

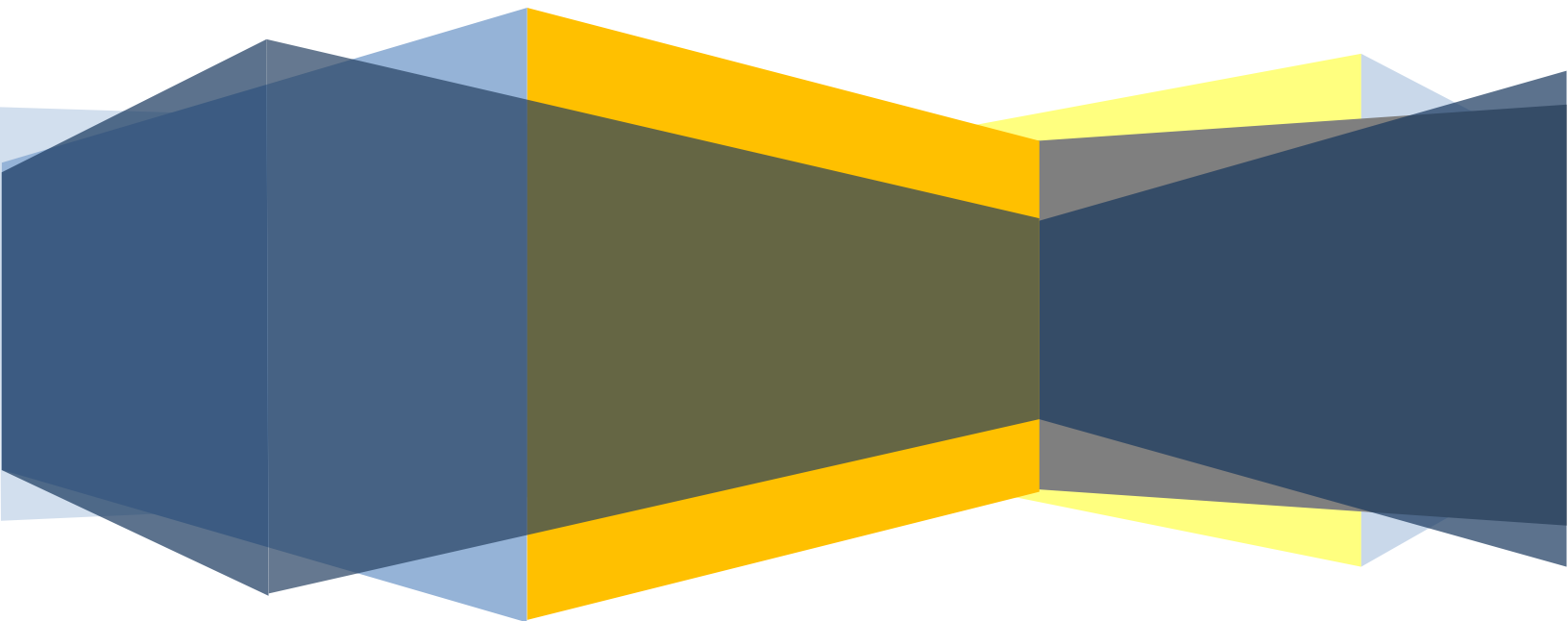


BRITISH  
COLUMBIA

# Financial Services Tribunal

## *2018-2019 Annual Report*

*Covering the reporting period from  
April 01, 2018 – March 31, 2019*



December 20, 2019

The Honourable David Eby, Attorney General  
Ministry of Attorney General  
Parliament Buildings  
Victoria, British Columbia  
V8V 1X4  
[AG.Minister@gov.bc.ca](mailto:AG.Minister@gov.bc.ca)

Dear Minister Eby:

**Re: Financial Services Tribunal 2018-2019 Annual Report**

I respectfully submit the Annual Report of the Financial Services Tribunal for the period April 1, 2018 to March 31, 2019.

Sincerely,



George Hungerford, Chair  
Financial Services Tribunal

Enclosure

## Message from the Chair

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I am pleased to submit the Annual Report of the Financial Services Tribunal (“FST”) for the fiscal year beginning April 1, 2018 and ending March 31, 2019. 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*.

