



***The Financial Services Tribunal
Annual Report***

2005-2006

The Mandate of the FST

The FST hears appeals from institutions and individuals who want to contest enforcement decisions made by the:

- Insurance Council of British Columbia;
- Real Estate Council of British Columbia;
- Superintendent of Real Estate;
- Superintendent of Pensions;
- Registrar of Mortgage Brokers; and
- Superintendent of Financial Institutions.

The FST only has jurisdiction to hear appeals under the following British Columbia statutes*:

Financial Institutions Act ***Credit Union Incorporation Act***
Mortgage Brokers Act ***Pension Benefits Standards Act***
Real Estate Services Act
Real Estate Development Marketing Act

Appeals to the FST are governed by the statutes (above) that provide for an appeal to the FST, and by the *Administrative Tribunals Act*.

Under section 242.3 (1) of the *Financial Institutions Act*, the FST has the exclusive jurisdiction to:

- inquire into, hear and determine all those matters and questions of fact and law arising or requiring determination; and
- make any order permitted to be made.

The *Financial Institutions Act* restricts appeals from decisions of the FST. The statute provides that a decision of the FST, on a matter in respect of which the FST has exclusive jurisdiction, is final and conclusive and is not open to question or review in any court.

The FST does not hear appeals on certain decisions taken by the Financial Institutions Commission (“FICOM”). Certain FICOM decisions that can not be appealed to the FST may be appealed to the BC Supreme Court.

* The *Real Estate Act* was repealed and replaced by the *Real Estate Services Act* on January 1, 2005. The FST heard 3 appeals under the *Real Estate Act* before it was repealed by the Government of BC.

The Appointment of Tribunal Members

On June 1, 2004, the Lieutenant Governor of British Columbia, the Honourable Iona Campagnolo, PC, CM, OBC, appointed four Tribunal Members to the FST:

- Dale R. Doan;
- John B. Hall;
- Professor Stanley W. Hamilton; and
- Robert J. Hobart.

The FST's Tribunal Members have diverse experience and expertise from academic, professional and regulatory backgrounds. Additional information on the Tribunal Members is profiled in Appendix 1.

The Administration of Appeals

In accord with section 242.1 (5) (c) of the *Financial Institutions Act*, the Chair of the FST has signed the FST Directives and Practice Guidelines to provide for rules of practice and procedure for the tribunal.

The Guidelines set out the process the tribunal expects parties to follow during the course of an appeal. They address issues such as the deadline for filing a Notice of Appeal, the format documents filed at the FST should follow and other procedural matters.

In response to stakeholder feedback and to ensure that the appeals process is effective and efficient, the most recent amendment to the Guidelines occurred in January 2006. These amendments dealt with a number of procedural issues that had arisen during the first years of operation of the FST.

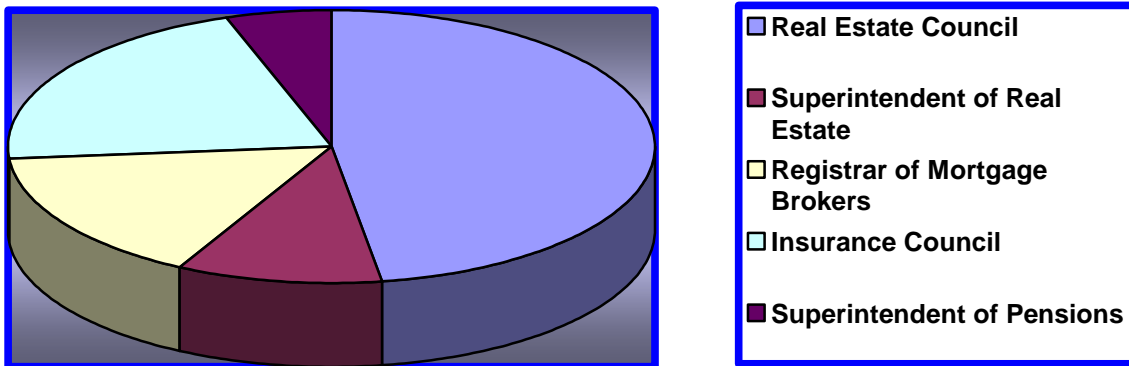
Attached as Appendix 2 is a copy of the most recent Guidelines.

FST Appeals

Since its inception until the end of fiscal year 2006, the FST has handled 19 complete appeals. Of these 19 cases:

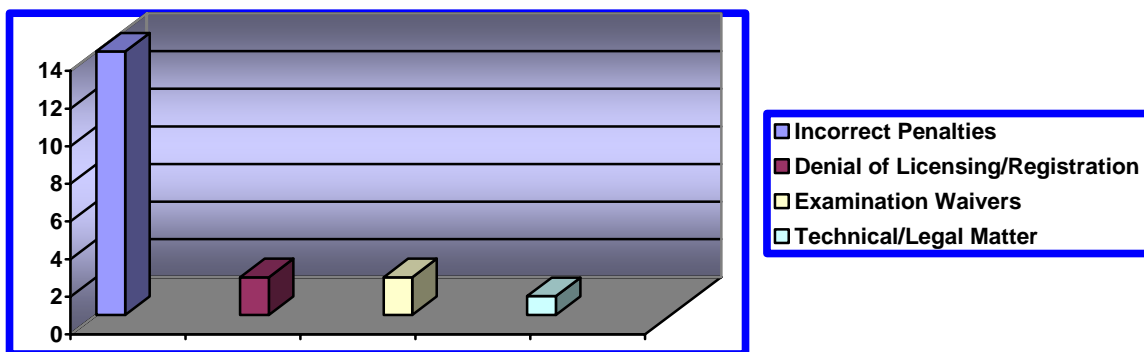
- 9 involve appeals of decisions of the Real Estate Council;
- 2 involve appeals of decisions of the Superintendent of Real Estate;
- 3 involve appeals of decisions of the Registrar of Mortgage Brokers;
- 4 involve appeals of decisions of the Insurance Council; and
- 1 involves an appeal of a decision of the Superintendent of Pensions.

