

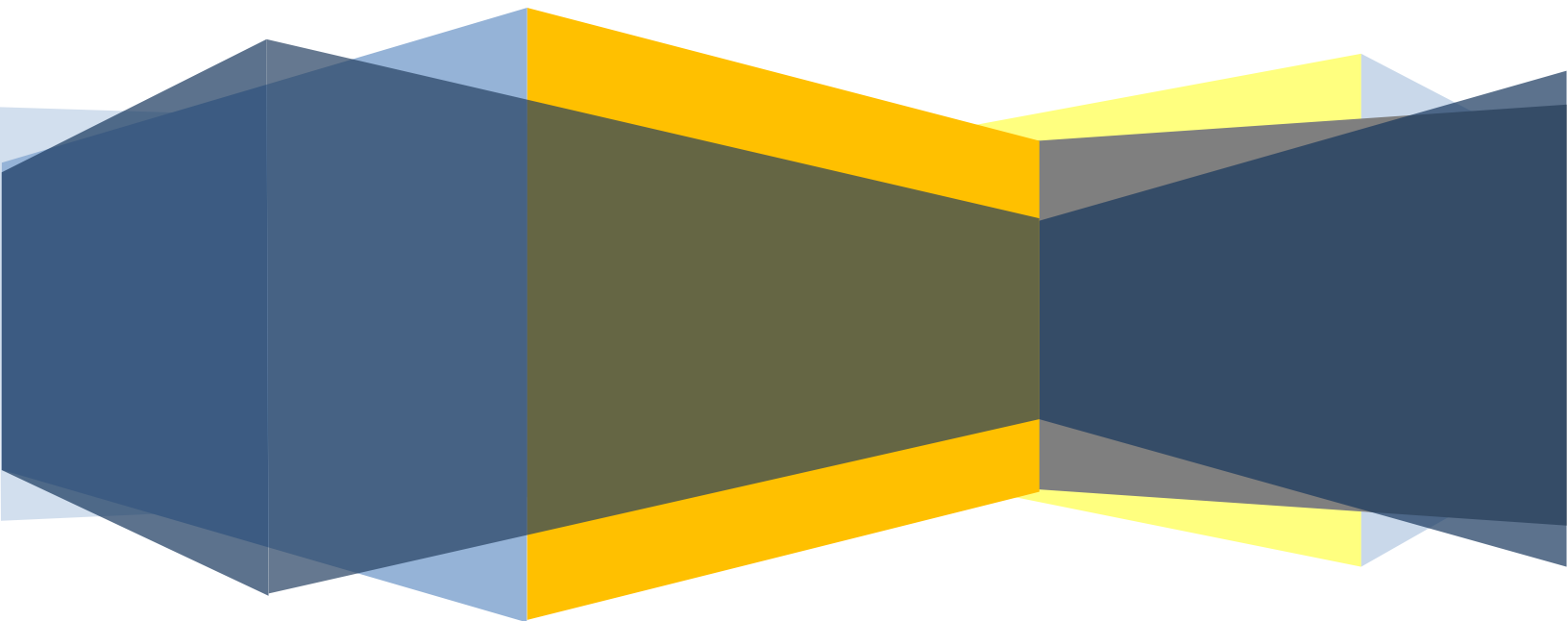


BRITISH
COLUMBIA

Financial Services Tribunal

2019-2020 Annual Report

*Covering the reporting period from
April 01, 2019 – March 31, 2020*



March 25, 2021

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

Dear Minister Eby:

Re: Financial Services Tribunal 2019-2020 Annual Report

I respectfully submit the Annual Report of the Financial Services Tribunal for the period April 1, 2019 to March 31, 2020.

Sincerely,



George Hungerford, 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, 2019 and ending March 31, 2020. 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 nine new appeals were filed with the Tribunal. Three new appeals were filed under the *Real Estate Services Act*, and six 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 – Six appeals were carried over from the previous reporting period¹. During this reporting period the FST closed five of the six carried-over appeals.

Matters Outstanding - Of the 15 total appeals which were before the FST in the current reporting period, eight appeals were closed. Seven appeals remained outstanding at the close of the reporting period.