### **Operations 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.

**New Appeals** - During this reporting period, a total of five new appeals were filed with the Tribunal. Three new appeals were filed under the *Real Estate Services Act*, and two new appeals were filed under the *Financial Institutions Act*. Further details regarding these appeals 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*, the *Pension Benefits Standards Act*, the *Mortgage Brokers Act* or the *Real Estate Development Marketing Act* during this reporting period.

**Appeals Carried Over** – Eleven appeals were carried over from the previous reporting period, and during this reporting period the FST decided the merits of all 11 carried-over appeals. Additionally, the FST issued several pre and post-hearing decisions in relation to the carried-over appeals.

**Matters Outstanding** - Of the 16 total appeals which were before the FST in the current reporting period, 11 appeals were closed. Five appeals remained outstanding at the close of the reporting period.

**Hearings** - All of the 11 appeals which were closed during the reporting period proceeded to a full hearing on their merits. These hearings were conducted in writing, before a single panel member.

### **Judicial Reviews and Appeals during Reporting Period**

#### *Appeals/Judicial Reviews filed in Reporting Period*

During this reporting period one new application for judicial review of an FST decision was filed with the BC Supreme Court. That matter remains outstanding before the Supreme Court as of the close of this reporting period.

Also during this reporting period, one appeal of a BC Supreme Court decision upholding a FST decision was filed with the BC Court of Appeal. That appeal was dismissed by the BC Court of Appeal during this reporting period.

### *Appeals/Judicial Reviews Carried Over*

During this reporting period, one Judicial Review petition which was before the BC Supreme Court in the previous reporting period was dismissed, and one appeal of a BC Supreme Court decision (upholding a FST decision) which was before the Court of Appeal in the previous reporting period was withdrawn by the Appellant.

One other Judicial Review which was before the BC Supreme Court at the end of the last reporting period remains outstanding as of the close of this reporting period.

### *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 following reporting period. The FST's workload for the current reporting period was consistent with the trend over the past several years of an increasing number of appeals. Although fewer appeals were filed in this reporting period than in the previous reporting period, the average number of appeals filed over the past three reporting periods is significantly higher than in previous reporting periods (2013/2014 – 1 new appeal; 2014/2015 – 1 new appeal; 2015/2016 – 7 new appeals; 2016/2017 – 5 new appeals; 2017/2018 – 13 new appeals; 2018-2019 – 5 new appeals). The 2019/2020 reporting period is expected to continue to reflect this trend of increased appeals.

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 the Tribunal does not foresee any special problems arising in the near future. Having said that, in response to the increased number of appeals the Tribunal is planning on recruiting additional members in the 2019/2020 reporting period as a means of more efficiently managing workload and planning for member succession.

### *Plans for improving the Tribunal's operations*

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 began data conversion and implementation of a new case management system to replace the outdated appeals management system the tribunal cluster has been using for the past two decades. The new case management system went live in November of 2019, and will be reported on in the next reporting period.

The main benefit of the new system is that it will allow the tribunal cluster, and the FST in particular, to function effectively and efficiently, using modern information technology. Going forward, the FST will have quicker, easier and more accurate access to appeal information and statistics, and will be able to more effectively track and report out on key performance indicators.

### *Change in Tribunal membership*

The Tribunal experienced significant change in membership over the course of this reporting period. R. Michael Tourigny was appointed as a permanent Member for a three-year term, and was designated Acting Chair of the Tribunal for a period of six months. The FST is sincerely thankful for his contribution to the Tribunal's work over this time of transition. The FST also welcomed Jane A. G. Purdie Q.C., and Michelle Good as new Members, and looks forward to continuing to work with these highly dedicated individuals. Finally, the FST wishes to extend its gratitude to Theodore (Ted) Strocel Q.C. and Patrick Lewis, who left the FST during this reporting period. The exemplary work of Mr. Strocel as Chair and Mr. Lewis as Member will remain a legacy to their membership on the Tribunal.