Chart 1: Appeals by Origin - Original Decision-maker



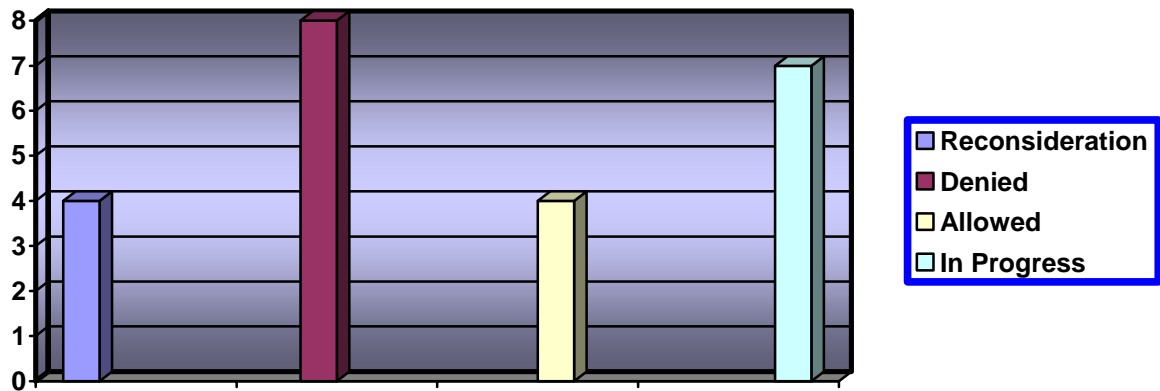
The issues under consideration included 14 appeals based on the grounds of incorrect penalties being imposed by the original decision-maker; 2 appeals based on denial of licensing/registration or removing conditions imposed upon a licensee; 2 appeals based on examination waivers for strata property managers; and 1 appeal based on a technical legal matter.

Chart 2: Appeals - By Grounds



With respect to decisions: 4 appeals were sent back for reconsideration to the original decision-maker; 8 appeals were denied by the FST confirming the original decision; 4 appeals resulted in the original decision being varied or reversed in whole or in part; and the remaining cases are in progress as at August 14, 2006.

Chart 3: Appeal Decisions (as at August 14, 2006)



For more information and a profile of the appeal cases, please see Appendix 3 in this report.

FST Operations

The FST is administered by 3 employees on a part-time basis: a Registrar, a Deputy Registrar and an Administrative Assistant. All of these employees spend only part of their time on FST matters, as they have other duties at the Financial Institutions Commission ("FICOM"). The offices of the tribunal are located within the premises of FICOM.

In 2006, the FST received \$12,750 in revenues. Expenses for the FST exceeded these revenues by a considerable amount.

Performance Measures for the Tribunal

To ensure the ongoing efficiency of the tribunal's operations, as data becomes available, the FST has tracked the following performance measures since its inception until the end of fiscal 2005/06:

Performance Measure	Results
Number of appeals finalized within 6 months of the filing of the Notice of Appeal	9/19
Number of decisions issued within 45 days of the receipt of the final submission in the appeal	11/19
Number of appeals that required oral hearings or the application of other special circumstances	2/19 1 oral hearing on the admissibility of evidence 1 oral hearing on the standard of review
Number of decisions reviewed pursuant to the Judicial Review Act (Supreme Court of British Columbia)	1/19
Number of decisions upheld by the Supreme Court of British Columbia	To be determined
Number of decisions overturned by the Supreme Court of British Columbia	To be determined

* Three of the appeals filed within FY 05/2006 remain in progress. Please note that appeals are assigned to each fiscal year by date of filing.

Appendix 1

Biographical Information – Chair, Vice-Chair and Members

J. Stewart Cunningham, Chair of the Financial Services Tribunal

Mr. Cunningham is the former President and CEO of Seaboard Life Insurance Company and its predecessor, Fidelity Life Assurance Company. He is a Fellow of the Canadian Institute of Actuaries, the Society of Actuaries, and an Associate of the British Institute of Actuaries. Mr. Cunningham is an actuarial and management consultant in Vancouver.

William John Dawson, Vice-Chair of the Financial Services Tribunal

Mr. Dawson is a former Partner with Pricewaterhouse Coopers (formerly Coopers and Lybrand) until his retirement in 2001. Mr. Dawson is past Vice-President and Chair of the Finance Committee for the Canadian Cancer Society (BC and Yukon Chapter), and he is a fellow of the Institute of Chartered Accountants and a Member of the Institute of Chartered Accountants of BC. Mr. Dawson holds a Bachelor of Commerce in Accounting from the University of BC.

Dale R. Doan, Tribunal Member

Mr. Doan is a partner in the law firm Cleveland & Doan in White Rock, BC. He has practiced business law for over 24 years, with a preference for secured transactions. Mr. Doan has taken secured transactions cases through all level of courts in Saskatchewan and British Columbia, and has appeared a number of times before the Supreme Court of Canada. Mr. Doan has published widely in areas of secured transactions, business and enforcement law, and was a contributing editor of *The British Columbia Personal Property Security Act Practice Manual*. He has taught Bar Admissions courses for 19 years, and lending law courses for the Canadian Banker's Association and Credit Union Central. In addition, he designed and taught a university law course at Simon Fraser University.

