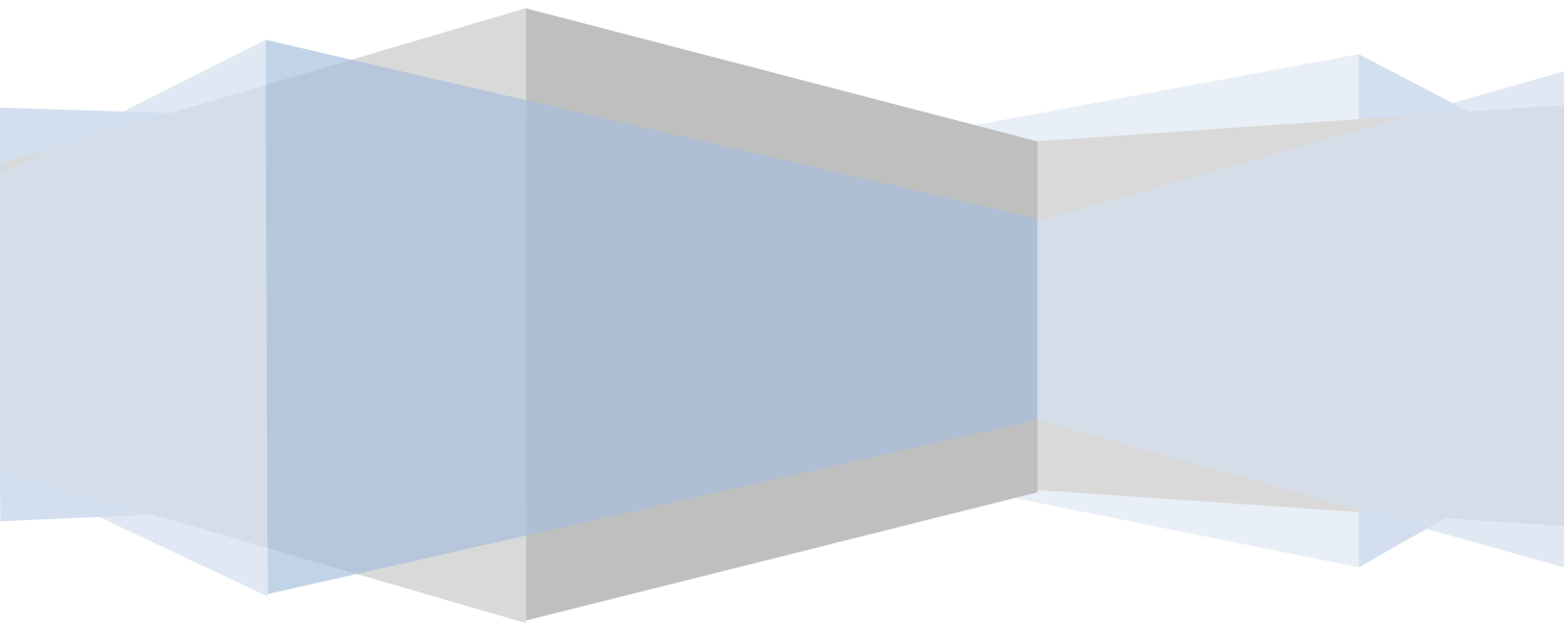




# **Financial Services Tribunal 2015-2016 Annual Report**





April 21, 2016


The Honourable Michael de Jong, Q.C.  
Minister of Finance  
PO BOX 9048  
STN PROV GOVT  
VICTORIA, BC  
V8W 9E2

Dear Minister de Jong:

**Re: Financial Services Tribunal 2015-2016 Annual Report**

I am pleased to submit to you the Annual Report of the Financial Services Tribunal ("FST") for the fiscal year beginning April 1, 2015 and ending March 31, 2016. This report is submitted pursuant to section 242.1 (5) (d) of the *Financial Institutions Act*.

Sincerely,



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

Enclosure



## *Message from the Chair*

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I was appointed to the tribunal, along with Wendy Baker QC, in October, 2015. Together with our colleague, vice-chair Patrick Lewis, we are now at full complement. I am very fortunate to have a tribunal which may be small in number but is comprised of highly qualified individuals who can deal with the various subject matters that are heard by this tribunal.

In the past six months we have received five new cases to decide, substantially more than for any one-year period in the past five years. Appeals were filed from decisions arising out of the Real Estate, Insurance and Mortgage Broker sectors. This is an indication of the importance of the tribunal to members of the public who ask us to review decisions of the six regulatory bodies for which we have regulatory oversight responsibility.

