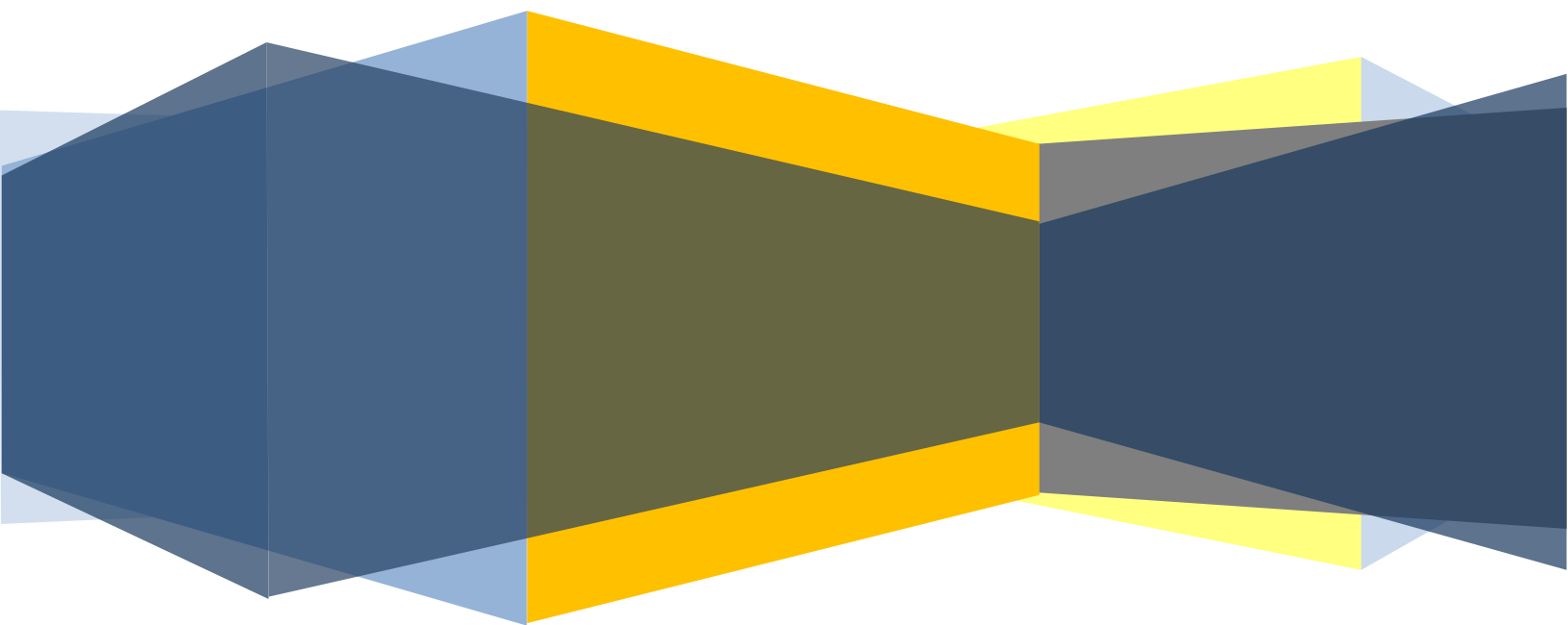




BRITISH
COLUMBIA

***Financial Services Tribunal
2016-2017 Annual Report***



July 27, 2017

The Honourable David Eby, Attorney General
Ministry of Attorney General
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Minister Eby:

Re: Financial Services Tribunal 2016-2017 Annual Report

I respectfully submit the Annual Report of the Financial Services Tribunal for the period April 1, 2016 to March 31, 2017.

Sincerely,



Theodore F. Strocel, Q.C.
Chair
Financial Services Tribunal

Enclosure

Message from the Chair

I am pleased to submit the Annual Report of the Financial Services Tribunal (“FST”) for the fiscal year beginning April 1, 2016 and ending March 31, 2017. This report is submitted pursuant to section 242.1 (5)(d) of the *Financial Institutions Act* and section 59.2 of the *Administrative Tribunals Act*.