John B. Hall, Tribunal Member

John Hall received his Bachelor of Laws degree from the University of British Columbia in 1980. He then articulated and became an associate with the full-service Vancouver law firm of Alexander, Holburn, Beaudin & Lang. He served as Vice-Chair of the B.C. Labour Relations Board from 1985 to 1987, before returning to private practice as a partner with his former firm.

Mr. Hall was re-appointed to the Labour Relations Board as Associate Chair (Adjudication) in 1992 and was Acting Chair from July to October 1996. He resigned to begin his current arbitration and dispute resolution practice in 1998. Since then, Mr. Hall has also received a number of part-time appointments administrative tribunals, including the Commercial Appeals Commission, the Liquor Appeal Board and the Public Service Appeal Board. He is presently a mediator with the federal Public Service Labour Relations Board, and a part-time member of the Yukon Public Service Labour Relations Board and the B.C. Financial Services Tribunal.

Many of Mr. Hall's administrative law decisions have been reported nationally since 1985. He was a Director of the Council of Canadian Administrative Tribunals, the founding President and later Director of the B.C. Council of Administrative Tribunals, and has been Secretary of the B.C. Arbitrators Association since 1999. He regularly instructs a wide range of tribunal adjudicators on hearing skills and decision writing.

Stanley W. Hamilton, Tribunal Member

Dr. Stanley W. Hamilton is the Philip H. White Professor Emeritus of Urban Land Economics, Sauder School of Business, University of British Columbia and a member of the Finance Division. Dr. Hamilton has extensive teaching and research experience in the areas of real estate investments and financing, real property assessment and pensions, and is the author of several books, monographs and articles relating to real estate investments and pension investments.

Dr. Hamilton was Chair of the Board of Trustees of the UBC Faculty Pension Plan for 14 years and is past Director of the Bureau of Asset Management at the Sauder School of Business. He continues to act

as a consultant in both public and private sector matters relating to real estate and pensions.

Dr. Hamilton is actively engaged in a number of community organizations including the Vancouver Economic Development Commission, the Investment Advisory Committee for the Public Guardian and Trustee of British Columbia, and the Arts Club Theatre Company.

Robert J. Hobart, Tribunal Member

Mr. Hobart is a financial services consultant based in Vancouver. He provides policy and strategic advice on the effective regulation of the insurance, securities, credit union and pensions sectors.

Prior to working as a consultant, Mr. Hobart served as the Superintendent of Financial Institutions and CEO of the Financial Institutions Commission (FICOM) and as Superintendent of Real Estate and Registrar of Mortgage Brokers from 1989-2001. Prior to his position at the Commission, Mr. Hobart served in progressively responsible management positions in the BC provincial and federal public service.

As a consultant, Mr. Hobart has provided advisory services to the insurance industry and insurance supervisory agencies in a number of African, Asian, European and North American jurisdictions. He has also provided advisory services to credit union supervisory agencies and to credit union directors and management.

Mr. Hobart is a graduate of the University of Alberta with a Masters Degree in Business Administration.

Appendix 2

Financial Services Tribunal Directives and Practice Guidelines August 2006

Financial Services Tribunal
Directives and Practice Guidelines
August 2006

1.0 Introduction

These Directives and Practice Guidelines have been issued pursuant to **section 12** of the ***Administrative Tribunals Act***.

These Directives and Practice Guidelines set out the general practice of the Financial Services Tribunal (“FST”), subject to the relevant statutes.

2.0 The Financial Services Tribunal (FST)

The FST hears appeals from individuals aggrieved by decisions made by the Insurance Council of British Columbia, Real Estate Council of British Columbia, Superintendent of Real Estate, Superintendent of Pensions, Registrar of Mortgage Brokers and Superintendent of Financial Institutions.

The FST only has jurisdiction to hear appeals under the following British Columbia statutes:

Financial Institutions Act
Mortgage Brokers Act
Real Estate Services Act

Credit Union Incorporation Act
Pension Benefits Standards Act
Real Estate Development Marketing Act

Appeals to the FST are governed by the statutes (above) that provide for an appeal to the FST, and by the ***Administrative Tribunals Act***.

Under **section 242.3 (1)** of the ***Financial Institutions Act*** (“***the Act***”), the FST has the exclusive jurisdiction to:

- inquire into, hear and determine all those matters and questions of fact and law arising or requiring determination; and
- make any order permitted to be made. (Please see “The decision” section below for further information.)

A decision of the FST on a matter in respect of which the FST has exclusive jurisdiction is final and conclusive and is not open to question or review in any court. (**Section 242.3 (2)** of the **Act**.)

The FST does not hear appeals on certain decisions taken by the Financial Institutions Commission (“FICOM”). Certain FICOM decisions which are not appealed to the FST may be appealed to the BC Supreme Court. For a complete list of the FICOM decisions that may be appealed to the BC Supreme Court, please see **section 242.4 (1)** of the **Act**.

3.0 The Appeal Process

3.1

Who may appeal?

Where one of the relevant statutes provides for an appeal, any person aggrieved by an order or decision under that statute may appeal it to the FST by filing a Notice of Appeal with the Chair of the FST. (For the relevant statutes, please see section 2.0 above.)