In closing, I would like to take this opportunity to thank my fellow tribunal members and staff, for their hard work and dedication over the past year and for their continuing commitment to the work of the Financial Services Tribunal.

I would be pleased to answer any questions that the reader of this report may wish to ask.



Theodore F. Strocel, Q.C.  
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*.

## *Tribunal Membership*

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

<i>TRIBUNAL MEMBER</i>	<i>ROLE</i>	<i>TERM EXPIRY</i>
Maurice M. Mourton	Chair	November 23, 2016
Patrick Lewis	Vice-Chair	November 30, 2016

At the beginning of the reporting period the FST had one vacancy. The Chair of the tribunal resigned effective September 12, 2015.

Effective October 30, 2015 a new Chair and one member were appointed by Order of the Lieutenant Governor in Council of British Columbia, which constitutes the tribunal membership at the end of the reporting period as follows:

<i>TRIBUNAL MEMBER</i>	<i>ROLE</i>	<i>TERM EXPIRY</i>
Theodore F. Strocel, Q.C.	Chair	December 31, 2018
Patrick Lewis	Vice-Chair	November 30, 2016
Wendy A. Baker, Q.C.	Member	October 30, 2018

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

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

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

#### ***PATRICK F. LEWIS, VICE-CHAIR***

Patrick Lewis is a Partner at the boutique litigation firm, Sugden, McFee & Roos LLP, in Vancouver, practicing exclusively in the area of civil litigation with an emphasis on commercial disputes. He was admitted as a barrister and solicitor to the Bar of the Province of British Columbia on June 14, 1985. The cases Mr. Lewis handles include: securities litigation; mining

disputes; professional liability claims and defence thereof involving lawyers, doctors, engineers and accountants; corporate litigation; insurance litigation; real property disputes; defamation claims; banking litigation; employment disputes; and, personal injury actions.

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

***WENDY A. BAKER, Q.C., MEMBER***

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



## *Operations*

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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 6 years now and has proven to be an effective and efficient means for providing administrative support to the FST which in turn enables the FST to effectively and efficiently fulfill its mandate to the public.

## *Contact Information*

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

## *Appeal Activity and Decisions Issued*

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### **APPEALS FILED**

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

**2015-RSA-002 BY JAMES SYDNEY PARSONS, FILED APRIL 28, 2015** - Appeal of two decisions of the Real Estate Council of BC, a liability decision determining that Mr. Parsons had committed numerous professional transgressions and a penalty decision imposing various penalties. The decision on the merits of this matter is reproduced in the following section

**2015-FIA-001 BY ANTONY FRANSEN, FILED JUNE 30, 2015** – Appeal filed by Antony Ronald Fransen on behalf of Fransen Insurance Services Ltd. (dba Sea to Ski Insurance Services) (the “Agency”), and on his own behalf as the “Nominee”, of a Decision and Order of the Insurance Council of British Columbia, suspending the general insurance licences of the Agency and the Nominee pending completion and consideration by Council of an investigation under section 232 of the *Financial Services Act*. The appeal was dismissed as abandoned.

**2015-MBA-001 GORDON STEPHEN LEMON, FILED NOVEMBER 4, 2015** - Appeal of a decision of the Registrar of Mortgage Brokers denying the Appellant's application for an order that the Registrar's Notice of Hearing be amended, such that it provide the Appellant with notice of the specified allegations made against him and for a direction that no final findings have been made against the Appellant, and that he will have the opportunity to be heard at a bifurcated hearing before the Registrar.

**2015-RSA-003 MURAT KADIOGLU, FILED December 4, 2015** - Appeal of the Decision and Order with respect to Penalty and Enforcement Expenses dated November 10, 2015, suspending the appellant's real estate license for a period of 30 days effective December 16, 2015, pay enforcement expenses of \$14,001.74, and enrol in and complete Components 1 and 3 of the accelerated Residential Trading Services Applied Practice Course within 6 months of the Order.

**2015-FIA-002 PRITPAL SINGH MANN, FILED December 21, 2015** - Appeal of a decision of the Insurance Council of BC suspending the appellant's general insurance license for a period of one year effective December 22, 2015, attaching conditions to the license at the expiration of the suspension and assessing investigation costs.

**2016-FIA-001 PATIE KAUR JOHL, FILED February 29, 2016** - Appeal from a decision and order of the Insurance Council of BC under sections 231 and 238 of the *Financial Institutions Act* placing a condition on the licensee's life and accident and sickness insurance license, that within 30 calendar days the licensee must be under the direct supervision of a qualified life and accident and sickness insurance agent, until the licensee's requested hearing under section 237 of the *Financial Institutions Act* is held.