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

Judicial Reviews and Court Appeals during Reporting Period

During this reporting period two new applications for judicial review of the same FST decision (file No. 2018-RSA-004) were filed with the BC Supreme Court. Both matters remain outstanding as of the close of this reporting period.

¹ The 2018-2019 FST Annual Report indicated that five matters remained outstanding at the end of that reporting period. However, a late application for costs required the FST to reopen the matter to take submissions and issue a costs decision. As a result, six matters were carried over from the previous reporting period to the current period, and the outstanding costs matter was decided in the current reporting period.

There were three applications for Judicial Review of FST decisions (file Nos. 2016-MBA-001², 2018-MBA-001, and 2017-RSA-001) which were outstanding before the BC Supreme Court at the commencement of this reporting period, and all remain 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. Significantly more appeals were filed in this reporting period than in the previous reporting period, and 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; 2019/2020 – 9 new appeals). The 2020/2021 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. Due to the trend in increased volume of appeals being filed, the Tribunal commenced recruitment of new members during this reporting period. Although the membership of the Tribunal has never been greater than four members, the Tribunal worked with the appointing authority to recruit for an additional three members. The Tribunal undertook outreach to different financial and legal sectors and sought out equity seeking groups in its recruitment efforts. Although falling outside of this reporting period, I am happy to report that in the summer of 2020, the Tribunal increased its membership from three to seven members. The Tribunal will report further on recruitment in the next reporting period.

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 an in-depth review of service delivery which has resulted in several organizational realignments within the cluster. Registry staff have been increased, providing greater case management capacity for all the tribunals within the cluster, including the FST.

² The 2018-2019 FST Annual Report reported on two matters which were outstanding before the BC Supreme Court at the close of the reporting period, but did not report on a third matter (filed in December of 2016 in relation to decision No. 2016-MBA-001), which was also outstanding before the BC Supreme Court at the time. That matter was described in the 2016-2017 FST Annual Report, and, as indicated above, remains outstanding before the BC Supreme Court as of the close of this reporting period.

Further, the cluster has completed full implementation of the new case management system which has significantly helped to modernize tribunal operations. With a modern case management system with flexible and adaptive functionality, the tribunal cluster, including the FST, has been able to better and more efficiently manage its appeals, and, going forward, will have easier and more accurate access to appeal information and statistics. This will allow the FST to be able to more effectively track and report out on key performance indicators.

Service delivery will continue to be reviewed over the next reporting period, and further technological and organizational change is expected to occur. The FST will continue to capitalize on technological improvements over the next reporting period.

COVID-19 and Pandemic Response

Importantly, this reporting period saw the onset of the COVID-19 pandemic and resultant state of emergency in British Columbia. In response to the pandemic, the FST implemented its business continuity plan, which focussed on ensuring ongoing service delivery to the users of the tribunal, while maintaining health and safety of tribunal staff and Members.

At the outset of the pandemic, questions about disease transmissibility resulted in shifting the way the Tribunal accepted paper-based submissions and materials from parties and how the Tribunal facilitated receipt of those materials by decision-makers. Declaration of a state of emergency and restrictions on in-person gatherings also necessitated research into and training of members in the use of video-conferencing software to ensure effective communication.

From the onset of the pandemic and into the next reporting period the Tribunal worked closely with its host Ministry of Attorney General to communicate and consult on emergency measures within the tribunal system in BC.

As a result of the province-wide mandate for appropriate social distancing, the Tribunal quickly shifted its operations from primarily paper-based to primarily electronic. The public was advised of the modification of Tribunal Rules to promote electronic filings, and were encouraged to flag pressing and/or sensitive matters to tribunal staff so that the FST could prioritize such matters in case of service disruption.

Thanks to the dedication and flexibility of staff in the tribunal cluster, and to the adaptability of tribunal Members to a new way of working and interacting, the tribunal did not suffer any service disruptions or adverse health consequences related to the pandemic during this reporting period. I would like to take this opportunity to extend my sincere thanks to all the individuals in the cluster who have worked hard to keep the tribunal open and accessible to the public it serves. Your work as government employees and appointees has been top rate during times which have been difficult for all of us.