3.2

Deadline for filing a Notice of Appeal

A Notice of Appeal must be filed in accordance with the statute under which an appeal decision was made or otherwise within **30 days** of the date of the decision being appealed.

If the FST is satisfied that special circumstances exist, the FST may extend the time to file a Notice of Appeal, even if the time to file has expired. In order to ensure that the FST understands these special circumstances, appellants are advised that their submission must set out the relevant issues regarding an extension application, including:

- what caused the delay;
- who will be prejudiced if an extension is not granted; or
- who will be prejudiced if an extension is granted.

The Chair of the FST may refuse to accept an extension application if it is not filed within the time set out in these Directives and Practice Guidelines.

In deciding whether to accept an extension application, the Chair of the FST will consider the following factors:

- promptness – the date the extension application was filed with the FST;
- the reasons for the extension; and
- possible prejudice to a party if an extension is or is not granted.

The Chair of the FST may consult the other parties to an appeal for their position on whether an extension application should be granted.

3.3

Completing the Notice of Appeal

The Notice of Appeal **must**:

- be in writing;
- identify the decision that is being appealed;
- state why the decision should be changed;
- state the outcome requested;
- contain the name, address and telephone number of the appellant, and if the appellant has an agent acting on the appellant's behalf, include the full name of the agent and a telephone number where the agent may be contacted during business hours;
- include an address for delivery for the appellant;
- be signed by the appellant or the appellant's agent;
- be accompanied by the appeal FST fee of **\$850**, payable to the Ministry of Finance; (Please note that a separate \$850 fee is required for each party to an appeal to the FST); and
- must include the names of all parties entitled to participate in the appeal which may include parties with statutory standing.

The Notice of Appeal may include an e-mail address of the appellant, if the appellant wishes to receive documents electronically.

Once the Chair of the FST has received the Notice of Appeal and the appeal fee of **\$850**, the Chair will assign the appeal to a Tribunal Member. Subject to the discretion vested in the FST on the awarding of costs on an appeal, the FST cannot waive or refund the appeal fee in whole or in part, even if the appellant wins the appeal or it is withdrawn or settled.

The Notice of Appeal should clearly set out why the appellant believes the original decision was wrong, or why the process leading to the decision was unfair. General statements such as “the decision is contrary to the law” or “it is against the weight of the evidence” may not be sufficient to have an appeal accepted.

The Notice of Appeal must demonstrate that the appeal is well-grounded and has a reasonable chance of success. The grounds for the appeal must clearly contain a concise statement of the error of fact, error of law, or error in process that the appeal is based upon.

3.4

How to file a Notice of Appeal

The appellant must file the original and two copies of the Notice of Appeal with the Chair of the Financial Services Tribunal. Filing may be done in person, by registered mail, or with the permission of the FST, by fax or e-mail, or as otherwise directed by the Chair of the FST.

The business address for the FST is the same as the Financial Institutions Commission:

**Financial Services Tribunal
Suite 1200 – 13450 102nd Avenue
Surrey, BC V3T 5X3**

The business hours of the Commission are from **8.30 am to 4.30 pm**, Monday to Friday, except public holidays.

The FST will immediately provide the other parties to the appeal with a copy of the Notice of Appeal.

3.5

Dismissal of an appeal by a Tribunal Member

The Tribunal Member under **section 242.2 (10) (f)** of the **Act**, may choose to dismiss an appeal if, in the opinion of the Member:

- the Notice of Appeal contains no reasonable grounds for an appeal;
- the appeal is frivolous or vexatious; or
- the Tribunal Member gives the appellant a written notice advising them to pursue their appeal within the timeframe specified in the notice, and the appellant fails to do so.

3.6 Proceedings

In general, an appeal to the FST does not operate as a stay. However, some statutes providing for an appeal to the FST may, in certain circumstances, provide that an appeal is a stay. (Please see **section 9** of the ***Mortgage Brokers Act*** for an example of these circumstances.)

Subject to the restrictions in the relevant statute, the Tribunal Member may, upon application of an interested party:

- stay the decision under appeal for any length of time, with or without conditions; or
- lift the stay of a decision under appeal for any length of time, with or without conditions.

Applications for the Tribunal Member to grant a stay must be in writing. The FST will serve the application on the other parties who may file a reply within **10 days**.

The Tribunal Member hearing the appeal also has the authority to make orders in respect of matters that arise out of the conduct of the appeal.

The Tribunal Member may also proceed with the appeal in the absence of the appellant, if the appellant has been given at least **10 days** notice.

3.7 Appeals involving similar questions

If two or more hearings before the FST involve the same or similar questions, the FST may:

- combine the hearings or any part of them;
- hear the applications at the same time;
- hear the applications one immediately after the other; or
- stay one or more of the hearings until after a determination is made on the other matter.

The FST has the right to make orders regarding procedures to be followed in the event that appeals involve similar questions.

3.8

The record

The FST will usually request a copy of the record from the decision-maker within **7 days** of the appellant filing a Notice of Appeal.

Under **section 242.2 (7)** of the **Act**, the original decision-maker must forward the record to the Chair of the FST within **14 days** of receiving the Chair's request for it. The FST will provide all parties with a copy of the record.

Section 242.2 (6) of the **Act** defines the record as consisting of the following:

- the record of oral evidence, if any, before the original decision-maker;
- copies of originals of documentary evidence before the original decision-maker;
- other things received as evidence by the original decision-maker; and
- the decision and written reasons for it, if any, given by the original decision-maker.

