

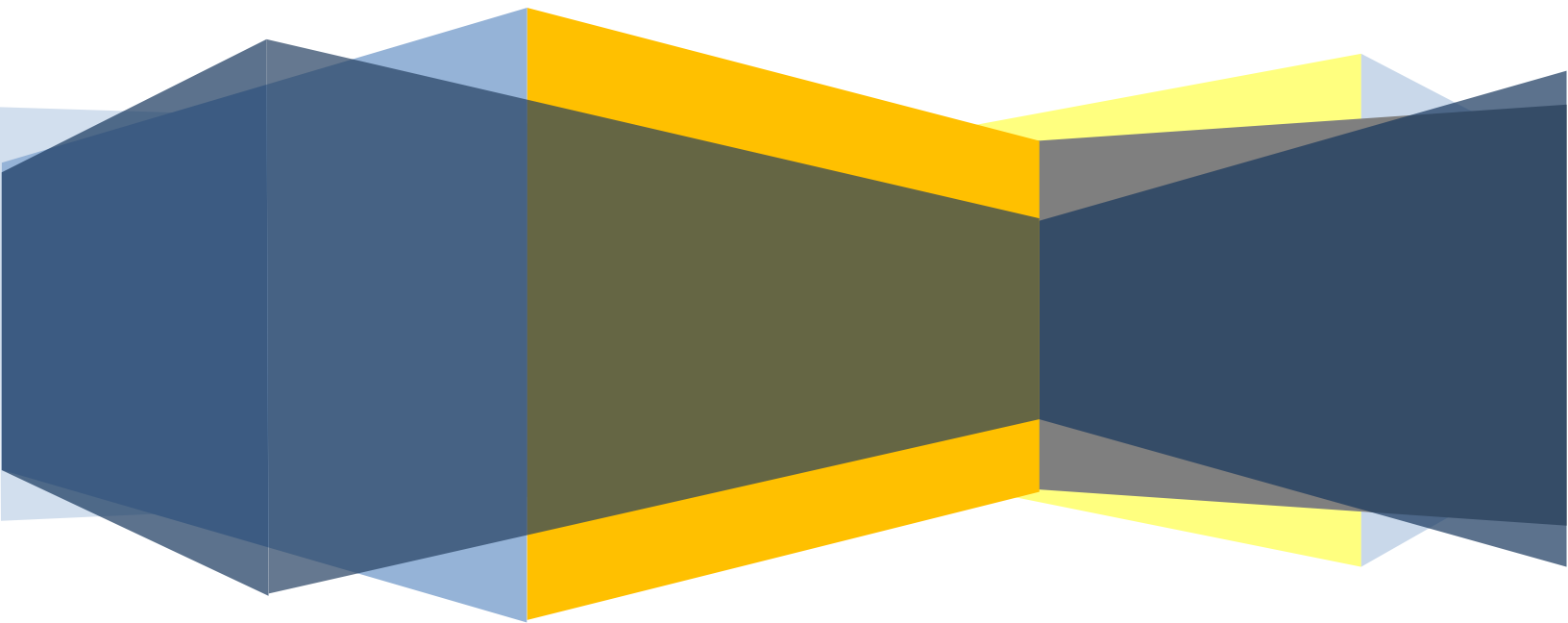


BRITISH  
COLUMBIA

# Financial Services Tribunal

## *2017-2018 Annual Report*

*Covering the reporting period from  
April 01, 2017 – March 31, 2018*



November 13, 2018

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

Dear Minister Eby:

**Re: *Financial Services Tribunal 2017-2018 Annual Report***

I respectfully submit the Annual Report of the Financial Services Tribunal for the period April 1, 2017 to March 31, 2018.

Sincerely,



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

Enclosure

## *Message from the Chair*

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I am pleased to submit the Annual Report of the Financial Services Tribunal (“FST”) for the fiscal year beginning April 1, 2017 and ending March 31, 2018. 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 13 new appeals were filed with the Tribunal. Three new appeals were filed under the *Real Estate Services Act*, eight new appeals were filed under the *Financial Institutions Act*, and two new appeals were filed under the *Mortgage Brokers 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*, or the *Real Estate Development Marketing Act* during this reporting period.

***Appeals Carried Over*** - In addition to new appeals filed during this reporting period, the FST decided the merits of three appeals carried over from the previous reporting period, and issued a costs decision regarding a fourth appeal carried over from the previous reporting period.