At the time of publication of this report the pandemic remains ongoing, and the FST continues to adapt to ever changing circumstances. As such, the Tribunal will report out more fully on additional pandemic-related measures and outcomes in the next reporting period.



George Hungerford
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*.

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>	FinancialServicesTribunal@gov.bc.ca
<i>WEBSITE:</i>	http://www.fst.gov.bc.ca/

Tribunal Membership

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

<i>TRIBUNAL MEMBER</i>	<i>ROLE</i>	<i>TERM EXPIRY/RESIGNATION</i>
George N.F. Hungerford	Chair	June 17, 2022
Michael Tourigny	Member	December 17, 2021
Michelle Good	Member	June 11, 2021
Jane A.G. Purdie, Q.C.	Member	May 29, 2021

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

GEORGE N. F. HUNGERFORD, CHAIR

George Hungerford is a senior policy lawyer with the British Columbia Securities Commission. He has extensive experience in the regulation of securities, in particular investment products. Formerly, he has a background in investment banking and consulting. Outside of work, he is an active board member on a number of Indigenous business and policy organizations. He holds an MBA from Stanford University and a law degree from UBC. He holds the CFA and CAIA designations and is called to the bars of British Columbia and the Northwest Territories. He is a member of the Gwich'in First Nation of the Northwest Territories and Yukon.

MICHAEL TOURIGNY, MEMBER

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

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 9 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

APPEALS FILED

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

2019-FIA-002 – FILED BY MANJIT BRAR ON APRIL 11, 2019 – appeal of a decision of the Insurance Council of British Columbia finding the Appellant had cheated and colluded on certain Insurance qualification exams, and ordering that the Appellant's Insurance Licence be cancelled for 4 years, that she pay hearings costs, and that she complete a remedial ethics course prior to reapplication for an Insurance Licence. The Appeal was before an adjudicator at the close of this reporting period.

2019 FIA-003 – FILED BY TRUNORTH WARRANTY PLANS OF NORTH AMERICA, LLC ON APRIL 30, 2019 – appeal of a decision of the Superintendent of Financial Institutions finding that the Appellant had breached the Financial Institutions Act by Carrying on insurance business in British Columbia without a valid business authorization to do so. The Superintendent ordered that the Appellant: immediately cease conducting insurance business in British Columbia; provide the Superintendent with a copy of certain contracts issued by it; and arrange for assumption of those contracts by a properly authorized insurance company. The Appeal was before an adjudicator at the close of this reporting period.

2019-FIA-004 FILED BY LUAN CHARLES XING ON MAY 07, 2019 - Appeal of a decision of the Insurance Council of BC finding the Appellant had committed professional misconduct, and a resultant Order that the Appellant's insurance licence be suspended for a period of one year, conditions be imposed on the Appellant's future licensing, and that fines and investigation costs be paid by the Appellant. During this

reporting period the Appeal was granted in part, and the licence suspension was set aside and the matter remitted to the Insurance Council for reconsideration with directions.

2019-FIA-005 FILED BY PARAMJIT DHALIWAL ON APRIL 25, 2019 - Appeal of a decision of the Insurance Council of BC to suspend the Appellant's insurance licence. The Appeal was abandoned during this reporting period and the FST closed its file in the matter.

2019-FIA-006 FILED BY DARWIN BERNARD PETER BRAUN ON AUGUST 16, 2019 - Appeal of a decision of the Insurance Council of BC finding the Appellant had committed professional misconduct, and appeal of the resultant Order that cancelled the Appellant's Life and Accident and Sickness Insurance Licence and imposed various fines and costs. The Appeal was withdrawn during this reporting period and the Appeal was dismissed.

2019-FIA-007 FILED BY PAMELA PEEN HONG YEE ON AUGUST 23, 2019 - Appeal of a decision of the Insurance Council of BC finding the Appellant had committed professional misconduct, and appeal of the resultant Order that cancelled the Appellant's Life and Accident and Sickness Insurance Licence and imposed various fines and costs. The Appeal was before and adjudicator at the close of this reporting period.