George Hungerford  
Chair, Financial Services Tribunal

## *Mandate*

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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*.

## *Contact Information*

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<b>MAILING ADDRESS:</b>	Financial Services Tribunal PO Box 9425 Stn Prov Govt Victoria BC V8W 9V1
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<b>WEBSITE:</b>	<a href="http://www.fst.gov.bc.ca/">http://www.fst.gov.bc.ca/</a>

## *Tribunal Membership*

At the commencement of this reporting period, the FST membership consisted of the following individuals:

<i>TRIBUNAL MEMBER</i>	<i>ROLE</i>	<i>TERM EXPIRY/RESIGNATION</i>
Theodore F. Strocel, Q.C.	Chair	December 31, 2018
Patrick Lewis	Vice-Chair	November 30, 2018
Michael Tourigny	Temporary Member	October 01, 2018

In December 2018, Michael Tourigny was appointed a permanent member of the FST and was designated as Acting Chair for a six month term. In July 2018, Jane A.G. Purdie was appointed to fill the vacancy left by Pat Lewis' resignation from the Tribunal. In December 2018, Michelle Good was appointed to the Tribunal as a member. Recruitment for a permanent Chair of the FST was commenced in December of 2018, and was ongoing at the close of this reporting period.

At the close of this reporting period, the FST membership consisted of the following individuals:

<i>TRIBUNAL MEMBER</i>	<i>ROLE</i>	<i>TERM EXPIRY/RESIGNATION</i>
Michael Tourigny	Acting Chair	December 17, 2021
Jane A.G. Purdie, Q.C.	Member	November 30, 2020
Michelle Good	Member	December 12, 2020

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

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

Ted Strocel has been practicing law in Abbotsford since 1981. He has carried on a general practice with emphasis on business and corporate law, wills and estate planning, and real estate. Throughout his practice he has carried litigation matters and has appeared before all levels of Court in British Columbia, and before administrative tribunals such as the Commercial Appeals Commission, predecessor to the Financial Services Tribunal. 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. 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.

***MICHAEL TOURIGNY, ACTING CHAIR***

Mike Tourigny obtained his Bachelor of Law degree from UBC in 1978, was called to the bar of British Columbia in 1979 and retired from the private practice of law in 2015. Mike has extensive trial court, appeal court, administrative tribunal and alternate dispute resolution counsel experience. During his more than 30 years of private practice as a commercial litigation partner in the Vancouver office of a large Canadian law firm, Mike acted on numerous occasions for commercial real estate, business and lending clients and in the process acquired a substantive knowledge of the financial services industry in the province. From December 31, 2015 – December 31, 2017 Mike was an appointed member of the British Columbia Environmental Appeal Board, Forest Appeals Commission and Oil & Gas Appeal Tribunal, and in those capacities adjudicated appeals from decisions of statutory decision makers in the province. Since September 2015 Mike has been an appointed member of the Board of Governors and Chair of the Finance and Audit Committee of Vancouver Community College.

***JANE A.G. PURDIE, Q.C., MEMBER***

Jane graduated from the University of Manitoba Law School after completing a B.A. (Economics/English) at the University of Saskatchewan. She practised in Manitoba and then moved to British Columbia where she has practised since 1980 in the White Rock area. Jane was appointed Queen's Counsel in 1992. Her practice has given her broad experience in the solicitor's area, though she has appeared in all 3 levels of the B.C. courts. She was the Chair of the Joint B.C. Real Estate Association/Canadian Bar Association provincial real estate contract standardization committee, and was a member of the B.C. Real Estate Association Forms committee for 10 years. Jane has been an elected member of the Canadian Bar Association Provincial Bar Council, Chair of the CBA National Elder Law Section and a board member of the General Practice Forum. Jane has taught courses and seminars in various topics including: mortgages and foreclosures, advanced real estate issues, ethics, wills, estates, elder law and family issues. She has been a presenter for the Continuing Legal Education Society, the People's Law School, the Law Society of B.C., the Canadian Bar Association, and various community and corporate organizations. Jane has also



served on the board of St. Jude’s nursing home in Vancouver and Seniors Come Share, a society providing day centre and outreach services to seniors.