***Matters Outstanding*** - Of the 17 appeals before the FST in the current reporting period, 6 appeals were closed. The remaining eleven appeals were before a member of the Tribunal pending decision at the close of the reporting period.

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

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

During this reporting period, two applications for judicial review of FST decisions were filed in the BC Supreme Court, one of which was dismissed, and one of which was pending decision at the close of this reporting period. Additionally, one application for leave to appeal to the BC Court of Appeal was filed in regard to a BC Supreme Court decision upholding an FST decision. That appeal was pending decision at the close of this reporting period. Finally, an application for leave to appeal a BC Court of Appeal Decision (which had upheld a BC Supreme Court Decision upholding a FST decision) to the Supreme Court of Canada (filed in the previous reporting period) was dismissed during 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 significantly higher than it has been over the past several years with 13 new appeals filed compared to 5-7 new appeals filed in the previous two reporting periods. Based on the increasing number of appeals the FST has received and considered over the past several 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), the 2018/2019 fiscal year reporting period is expected to continue the trend of increased appeals.

Section 59.2(g) of the *Administrative Tribunals Act* requires the Tribunal to report any trends or special problems it foresees. I am pleased to report that the Tribunal does not foresee any special problems arising in the near future. Having said that, the Tribunal does note a trend of increasing appeals and judicial reviews which may result in an increase in costs for the Tribunal going forward.

As discussed above, the Tribunal has experienced increasing number of appeals over the past several years and we expect this trend to continue. Although the Tribunal has not collected data respecting the cause of the recent increase in appeals to the Tribunal, it is clear that the stakes are high with respect to the decisions under review at the FST. Matters which come before the Tribunal often include the adjudication of an individual's right to practice his or her chosen profession. Such decisions may have broad ranging implications on an individual's reputation and/or how an individual is able to make a living going forward. Further, the FST is often called upon to adjudicate competing public policy issues which the FST must consider in relation to protection of the public.

In addition to the trend of increasing appeals, the Tribunal has also experienced increased numbers of judicial reviews of its decisions over the past several years. Although the Tribunal's decisions have almost always been upheld on judicial review, the additional costs associated with sending Counsel to represent the Tribunal are increasing with the number of judicial reviews filed each year. For example, of the total costs incurred by the Tribunal for "Professional Services" in this reporting period, approximately seventy percent (70%) were in relation to judicial review proceedings<sup>1</sup>. Although the Tribunal decides on a case-by-case basis the nature and extent of its participation on judicial review proceedings, its participation is often limited to providing a reviewing court with submissions regarding standard of review, jurisdiction and other fundamental issues affecting the tribunal on a systemic level. To ensure the maintenance of Tribunal independence, the Tribunal does not defend the merits of particular decisions. In accordance with

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<sup>1</sup> Total cost of "Professional Services" in the current reporting period was \$41,511.00, and of that total, \$28,116.00 was incurred in relation to judicial review proceedings.

the legal context in British Columbia, the Tribunal's participation on judicial review is intended to ensure the reviewing court has the benefit of the Tribunal's specialized expertise, and is able to engage in fully-informed adjudication.

*Plans for improving the Tribunal's operations*

Finally, section 59.2(h) of the *Administrative Tribunals Act* requires the Tribunal to report its plans for improving operations in the future. During this reporting period, the Appeals Office cluster responsible for providing administrative support to the Tribunal sought out and evaluated a new case management system to replace the outdated appeals management system the tribunal cluster has been using for the past two decades. The new case management system will allow the tribunal cluster to function effectively and efficiently, using modern information technology. In particular, the FST will have quicker, easier and more accurate access to appeal information and statistics, and will be able to more effectively track and report out on key performance indicators. Implementation of the new system is scheduled to take place over the subsequent reporting period, and the FST anticipates full integration of the system to occur by mid-2019.



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*.

## *Contact Information*

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

## *Tribunal Membership*

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

<i>TRIBUNAL MEMBER</i>	<i>ROLE</i>	<i>TERM EXPIRY/RESIGNATION</i>
Theodore F. Strocel, Q.C.	Chair	December 31, 2018
Patrick Lewis	Vice-Chair	November 30, 2018
Wendy A. Baker, Q.C.	Member	February 29, 2018

In February 2017, Wendy Baker Q.C. was appointed to sit as a Justice on the British Columbia Supreme Court, and, consequently, resigned from the FST. In her place, the Chair of the FST, in consultation with the Minister, appointed Michael Tourigny as a temporary Member for a six month term. Recruitment for the Vacancy created by Member Baker's departure commenced in February 2018 and was ongoing at the close of this reporting period.