2019-RSA 001 FILED BY FILED BY TREVOR WILLIAM MAXWELL INGLIS ON MAY 23, 2019- Appeal of a decision of the Real Estate Council finding the Appellant committed professional misconduct and ordering that his licence be suspended for nine months, he be required to pay a \$7500 fine and \$39,022.87 in enforcement expenses, and that he complete courses in Ethics and Communications. The Appeal was before an adjudicator at the close of this reporting period.

2019-RSA 001 FILED BY FILED BY THE SUPERINTENDENT OF REAL ESTATE ON JANUARY 07, 2020- Appeal by the Superintendent of a Consent Order between the Real Estate Council and Raj Banga which suspended Mr. Banga's licence for 2 months, imposed a discipline penalty of \$11,000, ordered the payment of enforcement expenses in the amount of \$1000, and imposed other conditions. The Appeal was before an adjudicator at the close of this reporting period.

2019-RSA 002 FILED BY FILED BY THE SUPERINTENDENT OF REAL ESTATE ON JANUARY 07, 2020- Appeal by the Superintendent of a Consent Order between the Real Estate Council and Joseph Liberatore which ordered Mr. Liberatore to pay a \$5000 discipline penalty and enforcement expenses of \$1500, and which imposed a requirement for remedial education to be undertaken. 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:

- **Four** decisions were issued on the merits of appeals
- **Four** costs decisions were issued
- **One** remedy decision was issued
- **Eleven** significant 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 new evidence should be admitted;
- whether to allow an extension of time to file an appeal;
- whether to allow an extension of time to file submissions in contested circumstances;
- whether to grant a stay of an underlying decision pending appeal;
- whether to grant an interim stay of an underlying proceeding pending determination of a stay application;
- whether to allow amendment of a Notice of Appeal;
- whether to allow withdrawal of an appeal;
- whether to dismiss an appeal which had not been perfected;
- what the appropriate remedy was for a decision allowing an appeal in part; and
- whether to award costs, and in what amount.

Final decisions on the merits

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

2018-RSA-004(a)

Decision Date:	September 20, 2019
Appellant:	Cui Zhu (Danielle) Deng
Respondent(s):	Real Estate Council of British Columbia
Third Party:	Superintendent of Real Estate
Act:	<i>Real Estate Services Act</i> SBC 2004, c 42 (“RESA”)
Issue(s):	Whether the Real Estate Council of British Columbia (RECBC) erred in finding that the Appellant had committed professional misconduct and whether the penalty and enforcement expenses assessed against the Appellant were reasonable.
Summary:	The Appellant’s former client alleged that the Appellant failed to advise her that a housing unit she had expressed interest in was available before she concluded a contract of purchase and sale on a different housing unit. The RECBC held a hearing and found the allegations were true and held that the Appellant committed professional misconduct by failing to disclose material information to her client regarding a property which her client wanted to purchase. The Appellant argued before the FST that certain of the RECBC’s findings of fact regarding the sale and purchase of the

properties were wrong, and that the RECBC made inappropriate findings about the Appellant's knowledge of her client's interest in the property. The FST accorded a high level of deference to the RECBC's findings of fact and rejected the Appellant's arguments on these grounds. Similarly, the FST rejected the Appellant's arguments that the \$5000 penalty was disproportionate to her misconduct, finding instead that the RECBC clearly articulated the basis for its determination of an appropriate penalty. However, the FST accepted the Appellant's argument that the enforcement expenses of \$50,285.52 were unreasonable. The FST found that the RECBC provided only brief reasons for its decision to award the costs against the Appellant, and that more analysis was necessary to justify such a high award. This was particularly the case considering that this was the second hearing involving the same matter; the first having resulted in an order which was overturned by the FST with direction that a new hearing be held. The FST held that although any enforcement expenses associated with the first hearing would have been quashed by the original FST order overturning the decision, the RECBC did not meaningfully consider the Appellant's argument concerning whether she should bear the cost of the second hearing, and in particular, the cost of the RECBC hiring outside counsel to prosecute the case against her. The FST ordered, as a remedy, that the enforcement expenses would be halved and the Appellant would be required to pay \$25,142.76.