To facilitate the efficient processing of appeals at the Tribunal, the FST requires that the original decision-maker provide one copy of the record for each party to the appeal, one copy of the record for the FST's files, and one copy of the record for the Tribunal Member hearing the appeal.

The FST will then distribute a copy of the record to each party to the appeal and to the Tribunal Member hearing the appeal.

All parties to an appeal may raise concerns regarding the integrity of the record of the decision being appealed. Expressions of concern regarding the integrity of the record should be filed with the FST within the **21 day** period required for the filing of the appellant's first submissions. Expressions of concern over the integrity of the record may not be accepted after this **21 day** period has expired.

3.9

Written submissions

Appeals to the Commission are appeals on the record, and **must** be based on written submissions unless otherwise permitted (**section 242.2 (5)** of the **Act**).

It is anticipated that submissions will normally be less than 25 pages. If a party wishes to make submissions longer than 25 pages, they should obtain prior permission from the Tribunal Member hearing the appeal. A book of authorities filed with submissions is in addition to the submissions and is not subject to a page limitation.

The appellant must file with the FST an original and two copies of the written submissions of the appellant within **21 days** of the receipt of the record. Filing may be done by registered mail, or with the permission of the FST, by fax or e-mail, or as directed by the Chair. The FST will serve a copy of the submission on the original decision-maker and on other parties to the appeal.

The original decision-maker and any other party to the appeal must file an original and two copies of their written submissions within **21 days** from the date of receiving the appellant's submission. The FST will serve a copy of these submissions on the appellant.

The appellant may file a written reply to the submissions of the decision-maker and other parties within **14 days** from the date of receiving these submissions. The reply must be limited to new issues raised in the submissions of the original decision-maker and other parties. The FST will serve the reply on the original decision-maker and the other parties.

The written submissions and replies must fully set out the arguments of a party and include copies of the legal cases that are being relied on. The arguments should be sound and detailed, and provide specific cross-references to the relevant part of the record and legal cases.

The written submissions must be typed and clearly formatted with logically organized and coherent paragraphs.

3.10

The service of documents by the FST

If the FST is required to provide a Notice of Appeal or any document to a party or other person in the appeal, it may do so by means of:

- ordinary mail;
- e-mail, if the party gives an e-mail address; or
- electronic transmission, including telephone transmission of a facsimile.

3.11

Failure to serve does not invalidate proceedings

If a Notice of Appeal or document has not been served in accordance with the Directives and Practice Guidelines, the proceedings will not be invalidated if:

- the contents of the Notice of Appeal or document were actually known (by the person to be served) within the time required for such service;
- the person to be served consents; or

- the failure to serve does not result in prejudice to the person (or any such prejudice can be satisfactorily addressed by an adjournment or some other means).

3.12

Are oral hearings permitted?

The FST will normally make its decision based purely on written material.

However, under **section 242.2 (8) (a)** of the **Act**, on application by a party, the Tribunal Member considering the appeal has the discretion to allow new evidence and oral submissions. A party to the appeal may apply in writing for permission to make oral submissions. The application should set out why written submissions are not appropriate.

In the event that the Tribunal Member holds an oral hearing, the hearing will be open to the public. However, dependent on the circumstances surrounding the hearing, the Tribunal Member may choose to exclude certain information from the public.

The FST may transcribe or tape record its oral proceedings.

3.13

New Evidence

Under **section 242.2 (8)(b)** of the **Act**, the Tribunal Member has the discretion to permit the introduction of new evidence (i.e., evidence that was not introduced at the original hearing), oral or otherwise, if they are satisfied that the new evidence:

- is substantial and material to the decision; and
- did not exist at the time the original decision was made, or did exist at that time, but was not discovered and could not through the exercise of reasonable diligence have been discovered.

Usually, an application to submit new evidence is filed by the appellant at the time they file their Notice of Appeal. The respondent party will be given an opportunity to file a response to the new evidence application, and the appellant will then be given a final opportunity to make a final reply in support of their new evidence application.

If a respondent party wishes to submit an application to submit new evidence, they usually will file their application when they file their respondent submissions. If a respondent files an application to submit new evidence, the appellant will be given an opportunity to file any response they wish to make regarding the

application. The respondent party will then be given a last opportunity to file any final reply they may wish to make in support of their new evidence application.

The application to introduce new evidence must be in writing, and must clearly demonstrate why the new evidence should be judged as substantial and material to the original decision. The application should also set out why the new evidence did not exist at the time the original decision was made, or, if it did exist, why the new evidence could not through the exercise of reasonable diligence have been discovered as part of the original decision process.

The Tribunal Member may consider any evidence, whether or not it is admissible in a court of law. **Section 34 (5)** of the **Evidence Act** does not apply to the FST.

The Tribunal Member may make an order regarding the application to introduce new evidence in advance of the appeal decision, especially if the new evidence is admitted and must therefore be produced and added to the record, or the order may be included in the appeal decision.

The Tribunal Member hearing the appeal has the authority to make an order to produce (either for the Member or for a party) a document or other thing in a person's possession or control that is admissible and relevant to an issue in an appeal. (For further information, please see **section 242.2 (10) (b) (ii)** of the **Act**.

In order to evaluate the relevance of new evidence, the Tribunal Member hearing the appeal may require that parties participate in any proceeding that might assist in clarifying or narrowing the facts or issues, or that may otherwise facilitate the appeal process.