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

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

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

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

Ted Strocel has been practicing law in Abbotsford since 1981. He has carried on a general practice with emphasis on business and corporate law, wills and estate planning, and real estate. Throughout his practice he has carried litigation matters and has appeared before all levels of Court in British Columbia, and before administrative tribunals such as the Commercial Appeals Commission, predecessor to the Financial Services Tribunal. He has been active in the legal community as a past President of the Fraser Valley Bar Association, a member of the Audit Committee of the Law Society of British Columbia, and a committee member for the Canadian Bar Association. Ted has also been active in community affairs, serving on various boards such as the Abbotsford Cultural Centre which operates the Reach gallery and museum and the Abbotsford Police Board. Ted has three grown children and a host of grandchildren. Ted was appointed a Queen's Counsel in 2010.

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

Patrick Lewis is a Partner at the boutique litigation firm, Sugden, McFee & Roos LLP, in Vancouver, practicing exclusively in the area of civil litigation with an emphasis on commercial disputes. He was admitted as a barrister and solicitor to the Bar of the Province of British Columbia on June 14, 1985. The cases Mr. Lewis handles include: securities litigation; mining disputes; professional liability claims and defence thereof involving lawyers, doctors, engineers and accountants; corporate litigation; insurance litigation; real property disputes; defamation claims; banking litigation; employment disputes; and, personal injury actions. Mr. Lewis has appeared in all levels of court in British Columbia, the Federal Court of Canada and has been involved in opposing applications for leave to appeal to the Supreme Court of Canada in a number of cases. Mr. Lewis is a member of the BC Branch of the Canadian Bar Association, Civil Litigation Subsection. He is also a member of the Trial Lawyers Association of British Columbia, a guest lecturer for the Continuing Legal Education Society of British Columbia and a Moot Court Judge at the U.B.C. Law School.

***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 served as chair of the Karen Jamieson Dance Society and was the vice-chair of the Motor Dealer Customer Compensation Fund Board. Ms. Baker also sat 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, and was appointed to the BC Supreme Court in 2018.

***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.



## *Operations*

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Effective April 1, 2010, the administrative support functions of the FST were moved from the Financial Institutions Commission (FICOM) in Vancouver and consolidated with the Environmental Appeal Board/Forest Appeals Commission Appeals Office (Appeals Office) in Victoria.

In addition to the FST, the Appeals Office provides administrative support to five other adjudicative tribunals. This clustering of the administrative support for eight independent appellate tribunals has been done to assist government in achieving economic and program delivery efficiencies by allowing greater access to resources while, at the same time, reducing administration and operating costs. The additional tribunals include the:

- Community Care and Assisted Living Appeal Board;
- Health Professions Review Board;
- Hospital Appeal Board;
- Industry Training Appeal Board; and,
- Oil and Gas Appeal Tribunal.

This move has resulted in significant savings to government for the operation of the FST through a shared services cluster approach which takes advantage of synergy and assists government in achieving economic and program delivery efficiencies. This arrangement has been in operation for 8 years now and has proven to be a very effective and efficient means for providing administrative support to the FST, which in turn enables the FST to effectively and efficiently fulfill its appellate mandate to the public.

Effective April 1, 2017, host Ministry responsibilities for administration of the Financial Services Tribunal (including budget oversight and member appointments, as well as facilities and records supports, etc.) were transferred to the Ministry of Attorney General as part of the Tribunal Transformation Initiative.

## *Appeal Activity and Decisions Issued*

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### **APPEALS FILED**

There were 13 new appeals filed during this reporting period. Four appeals remained open from the previous reporting period. The new appeals filed are described below. Eleven matters remain outstanding at the end of this reporting period.

**2017-FIA-001 – FILED BY JOCELYN FENELON ON MAY 29, 2017** – Appeal of a Decision of the Insurance Council of British Columbia refusing to grant the Appellant’s application for a Level 2 general insurance agent license. The appeal was dismissed.

**2017-RSA-001 - FILED BY CAI MING YANG ON MAY 16, 2017** – Appeal of decision of the Real Estate Council of British Columbia to attach conditions to the Appellant’s license. The appeal was allowed and the matter was remitted back to the Real Estate Council for reconsideration.