Disposition: ***The appeal was allowed in part.***

Appeal Decision: <http://www.fst.gov.bc.ca/decisions.htm>

2019-FIA-001(a)

Decision Date:	December 30, 2019
Appellant:	Xiaomei (May) Zou
Respondent(s):	Insurance Council of British Columbia
Third Party:	British Columbia Financial Services Authority
Act:	<i>Financial Institutions Act</i> , RSBC 1996, c 141 (" <i>FIA</i> ")
Issue(s):	Whether the penalty and assessment of costs against the Appellant was reasonable, and whether the Insurance Council of British Columbia (ICBC) breached the Appellant's right to procedural fairness.
Summary:	The Appellant was an insurance Licensee and was required to complete a certain number of continuing education (CE) credits each year. The Appellant's brokerage complained to the ICBC about the Appellant's CE credits and the ICBC conducted an audit which showed the Appellant did not have the requisite credits for each of the 2015-2017 licensing years. The ICBC proposed to fine the Appellant for each year that she did not have the required CE credits, and to require her to make up the credits. The

Appellant rejected the proposed penalty and requested a hearing. After holding a hearing, the ICBC ordered that the Appellant pay \$1000 for each year she did not attain the required number of CE credits, and also assessed hearing costs against her in the amount of \$5875.71. In her appeal to the FST the Appellant attempted to adduce evidence that she had completed additional CE credits for the 2015-2017 years, but the FST refused her application for new evidence on the basis that the Appellant had not explained why she did not provide these materials to the ICBC hearing committee. The Appellant further argued that the penalty of \$1000 for each year was not reasonable because the ICBC failed to consider extenuating circumstances which should have mitigated her responsibility to complete the CE credits on time. The FST rejected this argument holding that the penalty fell within a range of reasonable outcomes. The FST similarly rejected the Appellant's arguments that she was denied procedural fairness in 1) being denied an interpreter, 2) having her name published on the ICBC website while the decision was under appeal, and 3) not knowing about the potential for costs to be assessed against her if she proceeded to hearing. On the publication argument, the FST held that it was within the right of the ICBC to publish the decision and order on its website, whether or not the decision and order was later appealed. On the interpretation argument, the FST reviewed the record, including the transcript and observed that it appeared the Appellant was able to conduct business with the ICBC and others in English. The FST held that because the Appellant didn't seek a delay in the process or assistance with interpretation, her right to procedural fairness was not breached. On the notice of costs argument, the FST held that there was evidence on the record which showed that the Appellant was aware that costs could be assessed against her. The Appellant's final argument was that the costs which were assessed against her were unreasonable. The FST agreed with this argument on the basis that the ICBC did not provide reasons for awarding costs against the Appellant. As a result, the FST sent the matter of costs back to the ICBC with directions to reconsider and provide reasons.

Disposition: ***The Appeal was allowed in part.***

Appeal Decision: <http://www.fst.gov.bc.ca/decisions.htm>

2018-RSA-002(b) and 003(b)