The Tribunal Member may require a witness, by summons, to attend and give evidence on oath, at the cost of the party requesting the witness. If a new witness is required for the hearing, the appellant must file an application for a subpoena which clearly demonstrates why the witness is needed and what the witness is expected to say at the hearing. The application for a subpoena should include an affidavit of service to the witness and a cheque for the full costs in connection with the appearance of a witness. This will be required to be deposited with the FST before the FST will issue the subpoena.

3.14

The parties to a hearing

The **Act** defines a "party" as including any person who is making an appeal to the FST, the original decision-maker, or any other person who is authorized by the Tribunal Member conducting the hearing to appear as a party to an FST hearing.

Parties may be represented by counsel or agents and may make submissions as to facts, law and jurisdiction.

A party has the right to receive notice of all proceedings connected with the appeal.

3.15

The standard of review at the FST

The FST has a body of decisions that has progressively defined the standard of review at the Tribunal. For more information, please see the references to the standard of review in the following decisions:

- FST 04-003 (Superintendent of Real Estate v. Sherry Shohreh Moallem and the Real Estate Council of BC);
- FST 05-004 (Dan Vanh Nguyen and Express Mortgages Ltd. v. Registrar of Mortgage Brokers);
- FST 05-007 (Superintendent of Real Estate v. Kenneth Scott Spong and the Real Estate Council of BC);
- FST 05-008 (Financial Institutions Commission/Superintendent of Financial Institutions v. Branislav Novko and the Insurance Council of BC);
- FST 05-009 (Financial Institutions Commission/Superintendent of Financial Institutions v. Maria Pavicic and the Insurance Council of BC);
- FST 05-010 (Jeff Chambers v. Real Estate Council of BC);
- FST 05-011 (Ronald Patrick Thomson v. Superintendent of Real Estate); and
- FST 05-013/FST05-014 (Keith Grant Nelson/Sandra Jean Stinson v. Real Estate Council of BC);
- FST 05-019 (Jagjit Singh Cheema v. Insurance Council of BC and the Financial Institutions Commission); and
- FST 06-020 (Superintendent of Financial Institutions v. Insurance Council of BC and Richard Jones).

3.16

Adjournments

A hearing may be adjourned from time to time by a Tribunal Member by their own application, or where it is shown to the satisfaction of the Tribunal Member that the adjournment is required to permit an adequate hearing to be held.

In considering whether a hearing should be adjourned, the Tribunal Member will consider the following factors:

- the reason for the adjournment;
- whether an adjournment would cause unreasonable delay;
- the impact of refusing the adjournment on the applicant;
- the impact of granting an adjournment on the other parties; and
- the impact of the adjournment on the public interest.

3.17

Maintenance of order

The FST may make an order or give directions at proceedings that it considers necessary for the maintenance of order. These may include imposing restrictions on a person's continued participation or attendance at a proceeding, or excluding the person from attending the proceeding until the FST orders otherwise.

3.18

Contempt proceedings for an uncooperative witness or other person

The failure or refusal of a person summoned as a witness to do any of the following:

- attend a hearing;
- take an oath or affirmation;
- answer questions; and/or
- produce records or things in their custody or possession;

will make that person, on application to the court by the FST, liable to be committed for contempt as if in breach of an order or judgment of the court. (Please see **section 49** of the ***Administrative Tribunals Act***.)

3.19

The decision

As permitted under **section 242.2 (11)** of the **Act**, the Tribunal Member hearing the appeal may confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration to the person or body whose decision is under appeal.

With respect to this decision, the Tribunal Member must provide the decision in writing and provide reasons for it.

The decision is effective the date it is issued by the Tribunal Member, unless otherwise specified.

The FST provides public access to the decisions and orders. The decisions may be modified to ensure compliance with the *Freedom of Information and Protection of Privacy Act* before being released publicly.

FST decisions are available at <http://www.fic.gov.bc.ca/fst/decisions.htm>

3.20

Notice of decision

The FST will attempt to send a copy of the final decision or order, including the written reasons, within **45 days** from receiving the last submissions of the parties, to each party and any intervener who participated in the hearing.

If for any reason, the FST is of the opinion that it is impractical to send the final decision or order to any of the parties individually, the FST may, instead of doing so, cause reasonable notice of the decision to be given to such parties by public advertisement or otherwise as the FST may direct.

In cases where the FST decides not to send copies of the decision individually, it will inform the parties of a place where copies of the decision may be obtained.

On the FST's own initiative, or if a party requests it, the FST may amend a final decision to correct any of the following:

- a clerical decision or a typographical error;
- an accidental or inadvertent error, omission or similar mistake; and/or
- an arithmetical error made in a computation.

Within **30 days** of being served with a final decision, a party may apply to the FST for clarification of the final decision, and, in such cases, the FST may amend the final decision **only** in cases where the amendment will clarify it.

Unless the FST determines otherwise, an amendment will not be made **30 days** after all parties have been served with the final decision.

3.21

Power to award costs

The FST has the power to issue an order for payment of costs as follows:

- a party may be required to pay part of the costs of another party or an intervener in connection with an application;
- an intervener may be required to pay part of the costs of a party or intervener in connection with the application; or
- where the FST considers the conduct of a party has been improper, vexatious, frivolous or abusive, requiring the party to pay part of the actual costs and expenses of the tribunal.

3.22

The costs award process

A party (or intervener) may apply for costs in argument or at any other time during the appeal process. The FST may also request submissions on costs and will set a timeframe for the submission process.