Appeals during Reporting Period

Section 59.2(a) of the *Administrative Tribunals Act* requires the Tribunal to provide a review of its operations during the preceding reporting period. During this reporting period, a total of 5 new appeals were filed with the Tribunal. Two appeals were filed under the *Real Estate Services Act*, and one each under the *Financial Institutions Act*, the *Mortgage Brokers Act* and the *Pension Benefits Standards Act*. Further details of these appeals filed are provided later in this report pursuant to section 59.2(c) of the *Administrative Tribunals Act*. No new appeals were filed under the *Credit Union Incorporation Act* or the *Real Estate Development and Marketing Act* during this reporting period. An additional five matters carried over from the previous reporting period were also dealt with during this period.

Of those 10 appeals in total, 7 were closed during this reporting period and the other 3 are before a member of the Tribunal for adjudication. Of the appeals closed during the reporting period, 43% (3 appeals) were withdrawn or resolved by consent of the parties, which meant that they did not require a hearing. Four of the appeals proceeded to a hearing on their merits. These hearings were conducted in writing, before a single panel member. The issues considered in these appeals included the reasonableness of significant penalties imposed for alleged professional misconduct (including suspensions of up to 2 years), the appropriate standard of review to be applied on appeal, procedural fairness questions, the Tribunal’s jurisdiction to entertain appeals in certain circumstances, and whether costs should be awarded on appeal.

During this reporting period, two applications for Judicial review of FST decisions issued in this reporting period were filed in the BC Supreme Court and one application for leave to appeal to the Supreme Court of Canada was filed in regard to a BC Court of Appeal decision upholding an FST decision that had been considered by the BC Supreme Court and the BC Court of Appeal.

Forecast of workload for the next reporting year and trends noted

Section 59.2(f) of the *Administrative Tribunals Act* requires the Tribunal to provide a forecast of the workload for the succeeding reporting period. The FST’s workload for the 2017/2018 fiscal year reporting period is expected to be consistent with the past two years (7 appeals filed in 2015/16 and 5 in 2016/17). No significant increases or decreases in workload from this more recent history of activity (5-7 new appeals filed per year) are forecast.

Section 59.2(g) of the *Administrative Tribunals Act* requires the Tribunal to report any trends or special problems it foresees. I am pleased to report that we have not identified any trends or special problems that need to be reported on at this time.

Plans for improving the Tribunal’s operations

Finally, section 59.2(h) of the *Administrative Tribunals Act* requires the Tribunal to report its plans for improving operations in the future. During this reporting period, the Appeals Office cluster responsible for providing administrative support to the Tribunal was involved in planning for the replacement and upgrading of the electronic appeal management system that is used by the Tribunal and the seven other tribunals that are jointly administered through a shared office and staff. The existing appeal management system is nearly 20 years old and its software is no longer supported. A new appeal management system will allow the shared administrative office to continue to function effectively and efficiently, using modern information technology. The Tribunal hopes the new system will be in place and available for the FST to use in 2017. This will help ensure that the FST is able to track and report out on key performance indicators with confidence in the accuracy of the information.



Theodore F. Strocel, Q.C.
Chair
Financial Services Tribunal

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

Throughout this reporting period, the FST membership consisted of:

<i>TRIBUNAL MEMBER</i>	<i>ROLE</i>	<i>TERM EXPIRY</i>
Theodore F. Strocel, Q.C.	Chair	December 31, 2018
Patrick Lewis	Vice-Chair	November 30, 2018
Wendy A. Baker, Q.C.	Member	October 30, 2018

BIOGRAPHIES FOR THE TRIBUNAL MEMBERSHIP DURING THE REPORTING PERIOD ARE AS FOLLOWS:

THEODORE (TED) F. STROCEL, Q.C., CHAIR

Mr. Ted Strocel has been practicing law in Abbotsford since 1981. He practices in the areas of business and corporate law, wills and estate planning, and real estate. He has been active in the legal community as a past President of the Fraser Valley Bar Association, a member of the Audit Committee of the Law Society of British Columbia, and a committee member for the Canadian Bar Association. Ted has also been active in community affairs, serving on various boards such as the Abbotsford Cultural Centre which operates the Reach gallery and museum and the Abbotsford Police Board. Ted has three grown children and a host of grandchildren. He has coached minor hockey, girls' softball, and minor baseball. He is still active in master's basketball, as a member of teams which won provincial championships in 2009 and 2011, and gold medals at the World Master Games in 2005 and 2013. Ted was appointed a Queen's Counsel in 2010.