Decision Date: August 27, 2019

Appellant: Shahin Behroyan

Respondent: Real Estate Council of British Columbia

Third Party: Superintendent of Real Estate

Act: *Real Estate Services Act, SBC 2004, c 42 ("RESA")*

Issue(s):	Whether the RECBC erred in finding that the Appellant had committed professional misconduct.
Summary:	<p>The RECBC held a hearing in which it found that the Appellant had committed professional misconduct by falsely telling his client that a prospective buyer would pay full price for the client's property only if the client paid the buyer's agent a \$100,000 (later reduced to \$75,000) bonus, and by failing to disclose the inherent conflict of interest or advising his client to get independent legal advice. The RECBC ordered that the Appellant's licence be suspended for 12 months, that he pay a fine of \$7500, that he pay enforcement costs of \$58,708.85, and that he take an ethics course prior to the completion of his suspension. The Appellant appealed to the FST, which bifurcated the hearing into liability and penalty portions. This decision dealt only with the liability issue. On appeal, the Appellant argued that the RECBC erred in its assessment of credibility and in certain of its factual findings. The FST rejected these arguments and held that deference is owed to an underlying decision maker with respect to questions of fact and findings of credibility, and that the RECBC had supported its findings with reference to the evidence it relied on and provided reasons which indicated how it assessed the evidence. The Appellant also argued that the RECBC applied the wrong standard of proof, which the FST disagreed with, holding that the civil standard of a balance of probabilities was the appropriate standard which was applied by the RECBC. Similarly, the FST rejected the Appellant's arguments that the RECBC should have applied certain principles of Contract or Tort law, which the FST found were inapplicable to the matter. The FST also rejected the Appellant's arguments regarding RECBC being biased against him and failing to provide him with notice of the case he had to meet, as well as his argument that the RECBC's reasons were inadequate. However, the FST agreed with the Appellant's contention that the RECBC erred by making findings of professional misconduct in the absence of a proper evidentiary foundation. In particular, the FST held that the underlying assertions which formed the basis of two of the charges against the Appellant required expert evidence in order to prove, and that the RECBC had adduced no such evidence and had therefore not proven those charges. As a result of this finding, the FST requested submissions on the issue of appropriate remedy.</p>
Disposition:	<i>The appeal was allowed in part.</i>
Appeal Decision:	http://www.fst.gov.bc.ca/decisions.htm

2019-FIA-004(b)

Decision Date:	December 13, 2019
Appellant:	Luan Charles Xing
Respondent:	Insurance Council of British Columbia
Third Party:	British Columbia Financial Services Authority
Act:	<i>Financial Institutions Act</i> , RSBC 1996 c 141 (“FIA”)
Issue:	Whether the Appellant was denied procedural fairness in the process leading to the Suspension Order, whether the reasons given by the ICBC for making the Suspension Order were adequate, and whether the Suspension Order was reasonable in the circumstances.
Summary:	<p>An insurance company with whom the Appellant had an agency relationship provided a written investigation report to Council relating to client complaints and compliance concerns the insurer had about how the Appellant conducted business with them as life agent. The complaint prompted the ICBC to conduct its own investigation, which resulted in an intended decision to cancel the Appellant’s insurance licence. The Appellant exercised his right to a hearing, and during the course of the hearing, the Appellant and the representative of ICBC submitted a joint submission on penalty (“Joint Submission”). The Joint Submission sought supervision of the Appellant for one year, completion of certain courses and payment of investigation costs in the amount of \$1487.5. The ICBC rejected the Joint Submission and imposed a one year suspension (the “Suspension Order”) of the Appellant’s licence and one extra year of supervision in addition to other elements of the Joint Submission. The Appellant appealed to the FST and alleged a breach of procedural fairness in not having an opportunity to speak to the possibility of a suspension of his licence when questioned by the ICBC on the Joint Submission during the hearing. He also argued that the reasons for the Suspension Order were inadequate and that the Suspension Order was otherwise unreasonable. The FST held that the ICBC breached the Appellant’s right to procedural fairness. The FST held that when it was considering rejecting the Joint Submission it should have informed the parties that it may be disinclined to accept the Joint Submission and afforded them an opportunity to make further submissions on the more serious penalty of suspension which was being considered. The FST also held that the reasons given by the ICBC in support of the Suspension Order were inadequate in that they didn’t allow the FST to understand why the ICBC imposed the Suspension Order. As a result of these findings, the FST remitted the matter back to the ICBC with directions to allow the Appellant an opportunity to be heard on the issue of the suspension and to provide written reasons for any decision they then make.</p>
Disposition:	<i>The Appeal was allowed.</i>
Appeal Decision:	http://www.fst.gov.bc.ca/decisions.htm

Matters Outstanding at end of Period

There were seven 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

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 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 289 (last reporting period was 339 days). The shortest time from open to close was 47 days and the longest was 468 days. Six out of eight of the appeals closed 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 120 days from receiving the last submissions of the parties. In 17 percent (1 of 6) 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 five appeals where the practice directive was not met, the respective decisions were released and average of 285 days after the close of submissions³.