**2016-MBA-002 FILED BY SOHEIL ARMAN KIA ON DECEMBER 21, 2017** - Appeal of a Decision of the Registrar of Mortgage Brokers finding that the Appellant had conducted his business in a manner prejudicial to the public interest, and imposing a suspension of registration, conditions on re-registration and costs as a penalty. At the close of this reporting period the appeal was before an adjudicator pending decision.

**2017-FIA-002 FILED BY THE FINANCIAL INSTITUTIONS COMMISSION ON AUGUST 10, 2017** - Appeal of a Decision of the Insurance Council of British Columbia which found that Licensee Heidi Johnson committed professional misconduct and ordered her to pay a \$5000 fine. At the close of this reporting period the appeal was before an adjudicator pending decision.

**2017-FIA-003 FILED BY THE FINANCIAL INSTITUTIONS COMMISSION ON AUGUST 10, 2017** - Appeal of a Decision of the Insurance Council of British Columbia which found that Licensee Rabjit Singh Johal committed professional misconduct and ordered him to pay a \$5000 fine. At the close of this reporting period the appeal was before an adjudicator pending decision.

**2017-FIA-004 FILED BY THE FINANCIAL INSTITUTIONS COMMISSION ON AUGUST 10, 2017** - Appeal of a Decision and Order of the Insurance Council of British Columbia which found that Licensee Edmund George committed professional misconduct and ordered him to pay a \$5000 fine. At the close of this reporting period the appeal was before an adjudicator pending decision.

**2017-FIA-005 FILED BY THE FINANCIAL INSTITUTIONS COMMISSION ON AUGUST 10, 2017** - Appeal of a Decision of the Insurance Council of British Columbia which found that Licensee Jacqueline Babcock committed professional misconduct and ordered her to pay a \$5000 fine. At the close of this reporting period the appeal was before an adjudicator pending decision.

**2017-FIA-006 FILED BY THE FINANCIAL INSTITUTIONS COMMISSION ON AUGUST 10, 2017** - Appeal of a Decision of the Insurance Council of British Columbia which found that Licensee Cheryl Das committed

professional misconduct and ordered her to pay a \$5000 fine. At the close of this reporting period the appeal was before an adjudicator pending decision.

**2017-FIA-007 FILED BY THE FINANCIAL INSTITUTIONS COMMISSION ON AUGUST 10, 2017** - Appeal of a Decision of the Insurance Council of British Columbia which found that Licensee Ernie Nguyen committed professional misconduct and ordered him to pay a \$5000 fine. At the close of this reporting period the appeal was before an adjudicator pending decision.

**2017-FIA-008 FILED BY THE FINANCIAL INSTITUTIONS COMMISSION ON AUGUST 10, 2017** - Appeal of a Decision of the Insurance Council of British Columbia which found that Licensee Mi Keun Lee committed professional misconduct and ordered her to pay a \$5000 fine. At the close of this reporting period the appeal was before an adjudicator pending decision.

**2017-RSA-002 FILED BY ROBERT SCHOEN ON AUGUST 01, 2017** - Appeal from a Decision of the Real Estate Council of British Columbia which found that the Appellant had committed professional misconduct by failing to fulfill his duties as managing broker. At the close of this reporting period the appeal was before an adjudicator pending decision.

**2018-MBA-001 FILED BY ARVIND SHANKAR ON FEBRUARY 05, 2018** - Appeal from a Decision of the Registrar of Mortgage Brokers finding the appellant conducted business as a submortgage broker in British Columbia without being registered to do so, and imposing a discipline penalty, investigative costs and legal costs as a penalty. At the close of this reporting period the appeal was before an adjudicator pending decision.

**2018-RSA-001 FILED BY DOUGLAS WELDER ON FEBRUARY 20, 2018** - Appeal from a Decision of the Real Estate Council of British Columbia which found the Appellant unfit for licensing, and prohibited him from making further application for a license for a period of a least three years. At the close of this reporting period the appeal was before an adjudicator pending decision.

### **TRIBUNAL DECISIONS – SUMMARY**

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

- Four (4) decisions were issued on the merits of appeals,
  - two (2) of which were issued with respect to appeals filed prior to the commencement of the reporting period, and
  - two (2) of which were issued with respect to appeals filed during the course of the Reporting period;
- Two (2) costs decisions were issued,
  - one (1) with respect to an appeal filed prior to the commencement of the reporting period, and
  - one (1) with respect to an appeal filed during the reporting period;
- Ten (10) preliminary decisions were issued,

- one (1) with respect to an appeal filed prior to the commencement of the reporting period, and
- nine (9) with respect to appeals filed during the reporting period.