PATRICK F. LEWIS, VICE-CHAIR

Patrick Lewis is a Partner at the boutique litigation firm, Sugden, McFee & Roos LLP, in Vancouver, practicing exclusively in the area of civil litigation with an emphasis on commercial disputes. He was admitted as a barrister and solicitor to the Bar of the Province of British Columbia on June 14, 1985. The cases Mr. Lewis handles include: securities litigation; mining disputes; professional liability claims and defence thereof involving lawyers, doctors, engineers and accountants; corporate litigation; insurance litigation; real property disputes; defamation claims; banking litigation; employment disputes; and, personal injury actions.

Mr. Lewis has appeared in all levels of court in British Columbia, the Federal Court of Canada and has been involved in opposing applications for leave to appeal to the Supreme Court of Canada in a number of cases. Mr. Lewis is a member of the BC Branch of the Canadian Bar Association, Civil Litigation Subsection. He is also a member of the Trial Lawyers Association of British Columbia, a guest lecturer for the Continuing Legal Education Society of British Columbia and a Moot Court Judge at the U.B.C. Law School.

WENDY A. BAKER, Q.C., MEMBER

Wendy Baker has been a partner with Miller Thomson LLP since 2001. She has extensive commercial litigation experience spanning many industries and areas of practice including complex commercial disputes, strata law, agriculture, construction law, Aboriginal law, and administrative law. Active in her community, she serves as chair of the Karen Jamieson Dance Society and is the vice-chair of the Motor Dealer Customer Compensation Fund Board. Ms. Baker also sits as acting registrar for the Motor Vehicle Sales Authority. Ms. Baker holds her bachelor of laws from the University of Victoria and a bachelor of arts in English (honours) from UBC. Wendy Baker was appointed Queen's Counsel in 2009.

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 adjudicative tribunals. This clustering of the administrative support for eight independent appellate tribunals 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 operating 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.

This arrangement has been in operation for 7 years now and has proven to be a very effective and efficient means for providing administrative support to the FST, which in turn enables the FST to effectively and efficiently fulfill its appellate mandate to the public.

Effective April 1, 2017, host Ministry responsibilities for administration of the Financial Services Tribunal (including budget oversight and member appointments, human resources, facilities, and records supports, etc.) will be transferred to the Ministry of Justice as part of the Tribunal Transformation Initiative.

Contact Information

<i>MAILING ADDRESS:</i>	Financial Services Tribunal PO Box 9425 Stn Prov Govt Victoria BC V8W 9V1
<i>LOCATION:</i>	4 th Floor, 747 Fort Street Victoria BC V8W 3E9
<i>TELEPHONE:</i>	250 387-3464
<i>FAX:</i>	250 356-9923
<i>EMAIL:</i>	<u>FinancialServicesTribunal@gov.bc.ca</u>
<i>WEBSITE:</i>	<u>http://www.fst.gov.bc.ca/</u>

Appeal Activity and Decisions Issued

APPEALS FILED

There were five new appeals filed during this reporting period, in addition to five appeals open from the previous reporting period. The new appeals filed are described below. Three matters remain outstanding at the end of this reporting period.

2016-FIA-002 BY ANTONY FRANSEN, FILED AUGUST 5, 2016 – Appeal filed by Antony Ronald Fransen of a Decision and Order of the Insurance Council of British Columbia, suspending his general insurance licence until such time as a hearing relating to Council’s intended decision of September 2, 2015 was held and Council made a decision under s. 237 of the *Financial Services Act*. The appeal was withdrawn by the Appellant.

2017-MBA-001 BY SOHEIL ARMAN KIA, FILED FEBRUARY 8, 2017 - Appeal of a decision and order of a designate of the Registrar of Mortgage Brokers denying the Appellant's application for a declaration that a search executed by the Registrar of Mortgage Brokers' designate was ultra vires, or in the alternative, was unreasonable and contrary to section 8 of the *Canadian Charter of Rights and Freedoms*, and seeking an order that the information obtained by way of the search be excluded from the hearing before the designate. The Registrar made a cross-application for summary dismissal of the appeal under section 31 of the *Administrative Tribunals Act* on the grounds of lack of jurisdiction, prematurity and abuse of process.