The Tribunal has identified three key reasons for failing to meet its targeted days to reach final decision. First, during this reporting period, the Tribunal was facing higher than usual appeal

³ Actual number of days for each of the five appeals was as follows: 352, 352, 224, 228, 268.

numbers and was engaged with recruitment of three additional members (anticipated increase of 43% of capacity) to help manage the increased appeal volumes. Additionally, over the past several reporting periods the Tribunal has noted that appeals which are coming before the FST have been of increasing complexity, and many have been subject to numerous complex pre-hearing applications. Because appeals are written and “on the record” oftentimes these pre-hearing matters are determined as part of the final decision on the merits (rather than as stand-alone matters prior to final determination), thus expanding the scope of the final decision and adjudication process. Finally, and perhaps most importantly, over the past several reporting periods the FST has encountered an increasing number of self-represented individuals who may have financial sector expertise, but who are unfamiliar with the legalistic process of appellate adjudication. The FST has attempted to design its process to be as accessible as possible to all users, regardless of representation, however the Tribunal continues to face unique challenges with respect to hearing appeals involving self-represented parties.

Moving forward into the coming reporting cycles, the FST will be reviewing its procedures and operations to ensure accessibility to all users, and will also be reviewing its practice directives to ensure that the Tribunal has set realistic expectations for users of the Tribunal considering the increasing volume and complexity of FST appeals.

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

BC Supreme Court

During this reporting period two new applications for judicial review of Decision No. 2018-RSA-004(a), issued September 20, 2019, were filed with the BC Supreme Court. The first application, *Cui Zhu (Danielle) Deng v. Financial Services Tribunal*, 221047, was filed on November 18, 2019, and the second application, *Real Estate Council of BC v. Financial Services Tribunal*, S-1913100, was filed on November 28, 2019. Both matters remain outstanding as of the close of this reporting period.

Three applications for Judicial Review of FST decisions (file Nos. 2016-MBA-001⁴, 2018-MBA-001, and 2017-RSA-001) were outstanding before the BC Supreme Court at the commencement of this reporting period as follows: *Real Estate Council of British Columbia v. Financial Services Tribunal*, S-1799171; *Arvind Shankar v Financial Services Tribunal*, S-193245; and *Robert John Emil Hensel v. Financial Services Tribunal*, S-11611725. All remain outstanding as of the close of this reporting period.

BC Court of Appeal

During this reporting period, no appeals were filed with or heard by the Court of Appeal.

Supreme Court of Canada

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

⁴ The 2018-2019 FST Annual Report reported on two matters which were outstanding before the BC Supreme Court at the close of the reporting period, but did not report on a third matter (filed in December of 2016 in relation to decision No. 2016-MBA-001), which was also outstanding before the BC Supreme Court at the time. That matter was described in the 2016-2017 FST Annual Report, and, as indicated above, remains outstanding before the BC Supreme Court as of the close of this reporting period.

Statement of Financial Performance

(For the fiscal year ending March 31, 2020)

In fiscal year 2019/2020, the FST received \$6,800 from appellants respecting appeal filing fees, and incurred expenses of \$157,206 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 retained legal counsel to manage several judicial review applications.

<i>Operating Result</i>	<i>2014/2015</i> \$	<i>2015/2016</i> \$	<i>2016/2017</i> \$	<i>2017/2018</i> \$	<i>2018/2019</i> \$	<i>2019/2020</i> \$
Appellant Fees	850	5,950	4,250	11,050	4,250	6,800
Funding	8,964	45,383	86,013	80,459	122,391	150,406
Direct Expenses	(9,814)	(51,333)	(90,263)	(91,509)	(126,641)	(157,206)
Net	0	0	0	0	0	0
<i>Direct Expenses</i>	<i>2014/2015</i> \$	<i>2015/2016</i> \$	<i>2016/2017</i> \$	<i>2017/2018</i> \$	<i>2018/2019</i> \$	<i>2019/2020</i> \$
Salaries and Benefits	0	0	0	0	0	0
Professional Services	7,557	24,177	42,931	41,511	56,379	36,650
Board Fees & Expenses	2,217	26,920	46,588	48,635	69,821	120,556
Other	40	236	744	1363	441	0
Total Direct Expenses	9,814	51,333	90,263	91,509	126,641	157,206
Total FST Expenses	\$9,814	\$51,333	\$90,263	\$91,509	\$126,641	\$157,206

# of active Appeals	2	8	10	17	16	15
# of active Court Proceedings	2	3	3	4	5	5