***MICHELLE GOOD, MEMBER***

Michelle is of Cree ancestry and a descendent of the Battle River Cree and a member of the Red Pheasant Cree Nation. She has worked with indigenous organizations since she was a teenager and at 40 decided to approach that work in a different way obtaining her law degree from UBC at 43. She has practiced law in the public and private sector since then. In 2011 she took her life-long passion for writing and entered the UBC Master of Fine Arts (Creative Writing) program at UBC, graduating in 2014. Her poetry, and short stories have appeared in W49, The Puritan and Gatherings. Her poem, Defying Gravity was selected for inclusion in Best Canadian Poetry I English in 2016 and then again for inclusion in Best of the Best Canadian Poetry, A Tenth Anniversary Edition. Most recently her essay, A Tradition of Violence was selected for inclusion in a peer reviewed anthology out of the University of Alberta Press entitled Keetsahnak, Our Sisters: Walking with Murdered Indigenous Women, Girls and Two-Spirit Peoples. Her soon to be released novel Five Little Indians won the 2018 HarperCollins/UBC Best New Fiction Prize. She currently sits on a number of administrative boards and tribunals.

## *Operations*

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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 8 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, as well as facilities and records supports, etc.) were transferred to the Ministry of Attorney General as part of the Tribunal Transformation Initiative.

## *Appeal Activity and Decisions Issued*

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### **APPEALS FILED**

There were five new appeals filed during this reporting period. Eleven appeals remained open from the previous reporting period. The new appeals filed are described below.

**2018-RSA-002 – FILED BY SHAHIN BEHROYAN ON MAY 16, 2018** – appeal of two decisions of a discipline committee of the Real Estate Council of British Columbia finding the Appellant, Shahin Behroyan, committed professional misconduct, and imposing various penalties including a 12 month license suspension, a \$7500 fine, a requirement for completion of an ethics course, and payment of enforcement expenses of \$58,708.85. The Appeal was before an adjudicator at the close of this reporting period.

**2018-RSA-003 – FILED BY THE SUPERINTENDENT OF REAL ESTATE ON MAY 29, 2018** – appeal of the penalty decision of the Real Estate Council of British Columbia finding Shahin Behroyan, committed professional misconduct, and imposing various penalties including a 12 month license suspension, a \$7500 fine, a requirement for completion of an ethics course, and payment of enforcement expenses of \$58,708.85. The Appeal was before an adjudicator at the close of this reporting period.

**2018-RSA-004 FILED BY CUI ZHU (DANIELLE) DENG ON SEPTEMBER 07, 2018** - Appeal of two decisions of a discipline committee of the Real Estate Council of British Columbia finding the Appellant committed professional misconduct and assessing a discipline penalty of \$5,000, enforcement costs of \$50,285.52 and imposing supervision and education conditions on the Appellant's license. The Appeal was before an adjudicator at the close of this reporting period.

**2018-FIA-001 FILED BY VARINDER GREWAL ON OCTOBER 10, 2018** - Appeal of an Order of the Insurance Council of British Columbia cancelling the Appellant's Insurance license for a period of five years, fining the Appellant \$7,500, and assessing investigative and hearing costs of \$10,656.17. The Appeal was before and adjudicator at the close of this reporting period.

**2019-FIA-001 FILED BY XIAOMEI (MAY) ZOU ON MARCH 07, 2019**- Appeal of an Order of the Insurance Council of BC requiring the Appellant to complete a certain number of continuing education credits, fining the Appellant \$3000 for failing to complete the required continuing education credits, and

assessing hearing costs of \$5875.71. The Appeal was before an adjudicator at the close of this reporting period.