**2016-MBA-001 ROBERT HENSEL, FILED March 4, 2016** - Appeal from a decision of the Registrar of Mortgage Brokers suspending the appellant's mortgage broker registration for a period of 24 months effective March 7, 2016 and assessing investigative costs in the amount of \$5,000.00 and hearing costs in the amount of \$2,500.00 to be paid no later than March 31, 2016.

**DECISIONS ISSUED**

In addition to the decisions issued below on the merits of the appeal, one matter was dismissed as abandoned and there were 7 preliminary decisions issued regarding applications for a stay, to amend a notice of appeal, for extensions of time to file submissions, and seeking to have additional documents added to the appeal record, and to have the appeal bifurcated (heard in two separate stages).

**2015-RSA-001(c)**

Decision Date:	October 9, 2015
Appellant:	Superintendent of Real Estate
Respondents:	Real Estate Council of British Columbia Richard Thomas Valouche
Act:	<i>Real Estate Services Act</i> , S.B.C. 2004, c. 42
Issue:	Whether Council erred in law by providing inadequate reasons in support of its decision on penalty and as such, whether the penalty is unreasonable. A second ground of appeal alleged improper reliance on records.
Disposition:	The Tribunal concluded on a standard of correctness that the Council provided sufficient reasons for its decision and that in reaching that decision it did not consider documents or information beyond the scope available to it, which documents, were properly considered by the Tribunal on appeal in any event. Appeal dismissed without costs.
Appeal Decision:	<a href="http://www.fst.gov.bc.ca/pdf/2015-RSA-001(c).pdf">http://www.fst.gov.bc.ca/pdf/2015-RSA-001(c).pdf</a>

**2015-RSA-002(d)**

Decision Date:	November 13, 2015
Appellant:	James Sydney Parsons
Respondents:	Real Estate Council of British Columbia Superintendent of Real Estate
Act:	<i>Real Estate Services Act</i> , S.B.C. 2004, c. 42
Issue:	Whether the Real Estate Council could reasonably conclude that the penalty imposed was appropriate in the circumstances based on the evidence before it.
Disposition:	Appeal allowed in part. The Real Estate Council's decision was varied by removing certain references in the decision, varying the ineligibility period for the Appellant's ability to seek another licence from five years to 30 months, varying the discipline penalty amount from \$10,000 to \$5,000 and reducing the enforcement expenses payable from \$22,487.85 to \$7,500.
Appeal Decision:	<a href="http://www.fst.gov.bc.ca/pdf/2015-RSA-002(d).pdf">http://www.fst.gov.bc.ca/pdf/2015-RSA-002(d).pdf</a>

*Matters Outstanding at end  
of Period*

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There are five matters outstanding at the end of this reporting period, each of which are currently with an FST member for consideration. Decisions on these outstanding matters will be issued in the next reporting period.

## *Judicial Review of FST Decisions*

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

One additional matter before the Court was withdrawn during the reporting period.

There were no new applications for judicial review to the Supreme Court of British Columbia filed regarding FST decisions during this reporting period and no matters outstanding before the Supreme Court at the close of the reporting period.

The Supreme Court's decision in the matter noted below, dated January 14, 2016, was also appealed to the British Columbia Court of Appeal on February 15, 2016. That matter had not been set for hearing at the end of this reporting period.

### **2012-FIA-002- MOHAMED ALIE JALLOH**

Decision Date:	January 14, 2016
Appellant:	Mohamed Alie Jalloh
Respondents:	Insurance Council of British Columbia Financial Institutions Commission
Act:	<i>Financial Institutions Act</i> , R.S.B.C. 1996, c. 141
Issue:	The grounds for seeking review of the decision to the Court, regarding both the proceedings before Insurance Council and the subsequent FST appeal, were based on allegations of inadequacy in the services provided by the appellant's legal counsel
Disposition:	Application by way of judicial review was refused.
Court's Decision:	<a href="http://www.fst.gov.bc.ca/pdf/2016_BCSC_47.pdf">http://www.fst.gov.bc.ca/pdf/2016_BCSC_47.pdf</a>

## Statement of Financial Performance

(For the fiscal year ended March 31, 2016)

In fiscal year 2015/2016, the FST received \$5,950 in recoveries from appeal filing fees and incurred expenses of \$51,333 as detailed below in this five year chart. In addition to the larger than usual number of appeals filed during this reporting period (7 new appeals), the FST also provided substantive orientation to two new members during this period.

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