3.23

The criteria for awarding costs to the parties or interveners

In determining whether a party (or intervener) is liable to pay the costs of another party (or intervener), the FST will consider:

- whether the party (or intervener) engaged in conduct that is improper, vexatious, frivolous or abusive;
- whether the party (or intervener) submitted a position that was manifestly unfounded;
- whether the party (or intervener) unreasonably delayed or prolonged the proceeding, including any failure to comply with an FST undertaking or order;
- whether the party (or intervener's) participation assisted the Tribunal in understanding the issues;
- whether the party (or intervener) unreasonably failed to cooperate with other parties during the appeal;
- whether the party (or intervener) failed to attend a hearing or other proceeding, or to send a representative, despite notice having been provided to the party (or intervener);
- the party's (or intervener's) degree of success in the proceeding; and
- any other matter the Tribunal considers relevant.

3.24

Costs of the Tribunal

The FST may, after considering submissions from a party (or intervener) that may be subject to an order, order its costs to be paid by that party (or intervener).

The costs of the FST consist of the expenses that the Tribunal has incurred in connection with the proceeding.

In determining whether a party or intervener is liable to pay costs of the Tribunal, the FST will consider the same factors identified in section 3.21 above.

3.25

Costs of Parties and Intervenors

If the Tribunal Member hearing the case decides to award costs to one of the parties or intervenors, the FST will calculate these costs using the BC Supreme Court Rules as a guideline.

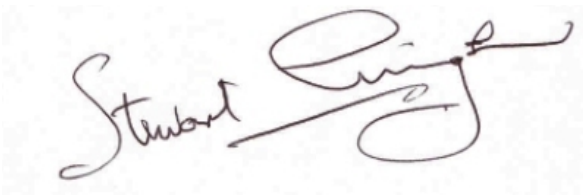
4.0 Miscellaneous

4.1

Constitutional questions

The FST does not have jurisdiction over constitutional questions.

For the Financial Services Tribunal



J. Stewart Cunningham

Chair of the Financial Services Tribunal

SUMMARY OF FILING REQUIREMENTS AND TIME PERIODS

- A Notice of Appeal must be filed in accordance with the statute under which an appeal decision was made or otherwise within 30 days of the date of the decision being appealed. (Original and 2 copies)
- FST will deliver a Notice of Appeal to respondent(s)
- FST will request a copy of the record from the original decision-maker
- Original decision-maker files record within 14 days of the receipt of the request for the record from the FST
- FST will deliver* a copy of the record to all parties (Please see below)
- Within 21 days of receiving a copy of the record from the FST, the appellant must file with the FST one original and two copies of their written submissions
- The FST will deliver to the respondent(s) a copy of the appellant's written submissions
- Within 21 days of receipt of the appellant's submissions, the respondent(s) must file with FST the respondent's written submissions
- The appellant will be given 14 days to reply to the respondent's submissions

*A Note on Delivery by the FST

Every appellant must provide an address for delivery to the Tribunal on the Notice of Appeal.

The Tribunal will deliver information to the appellant to the address for delivery provided by the appellant.

If an appellant's address for delivery changes during the appeal process, the appellant must promptly notify the Tribunal of the change.

Information delivered by the Tribunal to the address for delivery provided by the appellant will be treated as having been delivered to the appellant. Mail slotting by courier or by Canada Post are sufficient to meet the delivery requirement.

Appendix 3

A Summary Profile of FST Appeal Cases to the end of FY 2006

Year Received/ Appeal Number	Appellant(s)	Respondent(s)	Act	Issues under Consideration	Disposition of those Issues
04-001	Ronald Patrick Thomson	Superintendent of Real Estate	Real Estate Act	Suspension of real estate license/period of suspension penalty	Reconsideration: Decision on penalty sent back to the Superintendent of Real Estate for reconsideration.
04-002	Sudarshan Rana	Real Estate Council of BC	Real Estate Act	Suitability of appellant for licensing under the Real Estate Act	Denied: Mr. Rana's appeal was denied. The decision of the Real Estate Council to deny licensing was affirmed.
04-003	Superintendent of Real Estate	Sherry Shohreh Moallem Real Estate Council of BC	Real Estate Act	Period of suspension by respondent Council inadequate	Allowed: The original decision was varied. The appeal of the Superintendent was allowed in part. The penalty was increased.
05-004	Danh Van Nguyen and Express Mortgages Ltd.	Registrar of Mortgage Brokers	Mortgage Brokers Act	Registrar error in failure to acknowledge admission of fault; Registrar error regarding penalty with respect to apparent lack of remorse; harshness of penalty	Denied: Mr. Nguyen's appeal was denied. The decision of the Registrar was affirmed and additional conditions on registration were added.
05-005	Superintendent of Financial Institutions	Maria Pavicic Insurance Council of BC	Financial Institutions Act	Insurance Council period of suspension inadequate; order for costs against the Insurance Council of BC	Terminated: The appeal was terminated due to a filing error. The appeal was refilled, granted leave to be heard and assigned a new appeal number. (Please see FST appeal 05-009 below.)
05-006	Superintendent of Financial Institutions	Branislav Novko Insurance Council of BC	Financial Institutions Act	Insurance Council period of suspension inadequate; order for costs against the Insurance Council of BC	Terminated: The appeal was terminated due to a filing error. The appeal was refilled, granted leave to be heard and assigned a new appeal number. (Please see FST appeal 05-008 below.)
05-007	Superintendent of Real Estate	Kenneth Scott Spong Real Estate Council of BC	Real Estate Services Act	Period of suspension by the respondent Council inadequate; order for costs against the respondent Real Estate Council	Reconsideration: The FST sent the matter back to the Real Estate Council with directions. The Real Estate Council subsequently affirmed its original decision. The reconsideration decision was appealed by the Superintendent of Real Estate. (Please see FST appeal 06-022).
05-008	Financial Institutions Commission	Branislav Novko Insurance Council of BC	Financial Institutions Act	Insurance Council period of suspension inadequate; order for costs against the Insurance Council of BC	Allowed: The original decision was varied. The Commission/Superintendent's appeal was allowed and the penalty was increased.
05-009	Financial Institutions Commission	Maria Pavicic Insurance Council of BC	Financial Institutions Act	Insurance Council period of suspension inadequate; order for costs against the Insurance Council of BC	Allowed: The original decision was varied. The Commission/Superintendent's appeal was allowed and the penalty was increased.
05-010	Jeff Chambers	Real Estate Council of BC	Real Estate Services Act	Appeal from refusal of Council to waive an examination – new legislated requirements for strata property managers in BC; costs	Denied: Mr. Chamber's appeal was denied. The FST affirmed the Real Estate Council's new legislated authorities regarding the licensing of strata property managers.