### ***TRIBUNAL DECISIONS – SUMMARY***

During the current reporting period, the following numbers and categories of decisions were issued by the FST:

- **Eleven** decisions were issued on the merits of appeals
- **Two** costs decisions were issued
- **Fourteen** preliminary decisions were issued

#### ***Preliminary and Post-Hearing Decisions***

The sixteen preliminary and post-hearing decisions issued during the reporting period generally dealt with the following issues:

- whether certain evidence properly formed part of an appeal record;
- whether to order original transcripts of an underlying proceeding;
- whether to allow the release of information to a third party;
- whether a conflict or reasonable apprehension of bias existed;
- whether to allow an extension of time to file submissions in contested circumstances;
- whether to allow an appeal to be bifurcated into separate liability and penalty hearings;
- whether to grant a stay of an underlying decision pending appeal;
- whether to join similar appeals to be heard by one tribunal member;
- whether to allow a withdrawal of an request to abandon an appeal;
- whether to allow a withdrawal of a request for abeyance; and
- whether to award costs, and in what amount.

#### ***Final decisions on the merits***

The following is a summary of the eleven final decisions on the merits issued during the reporting period:

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#### ***2017-MBA-002(b)***

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Decision Date:	September 14, 2018
Appellant:	Soheil Arman Kia
Respondent(s):	Registrar of Mortgage Brokers
Act:	<i>Mortgage Brokers Act</i> , RSBC 1996, c 313 (“MBA”)
Issue(s):	Whether the Registrar of Mortgage Brokers erred in finding that a search of the Appellant’s business premises was lawful and the evidence obtained from the search was admissible; whether the Registrar erred in finding the

Appellant conducted his business in a manner prejudicial to the public interest; and whether the resultant penalty was overly harsh in the circumstances.

**Summary:** The Appellant was the “designated individual” for his mortgage broker business. He appealed from liability and penalty decisions made by a Registrar’s designate finding that he had conducted business in a manner prejudicial to the public interest and imposing penalties and costs by way of remedy. In coming to the decision on liability, the Registrar’s designate relied on evidence collected during a search of the Appellant’s business premises which the designate ruled was lawfully obtained. In addition to disputing the liability and penalty decisions, the Appellant alleged the search was unlawful and the ruling to admit the evidence obtained by the search was unreasonable. The Panel held the search was lawful and the evidence obtained therein had been properly admitted. The Panel held it had the jurisdiction to determine the issue of whether the Appellant’s Charter rights had been breached because the issue was not a “Constitutional Question”, as defined. The Panel further held that the designate had answered questions of credibility and findings of fact reasonably, and had imposed a penalty which was not overly harsh or unreasonable.

**Disposition:** *The appeal was dismissed in its entirety.*

**Appeal Decision:** [http://www.fst.gov.bc.ca/pdf/2017-MBA-002\(b\).pdf](http://www.fst.gov.bc.ca/pdf/2017-MBA-002(b).pdf)

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***2017-FIA-002(a), 003(a), 004(a), 005(a), 006(a), 007(a) and 008(a)***

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**Decision Date:** July 31, 2018

**Appellant:** Financial Institutions Commission

**Respondents:** Insurance Council of British Columbia, Heidi Johnson, Rabjit Singh Johal, Edmund George, Jacqueline Nicole Babcock, Cheryl Lee Das, Ernie Nguyen and Mi Keun Lee

**Act:** *Financial Institutions Act, RSBC 1996, c 141 (“FIA”)*

**Issue(s):** What was the appropriate standard of review of each of the seven penalty decisions, and were the penalties assessed against the individual Respondent Licensees reasonable?

**Summary:** The Appeal concerned seven decisions of the Respondent Insurance Council. The Insurance Council’s first instance decisions arose from the misconduct of insurance agents who renewed clients’ auto insurance when the governing rules prohibited them from doing so where bridge tolls had not been paid. The renewals were accomplished by taking advantage of a “glitch” in the Insurance Council of British Columbia computer system that allowed agents to bypass the normal system restriction that was triggered when a bridge toll was unpaid. The Chair comprehensively reviewed the

Tribunal’s internal jurisprudence relating to its internal standard of review of underlying decisions. In relation to penalty appeals, the Chair held:

*“[T]he Tribunal should unapologetically accept that the Legislature expected it to intervene in any penalty appeal where it finds that there has been an error in principle as opposed to an “error” in line-drawing by the Insurance Council, and that it is for the Tribunal to determine where an error in principle has occurred. The Tribunal should apply this test not as if it were a court, but should apply it from its specialized institutional vantage point and with a careful eye to the public interest.”*

With respect to the reasonableness of the seven penalty decisions, the Chair held that the decisions amounted to an error in principle as they failed to reflect the values of public protection, specific and general deterrence and denunciation where a licensee has engaged in repeated conduct that has brought that licensee’s trustworthiness into question.