2016-PBA-001 BY The Board of Trustees of the Interior Lumbermen’s Pension Plan, FILED August 19, 2016 – Appeal under section 127(1) of the *Pension Benefits Standards Act* of a decision of the Superintendent of Pensions directing that the Trustees inform Plan members by August 31, 2016 of steps being taken to address the Plan’s solvency deficiency, including that the Trustees were submitting a remediation plan as requested by the Superintendent. The appeal was withdrawn by the Appellant.

2016-RSA-001 BY Cui Zhu (Danielle) Deng, FILED August 11, 2016 - Appeal of the Decision and Order of the Real Estate Council with respect to Penalty and Enforcement Expenses determining that the Appellant committed professional misconduct, suspending her licence for 14 days, assessing enforcement expenses in the amount of \$8,336.00 and requiring her to enroll in and successfully complete the Real Estate Trading Services Remedial Education Course.

2016-RSA-002 BY YU-HSUANG (LESTER) LIN, FILED SEPTEMBER 16, 2016 - Appeal of a Decision and Order of the Real Estate Council dated December 17, 2015, cancelling the Appellant’s licence to practice as a real estate agent under section 43(3) of the *Real Estate Services Act*. The order was made without notice to the Appellant based on a finding that the Appellant had violated a previous consent order issued by the Discipline Committee and section 20 of the *Real Estate Services Act*.

TRIBUNAL DECISIONS

In addition to the 4 decisions issued on the merits of appeals carried forward from the previous reporting period, which are summarized below, 3 appeals were withdrawn prior to a hearing. Therefore, during this reporting period, 43% (3 of 7) of the appeals finally disposed of by the FST were resolved without a hearing.

There were also 6 preliminary decisions issued regarding applications for the following interim relief:

- a stay of the effect of a tribunal decision pending an application for costs,
- a stay of a regulatory decision pending appeal,
- to lift a statutory stay,
- to amend a notice of appeal,
- to admit new evidence on the appeal, and
- an extension of time to file an appeal.

One post-hearing decision regarding costs of the appeal was also issued during the reporting period.

Final decisions on the merits

2015-RSA-003(b)

Decision Date:	February 1, 2017
Appellant:	Murat Kadioglu
Respondents:	Real Estate Council of British Columbia and Superintendent of Real Estate
Act:	<i>Real Estate Services Act</i> , S.B.C. 2004, c. 42 (“RESA”)
Issue:	Whether Council erred in making certain findings of fact, in failing to observe rules of natural justice and procedural fairness, in breaching the appellant’s <i>Charter</i> rights and by issuing excessive penalties.
Disposition:	The Tribunal applied the following standards of review: (a) correctness for questions of law; (b) reasonableness for questions of fact, discretion and penalty; and (c) fairness for procedural fairness questions. The Tribunal found no basis to interfere with the Respondent’s evidentiary findings and no breach of procedural fairness or natural justice. The Tribunal further held that the FST does not have jurisdiction to entertain a <i>Charter</i> remedy and that the penalties imposed were reasonably supported by the evidence and consistent with Orders made in other cases or are supported by the <i>RESA</i> and <i>RESA</i> regulation. The appeal was dismissed on all grounds.
Appeal Decision:	http://www.fst.gov.bc.ca/pdf/2015rsa003b.pdf

2016-MBA-001(a)

Decision Date:	October 19, 2016
Appellant:	Robert John Emil Hensel
Respondent:	Registrar of Mortgage Brokers of British Columbia
Act:	<i>Mortgage Brokers Act</i> , R.S.B.C. 1996, c. 313
Issues:	Whether the Registrar of Mortgage Brokers al Estate Council could reasonably conclude that the conduct of the appellant constituted “conduct prejudicial to the public interest” within the meaning of section 8(1)(i) of the <i>Act</i> ; whether the Registrar misinterpreted the evidence and submissions before her and thereby erred in making adverse findings against the Appellant as to his credibility and intent and erred in finding the actions of the Appellant were prejudicial to the public penalty; erred in making other findings when there was no evidence upon which to base those findings; and failed to take into account other relevant evidence. The appellant also alleges that the penalty is inappropriate and unreasonable because he is not in breach of the <i>Act</i> .
Disposition:	The Tribunal found that it was reasonable for the Registrar to have formed the opinion that the appellant conducted business in a manner prejudicial to the public interest and that the Registrar considered all of the relevant evidence submitted at the hearing and assessed the evidence based upon her opinion as to what constituted culpable behaviour. The Tribunal also found that the Registrar was not mistaken in her view of the evidence and that her findings were reasonable and supported by the evidence as a whole. <i>The appeal was dismissed.</i>
Appeal Decision:	http://www.fst.gov.bc.ca/pdf/2016mba001a.pdf

