribunals. This has been done to assist government in achieving economic and program delivery efficiencies by allowing greater access to resources while, at the same time, reducing administration and operation costs. The additional tribunals include the:

- Community Care and Assisted Living Appeal Board;
- Health Professions Review Board;
- Hospital Appeal Board;
- Industry Training Appeal Board; and,
- Oil and Gas Appeal Tribunal.

This move has resulted in significant savings to government for the operation of the FST through a shared services cluster approach which takes advantage of synergy and assists government in achieving economic and program delivery efficiencies.

Contact Information

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<i>FAX:</i>	250 356-9923
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<i>WEBSITE:</i>	<u>http://www.fst.gov.bc.ca/</u>

Appeal Activity and Decisions Issued

APPEALS FILED

There was one new appeal filed with the FST between April 1, 2011 and March 31, 2012.

The appeal to the FST was from a Summons issued by the Registrar of Mortgage Brokers requiring the Appellant to appear for questioning as part of an investigation by the Registrar. The day before the Appellant was required to appear for questioning he filed an appeal with the FST seeking to set aside the Summons. That same day the Registrar applied to have the FST summarily dismiss the appeal on several grounds, including that the FST has no jurisdiction to hear the matter, or in the alternative, asking the FST to lift the stay that was automatically in effect upon filing the appeal. The application to lift the stay was denied and a decision on jurisdiction of the FST to hear the appeal was rendered.

DECISIONS ISSUED

A decision on the jurisdiction of the FST to hear and consider an appeal of a summons to appear for questioning in an investigation was issued in 2012 as follows:

2011-MBA-001

Decision Date:	January 18, 2012
Appellant:	Keith Allan Cook
Respondent:	Registrar of Mortgage Brokers of BC
Act:	Mortgage Brokers Act, R.S.B.C. 1996, c. 313
Issue:	Issuance of a Summons to appear for questioning in an investigation
Disposition:	Appeal Dismissed for lack of Jurisdiction
Appeal Decision:	http://www.fst.gov.bc.ca/pdf/2011-MBA-001(a).pdf

The preliminary issue was determined by way of written submissions and was concluded in less than 11 weeks from the date the appeal was filed. The member determined that the FST does have jurisdiction under s. 9(1) of the *Mortgage Brokers Act* to hear an appeal challenging a decision to issue a summons pursuant to s. 6(3) of that *Act*. However, the FST has no jurisdiction over constitutional questions by virtue of s. 44 of the *Administrative Tribunals Act*. In this case the Appellant's application to quash the Summons fell outside the FST's jurisdiction because it sought a constitutional remedy for infringement or denial of rights or freedoms guaranteed by the *Charter*. The appeal was therefore dismissed for lack of jurisdiction.

*Matters Outstanding at end
of Period*

There were no matters outstanding at the end of this reporting period.

Judicial Review of FST Decisions

APPEAL NO. 2008-MBA-040 – REGISTRAR OF MORTGAGE BROKERS

One decision of the Supreme Court of British Columbia on judicial review of a September 2009 FST decision in appeal no. 2008-MBA-040 - Registrar of Mortgage Brokers was rendered in the previous fiscal year remitting the matter back to the FST for reconsideration. The Supreme Court's decision dated June 29, 2010, was appealed to the British Columbia Court of Appeal on July 27, 2010. The FST intervened in the appeal principally on three points. The first was to confirm that the patently unreasonable test, set out in s. 58 of the *Administrative Tribunals Act*, applied to all the questions in the case. The second was to confirm the FST's appellate jurisdiction to review legal questions on a correctness test. The third was to make submissions regarding what the patently unreasonable test means in light of some recent Supreme Court of Canada case law. The FST submitted that patent unreasonableness requires the highest standard of deference, that of "clear irrationality". The Court of Appeal decision was rendered within this period on August 11, 2011. The Court of Appeal overturned the Supreme Court judgment, quashed the decision of the FST, held that it was not necessary to remit the matter for redetermination by the FST and restored the original decision of the Registrar of Mortgage Brokers. Although the decision of the FST in the result was overturned, the Court of Appeal accepted all three of the tribunal's submissions regarding the standard of review both before the FST and upon judicial review by the Court.

APPEAL NO. 2010-PBA-001 – SUPERINTENDENT OF PENSIONS

Another decision on an application for judicial review to the Supreme Court of British Columbia regarding appeal no. 2010-PBA-001- Superintendent of Pensions was rendered during this reporting period. That matter involved a dispute regarding the criteria by which certain employees became eligible for membership in a pension plan. The Superintendent of Pensions directed the employer to offer membership in its pension plan for hourly employees to certain casual employees. The employer appealed the decision of the Superintendent to the FST. The appeal was opposed by the Union representing the employees and by the Superintendent. On December 10, 2010 the FST issued its decision dismissing the appeal. The employer applied for Judicial Review seeking to quash the decision of the FST. The FST appeared by counsel on this judicial review application to make submissions pertaining to the record and the standard of review. In its decision issued on November 9, 2011, the Supreme Court upheld the decision of the FST and stated that "the appeal decision of the Tribunal was thorough and reasonable in respect of all the issues which were before it."

Statement of Financial Performance

(For the fiscal year ended March 31, 2012)

In fiscal year 2011/2012, the FST received \$850 in recoveries from appeal filing fees and incurred expenses of \$71,202 as detailed below in this four year chart. Although there was only one new appeal filed in this reporting period, the FST also appeared, via legal counsel, on two separate oral judicial review hearings before the Supreme Court and the Court of Appeal for British Columbia to make submissions on important issues being considered by the court for the first time, including the FST's jurisdiction and the applicable standard of review to be applied by the FST and the Court.

<i>Operating Result</i>	<i>2008/2009</i> \$	<i>2009/2010</i> \$	<i>2010/2011</i> \$	<i>2011/2012</i> \$
Recoveries	2,550	0	1,700	850
Expenses	(93,902)	(58,698)	(29,371)	(71,202)
Net	(91,352)	(58,698)	(27,671)	(70,35)

<i>Direct Expenses</i>	<i>2008/2009</i> \$	<i>2009/2010</i> \$	<i>2010/2011</i> \$	<i>2011/2012</i> \$
Salaries and Benefits	45,026	(421)	0	0
Professional Services	6,266	1,240	11,130	61,722
Board Fees & Expenses	6,949	19,025	18,241	9,300
Other	273	283	0	180
Total direct Expenses	58,514	20,127	29,371	71,202
Allocated Overhead from FICOM	35,388	38,571	n/a	n/a
Total FST Expenses	\$ 93,902	\$ 58,698	\$ 29,371	\$ 71,202