Disposition: ***Each of the seven Appeals was allowed on the basis that the penalties assessed by the Insurance Council were unreasonable. The matter of assessment of reasonable penalty was remitted back to the Insurance Council with instructions.***

Appeal Decision: <http://www.fst.gov.bc.ca/pdf/2017fia002a;etal.pdf>

***2018-MBA-001(a)***

Decision Date: January 25, 2019

Appellant: Arvind Shankar

Respondent: Registrar of Mortgage Brokers

Act: *Mortgage Brokers Act*, RSBC 1996, c 313 (“MBA”)

Issue(s): Whether the Registrar gave the Appellant proper notice of the case he had to meet; whether the Registrar handled certain evidentiary matters fairly and reasonably; and whether the penalty assessed by the Registrar was reasonable in all the circumstances.

Summary: The Appellant appealed two decisions of the Registrar of Mortgage Brokers: one finding he had been conducting business as a submortgage broker without being registered to do so contrary to the *MBA*; and the other imposing a financial penalty and costs. The Panel held that the Appellant was entitled to a high degree of procedural fairness, but that he had received fair notice of the case he had to meet. The Panel further held that the Registrar had fairly and reasonably made rulings regarding evidentiary matters, and had correctly applied the standard and onus of proof in the decision. On the matter of penalty, the Panel applied the less deferential reasonableness standard of review to the issue and determined that the Registrar had reasonably assessed the maximum administrative penalty against the Appellant and had reasonably awarded costs against him.

Disposition: ***The appeal was dismissed in its entirety.***  
 Appeal Decision: <http://www.fst.gov.bc.ca/pdf/2018mba001a.pdf>

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***2017-RSA-001(a)***

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Decision Date: April 19, 2018  
 Appellant: Roger Bruce Schoen  
 Respondent: Real Estate Council of British Columbia and Superintendent of Real Estate  
 Act: *Real Estate Services Act, SBC 2004, c 42 ("RESA")*  
 Issue: Whether, the Real Estate Council afforded the Appellant procedural fairness; whether new evidence tendered by the Appellant was admissible; and whether the Real Estate Council reasonably decided the Appellant had committed professional misconduct.  
 Summary: The Appellant, a former managing broker of a real estate brokerage, appealed liability and penalty decisions made against him by the Real Estate Council. The Liability decision found he had committed professional misconduct by failing to fulfill his responsibilities to properly manage and actively supervise the brokerage, including maintaining proper books and records and ensuring that rental funds were deposited into a complainant's bank account in accordance with his written instructions. The Penalty decision ordered that the Appellant was barred from applying for a real estate license for a specified number of years and assessed a monetary penalty and costs against him. The Appellant argued various breaches of procedural fairness in the investigation which led to the underlying decision. He also argued that he did not breach the RESA, and the Council was wrong to find he did so. Finally, he argued that the penalty ordered by the Real Estate Council was "outrageous, disproportionate and totally unfair".

The Chair dismissed all of the Appellants arguments on appeal. On the matter of the Application for new evidence, the Chair determined that the proper forum in which to tender the evidence was at the underlying hearing, and the evidence did not otherwise pass the relevant test of admissibility of new evidence. The Chair also dismissed the Appellant's multiple arguments regarding procedural fairness, including the Appellant's multiple allegations of bias which the Chair held were "unsubstantiated, unwarranted, and at times very discourteous". The Chair did not accept the Appellant's arguments that he did not breach the RESA, and upheld the liability decision in total. The Chair held that the assessment of enforcement expenses and the disciplinary penalty were reasonable upheld them.