2015-MBA-001(a)

Decision Date:	June 7, 2016
Appellant:	Gordon Stephen Lemon
Respondent:	Registrar of Mortgage Brokers of British Columbia
Act:	<i>Mortgage Brokers Act</i> , R.S.B.C. 1996, c. 313
Issue:	Whether, in the absence of an appeal to the FST, the appellant was entitled to be heard on the facts alleged in a temporary “Suspension Order and Cease and Desist Order” issued by the Registrar, prior to a determination on penalty. The Registrar’s position was that she was <i>functus officio</i> in regard to the facts stated in the Order and accordingly the Order cannot be revisited.
Disposition:	The Tribunal concluded that the Registrar erred when she concluded that she was <i>functus officio</i> with regard to the facts found. Further, the Tribunal found that while the Order could have been appealed, the appellant was perfectly entitled to take the course that he did and rely on the fact that no final order would be made without giving him an opportunity to be heard.

The appeal was allowed and the Registrar’s decision was set aside and sent back for reconsideration with directions that: (1) the Registrar issue a new Notice of Hearing setting out the facts alleged in the Order and the contraventions of the Act the appellant is alleged to have committed; (2) provide the appellant with a fair opportunity to respond to the factual findings made in the Order; and (3) defer holding a penalty hearing until such time as she has made her final findings of fact after providing an opportunity for the appellant to be heard.

Appeal Decision: [http://www.fst.gov.bc.ca/pdf/2015-MBA-001\(a\).pdf](http://www.fst.gov.bc.ca/pdf/2015-MBA-001(a).pdf)

2015-FIA-002(a)

Decision Date: July 12, 2016
 Appellant: Pritpal Singh Mann
 Respondents: Insurance Council of British Columbia, and Financial Institutions Commission
 Act: *Financial Institutions Act*, R.S.B.C. 1996, c.141.
 Issue: Whether the one year suspension levied against the appellant by Council as a result of his conduct in the aftermath of a motor vehicle accident in which he was involved, was reasonable in the circumstance.
 Disposition: The Tribunal concluded that the one year suspension of the appellant’s insurance licence was unreasonable and should be replaced with a two month suspension and a further term that for an additional period of one year he shall be prohibited from any professional dealings in Autoplan business. **The appeal was allowed.** The one year suspension was varied, the Licensee’s general insurance license was suspended for a period of two months with conditions, and the deadline for payment of investigative costs was altered to align with the end of the new two month suspension period.

Appeal Decision: [http://www.fst.gov.bc.ca/pdf/2015-FIA-002\(a\).pdf](http://www.fst.gov.bc.ca/pdf/2015-FIA-002(a).pdf)

Matters Outstanding at end of Period

There were 3 matters outstanding at the end of this reporting period, each of which is currently with an FST member for adjudication. Decisions on the merits of these outstanding matters will be issued and summarized in the next reporting period.

Performance Indicators and Timelines

Section 59.2(b) and (d) of the *Administrative Tribunals Act* requires the Tribunal to report on performance indicators, and provide details of the time from filing to decision of matters disposed of by the Tribunal in the reporting period.

The FST appeal process has been designed to be fast, efficient and cost effective. Appeals are “on the record” and are primarily conducted in writing. Conducting a hearing in writing generally saves time and expense for both the parties and the Tribunal. A single member of the Tribunal hears and decides each appeal, again keeping the cost to government for the tribunal at a minimum. The Tribunal has established tight timelines for the parties to file their written submissions on appeal in order to keep the process moving.