Year Received/ Appeal Number	Appellant(s)	Respondent(s)	Act	Issues under Consideration	Disposition of those Issues
				requested by respondent Council	
05-011	Ronald Patrick Thomson	Superintendent of Real Estate	Real Estate Services Act	Appeal from the reconsideration on penalty – Superintendent's decision arising from FST appeal decision 04-001	Denied: Mr. Thomson's appeal on penalty was denied. The Superintendent's decision on penalty was affirmed.
05-012	Superintendent of Real Estate	Chrystale Ashworth and Master Key Realty Limited Real Estate Council of BC	Real Estate Services Act	Penalty imposed by the respondent Council on Master Key Realty inadequate; penalty imposed on the respondent Ashworth by the respondent Council inadequate; order for costs	In progress
05-013	Keith Grant Nelson	Real Estate Council of BC Superintendent of Real Estate	Real Estate Services Act	Penalty imposed by respondent Council excessive under the circumstances; dismissal of findings of negligence by respondent Council	Denied: Mr. Nelson's appeal was denied. The disciplinary decision of the Real Estate Council was affirmed.
05-014	Sandra Jean Stinson	Real Estate Council of BC Superintendent of Real Estate	Real Estate Services Act	Penalty excessive. Misapprehension of evidence and the facts of the case/appellant not properly informed of right to counsel; appellant not informed of her right to present evidence in addition to her own testimony by respondent Council; appellant did nothing wrong and nothing contrary to Act or Regulations	Denied: The disciplinary decision of the Real Estate Council was affirmed.
05-015	Chrystale Ashworth and Master Key Realty Ltd	Superintendent of Real Estate Real Estate Council of BC	Real Estate Services Act	Penalty excessive. Dismissal of order reprimanding Master Key Realty Ltd by respondent Council; dismissal of suspension order regarding Chrystale Ashworth by respondent Council; dismissal of costs order assigned by respondent Council; Dismissal of conditions regarding property management activities by appellant imposed by respondent Council; dismissal of breach of Real Estate Council Regulation re managing broker attendance at brokerage office; dismissal of negligence order re failure to provide landlords with	In progress

Year Received/ Appeal Number	Appellant(s)	Respondent(s)	Act	Issues under Consideration	Disposition of those Issues
				copy lease agreements; dismissal of order regarding incompetence within meaning of section 9.12 of Regulation 75/61 of Real Estate Act; dismissal of Council order regarding misappropriation of funds by appellant	
05-016	William David Blackall	Real Estate Council	Real Estate Services Act	Waiver from the application of an examination – new legislated requirements for strata property managers in BC; costs requested by respondent Council	Denied: Mr. Blackall's appeal was denied. The FST affirmed the Real Estate Council's new legislated authorities regarding the licensing of strata property managers.
05-017	Keith Bryan Westergaard	Registrar of Mortgage Brokers	Mortgage Brokers Act	Removal of conditions imposed on appellant's certificate registration as a licensed mortgage broker	Allowed: The original decision was reversed. The FST's decision allowed Mr. Westergaard's appeal. The FST sent the matter back to the Registrar for a new hearing and awarded costs.
05-018	John Winston Carson	Registrar of Mortgage Brokers	Mortgage Brokers Act	Excessive penalty imposed by the Registrar of Mortgage Brokers	Denied: Mr. Carson's appeal was denied. The original decision of the Registrar was affirmed.
05-019	Jagjit Singh Cheema	Insurance Council of BC Commission/ Superintendent of Financial Institutions	Financial Institutions Act	Excessive penalty imposed by the Insurance Council of BC	Reconsideration: The FST allowed the appeal in part and sent the matter back to the Council instructing the Council to make a new order and reasons for it - to include findings of fact and an explanation for the penalty the Council believes is appropriate. Mr. Cheema's license cancellation is rescinded pending the new order and reasons consistent with the terms above.
06-020	Commission/ Superintendent of Financial Institutions	Richard Jones Insurance Council of BC	Financial Institutions Act	Inadequate penalty imposed by the Insurance Council of BC	Reconsideration: The FST sent the decision on penalty back to the Insurance Council of BC for reconsideration.
06-021	Grimm's Fine Foods	Superintendent of Pensions	Pension Benefits Standards Act	Appeal of a decision of the Superintendent of Pensions – definition of "spouse" in legislation	In progress