Disposition: ***The Appeal was dismissed in its entirety.***  
 Appeal Decision: [http://www.fst.gov.bc.ca/pdf/2017-RSA-002\(b\).pdf](http://www.fst.gov.bc.ca/pdf/2017-RSA-002(b).pdf)

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**2018-RSA-001(a)**

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Decision Date:	February 21, 2019
Appellant:	Douglas Welder
Respondent:	Real Estate Council of British Columbia
Act:	<i>Real Estate Services Act</i> , SBC 2004, c 42 (“RESA”)
Issue(s):	Whether the Real Estate Council acted fairly and reasonably in refusing to grant the Appellant a real estate agent license and prohibiting him from reapplying for a period of three years.
Summary:	The Appellant, a disbarred lawyer, appealed the decision of the Real Estate Council finding that he was not a person of good reputation and was therefore unsuitable to be licensed as a real estate agent under the RESA. Part of the order included a provision prohibiting the Appellant from reapplying for licensure for a period of three years. The Appellant made arguments regarding the Real Estate Council’s interpretation of a provision of the <i>Legal Professions Act</i> (“LPA”) which he said prohibited introduction of evidence of his past history with the Law Society. He also argued that the Real Estate Council erred in imposing a three-year period of ineligibility for reapplication. The Panel held that the Real Estate Council had adopted a reasonable interpretation of the provision of the LPA, and, further, that the Council had acted fairly in seeking written submissions from the parties regarding their positions on interpretation of the provision. The Panel further held that the Panel had not erred in applying the correct onus, nor had it erred in interpreting and weighing the evidence. With respect to the three-year waiting period, the Panel held that it fell well within a reasonable range of outcomes.
Disposition:	<b><i>The appeal was dismissed in its entirety.</i></b>
Appeal Decision:	<a href="http://www.fst.gov.bc.ca/pdf/2018rsa001a.pdf">http://www.fst.gov.bc.ca/pdf/2018rsa001a.pdf</a>

### *Matters Outstanding at end of Period*

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There were five matters outstanding at the end of this reporting period. Decisions on the merits of these outstanding matters will be summarized in the next reporting period.

## *Performance Indicators and Timelines*

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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 339 days. The shortest time from open to close was 261 days and the longest was 366 days. Each of the appeals filed in this reporting period proceeded to full hearing.

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 90 days from receiving the last submissions of the parties. In 82 percent (9 of 11) of the appeals involving a hearing on the merits that were completed within the reporting period, the decisions were released within those timelines. In the two appeals where the practice directive was not met, the respective decisions were released 112 and 262 days after the close of submissions.

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*

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### ***BC Supreme Court***

One application for judicial review was filed in the BC Supreme Court on March 25, 2019, in regard to Decision No. 2018-MBA-001(a), which was issued by the FST on January 25, 2019. The application, *Arvind Shankar v Financial Services Tribunal*, S-193245, was pending determination as of the close of this reporting period.

Two applications for judicial review were pending decision before the Court at the close of the last reporting period. The Court dismissed *Yang v Real Estate Council of British Columbia*, and a summary of the decision appears below. *Real Estate Council of British Columbia v Yang*, S179917 remains outstanding before the Supreme Court at the close of this reporting period.

### ***BC Court of Appeal***

One appeal was filed at the Court of Appeal on June 18, 2018, in regard to a decision of the BC Supreme Court dismissing an appeal of FST Decision No. 2017-RSA-001(a). The Court of Appeal dismissed that appeal on January 28, 2019, *Caiming Yang v Real Estate Council of British Columbia*, 2019 BCCA 43, and a summary of the Court's decision appears below.

An appeal which was before the BC Court of Appeal at the commencement of this reporting period was abandoned by the Appellant. The appeal was of a BC Supreme Court decision upholding an FST decision: *Kadioglu v Real Estate Council of British Columbia et al*, 2017 BCSC 2252.

### ***Supreme Court of Canada***

During the reporting period, no leave applications or appeals were filed with or heard by the Supreme Court of Canada.