For those appeals closed within this reporting period, the overall average time from the date of filing an appeal to its disposition was 193 days. The shortest time from open to close was 54 days and the longest was 425 days. For those matters resolved without a hearing, the average time was 92 days. For those appeals requiring a hearing on the merits and adjudication, the average time from filing to decision was 268 days.

The Tribunal’s “Practice Directives and Guidelines”, which are available on the Tribunal’s website, provide that the Tribunal will endeavour to issue a copy of the final decision or order, including written reasons, to each party within 60 days from receiving the last submissions of the parties. In 50 percent (2 of 4) of the appeals involving a hearing on the merits that were completed within the reporting period, the decisions were released within those timelines; one appeal was issued within 53 days and the other within 19 days of the close of submissions. Two appeals did not meet the time guideline.

Finally, section 59.2(e) of the *Administrative Tribunals Act* requires the Tribunal to report the results of any surveys carried out by the Tribunals during the reporting period. The Tribunal did not conduct any surveys during this reporting period.

Judicial Review of FST Decisions

One decision of the Court of Appeal of British Columbia was rendered during the reporting period on judicial review of a 2012 FST decision. A summary of that court decision appears below.

There were also two new applications for judicial review to the Supreme Court of British Columbia filed regarding FST decisions (2015-RSA-003 and 2016-MBA-001) during this reporting period and those matters remain outstanding before the Supreme Court at the close of the reporting period.

The Court of Appeal’s decision in the matter summarized below, dated December 20, 2016, was also the subject of an application for leave to appeal to the Supreme Court of Canada in February 2017. A decision from the Supreme Court of Canada on that leave application was pending at the end of this reporting period.

2012-FIA-002- MOHAMED ALIE JALLOH

Decision Date:	December 20, 2016
Appellant:	Mohamed Alie Jalloh
Respondents:	Insurance Council of British Columbia Financial Institutions Commission
Act:	<i>Financial Institutions Act</i> , R.S.B.C. 1996, c. 141
Issue:	The grounds for seeking review of the decision to the Court, regarding both the proceedings before Insurance Council and the subsequent FST appeal, were based on allegations of inadequacy in the services provided by the appellant’s legal counsel
Disposition:	The appeal was dismissed.
Court’s Decision:	http://www.courts.gov.bc.ca/jdb-txt/ca/16/05/2016BCCA0501cor1.htm
Court’s Summary:	<i>The appellant, an insurance sales licensee, petitioned for judicial review of administrative decisions imposing a four-year suspension of his license. On judicial review, he alleged, for the first time, ineffective assistance of counsel before both the first-instance tribunal and the appellate tribunal. The chambers judge committed no reversible error in considering the statutory scheme and prejudice, including the delay and apparent strength of the appellant’s case, in declining to exercise his discretion to grant relief.</i>

.

Statement of Financial Performance

(For the fiscal year ended March 31, 2017)

In fiscal year 2016/2017, the FST received \$4,250 in recoveries from appeal filing fees and incurred expenses of \$90,263 as detailed below in this six year chart. In addition to the larger than usual number of appeals filed during this reporting period (5 new appeals), the FST also provided substantive professional development to members during this period and appeared, via legal counsel, on three separate judicial review hearings of FST decisions before the Supreme Court and the Court of Appeal, to make submissions on important issues being considered by the court.

<i>Operating Result</i>	2011/2012 \$	2012/2013 \$	2013/2014 \$	2014/2015 \$	2015/2016 \$	2016/2017 \$
Recoveries	850	2,550	850	850	5,950	4,250
Expenses	(71,202)	(23,826)	(14,511)	(9,814)	(51,333)	(90,263)
Net	(70,352)	(21,276)	(13,661)	(8,964)	(45,383)	(86,013)
<i>Direct Expenses</i>	2011/2012 \$	2012/2013 \$	2013/2014 \$	2014/2015 \$	2015/2016 \$	2016/2017 \$
Salaries and Benefits	0	0	0	0	0	0
Professional Services	61,722	6,690	8,470	7,557	24,177	42,931
Board Fees & Expenses	9,300	16,607	5,839	2,217	26,920	46,588
Other	180	529	202	40	236	744
Total direct Expenses	71,202	23,826	14,511	9,814	51,333	90,263
Total FST Expenses	\$71,202	\$23,826	\$14,511	\$9,814	\$51,333	\$90,263