### ***Judicial Review Summaries:***

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#### *Yang v The Real Estate Council of BC, 2018 BCSC 933*

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Decision Date:	May 22, 2018
Appellant:	Cai Ming Yang
Respondents:	Real Estate Council of BC
Act:	<i>Real Estate Services Act</i> , SBC 2004, c 42
Issue:	The Appellant petitioned for judicial review on the basis that the FST did not find in his favour on one of two issues he

raised before the tribunal; that being whether a qualification hearing was properly held.

Disposition:	The appeal was dismissed
Court's Decision:	<a href="https://www.courts.gov.bc.ca/jdb-txt/sc/18/09/2018BCSC0933.htm">https://www.courts.gov.bc.ca/jdb-txt/sc/18/09/2018BCSC0933.htm</a>
Court's Summary:	The Appellant, a real estate licensee, petitioned for judicial review of the decision of the FST finding in his favour on one issue which resulted in the removal of conditions attached to his Real Estate Licence, but finding against him on another issue having to do with whether a qualification hearing of the Respondent Real Estate Council was properly held. The Chambers judge dismissed the appeal on the basis of mootness/and or that the judicial review would serve no useful purpose if it were to proceed as the Appellant had already been successful at the FST level.

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*Caiming Yang v Real Estate Council of British Columbia, 2019 BCCA 43*

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Decision Date:	January 28, 2019
Appellant:	Caiming Yang
Respondents:	Real Estate Council of BC Financial Services Tribunal
Act:	<i>Real Estate Services Act, SBC 2004, c 42</i>
Issue:	Whether the Court below had committed an error in principle in declining to entertain the judicial review petition on the ground that to do so would serve no useful purpose.
Disposition:	The appeal was dismissed
Court's Decision:	<a href="https://www.bccourts.ca/jdb-txt/ca/19/00/2019BCCA0043.htm">https://www.bccourts.ca/jdb-txt/ca/19/00/2019BCCA0043.htm</a>
Court's Summary:	The Appellant appealed a decision of the BC Supreme Court which had dismissed his application for judicial review on the basis that to entertain the judicial review would serve no practical purpose. The Court of Appeal upheld the decision of the judicial review judge and held that she did not err in refusing to hear the Appellant's petition because it would serve no practical purpose.

## Statement of Financial Performance

(For the fiscal year ending March 31, 2019)

In fiscal year 2018/2019, the FST received \$4,250 from appellants respecting appeal filing fees, and incurred expenses of \$126,641 as detailed below. We have provided a six year chart for comparative purposes. In addition to the appeals filed during this reporting period, the FST also provided professional development to members and appeared, via legal counsel, on several judicial review applications to make submissions on important issues.

<i>Operating Result</i>	<b>2013/2014</b>	<b>2014/2015</b>	<b>2015/2016</b>	<b>2016/2017</b>	<b>2017/2018</b>	<b>2018/2019</b>
	\$	\$	\$	\$	\$	\$
Appellant Fees	850	850	5,950	4,250	11,050	4,250
Funding	13,661	8,964	45,383	86,013	80,459	122,391
Direct Expenses	(14,511)	(9,814)	(51,333)	(90,263)	(91,509)	(126,641)
Net	0	0	0	0	0	0
<i>Direct Expense Details</i>	<b>2013/2014</b>	<b>2014/2015</b>	<b>2015/2016</b>	<b>2016/2017</b>	<b>2017/2018</b>	<b>2018/2019</b>
	\$	\$	\$	\$	\$	\$
Salaries and Benefits	0	0	0	0	0	0
Professional Services	8,470	7,557	24,177	42,931	41,511	56,379
Board Fees & Expenses	5,839	2,217	26,920	46,588	48,635	69,821
Other	202	40	236	744	1363	441
Total direct Expenses	14,511	9,814	51,333	90,263	91,509	126,641
# of active Appeals	1	2	8	10	17	16
# of active Court Proceedings	1	2	3	3	4	5
<b>Total FST Expenses</b>	<b>\$14,511</b>	<b>\$9,814</b>	<b>\$51,333</b>	<b>\$90,263</b>	<b>\$91,509</b>	<b>\$126,641</b>