**Preliminary and Post-Hearing Decisions**

The eleven (12) preliminary and post-hearing decisions issued during the reporting period generally dealt with the following issues:

- whether to admit new evidence on appeal;
- whether to allow an expedited hearing;
- whether a conflict or reasonable apprehension of bias existed;
- whether to allow an extension of time to file submissions in contested circumstances;
- whether certain evidence could be disclosed;
- whether certain materials should be redacted to protect privacy;
- whether to grant a stay of an underlying decision pending appeal;
- whether to join similar appeals to be heard by one tribunal member;
- whether to dismiss an appeal as premature or as an abuse of process; and
- whether to award costs, and in what amount.

**Final decisions on the merits**

The following is a summary of the four (4) final decisions on the merits issued during the reporting period:

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**2016-RSA-002(d)**

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Decision Date:	July 27, 2017
Appellant:	Lester Lin
Respondent(s):	Real Estate Council of British Columbia and Superintendent of Real Estate
Act:	<i>Real Estate Services Act</i> , SBC 2004, c 42 (“RESA”)
Issue:	Whether the Real Estate Council of British Columbia reasonably cancelled the Appellant’s license to practice as a realtor.
Disposition:	The Real Estate Council cancelled the Appellant’s license without notice on the basis that he had contravened a consent order in place between the parties. The Tribunal found that the Appellant was denied procedural fairness when the Committee failed to provide him with adequate reasons for cancelling his license. <b><i>The appeal was allowed and the matter was remitted back to the Discipline Committee for reconsideration of the issue of penalty and the provision of adequate reasons.</i></b>
Appeal Decision:	<a href="http://www.fst.gov.bc.ca/pdf/2016-RSA-002(d).pdf">http://www.fst.gov.bc.ca/pdf/2016-RSA-002(d).pdf</a>

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**2016-RSA-001(a)**

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Decision Date:	July 13, 2017
Appellant:	Danielle (Cui Zhu) Deng
Respondents:	Real Estate Council of British Columbia and Superintendent of Real Estate
Act:	<i>Real Estate Services Act</i> , SBC 2004, c 42 (“RESA”)
Issue:	Whether a Discipline Committee of the Real Estate Council of British Columbia reasonably and fairly found the Appellant had committed professional misconduct.
Disposition:	The Appellant was unrepresented in a hearing before the Discipline Committee of the Real Estate Council where she was defending against allegations that she committed professional misconduct. The Tribunal found the Discipline Committee’s process was unfair to the Appellant as the Committee improperly allowed opposing counsel to govern the process and make rulings against the Appellant. The Tribunal held that in so doing, the Committee deprived the Appellant of her ability to fully present her case. <b><i>The appeal was allowed on the basis of a lack of procedural fairness and the matter was remitted back to the Real Estate Council for reconsideration.</i></b>
Appeal Decision:	<a href="http://www.fst.gov.bc.ca/pdf/2016-RSA-001(b).pdf">http://www.fst.gov.bc.ca/pdf/2016-RSA-001(b).pdf</a>

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**2017-FIA-001(a)**

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Decision Date:	January 17, 2018
Appellant:	Jocelyn Fenelon
Respondent:	Insurance Council of British Columbia
Act:	<i>Financial Institutions Act</i> , RSBC 1996, c 141
Issues:	Whether the Insurance Council reasonably refused to grant the Appellant’s application for a Level 2 general insurance agent license.
Disposition:	The Appellant had previously held various insurance licenses which had been cancelled due to the Appellant’s misconduct. When the Appellant re-applied for his Level 2 general insurance license, he did so under certain “equivalency” provisions of the Act, as he did not have the requisite qualifications. The Tribunal held that the Insurance Council treated the Appellant fairly, did not engage in undue delay and reasonably denied the Appellant’s application on the basis that he did not have the requisite or equivalent qualifications. <b><i>The appeal was dismissed.</i></b>
Appeal Decision:	<a href="http://www.fst.gov.bc.ca/pdf/2017-FIA-001(a).pdf">http://www.fst.gov.bc.ca/pdf/2017-FIA-001(a).pdf</a>

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

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Decision Date:	June 7, 2016
Appellant:	Cai Ming Yang
Respondent:	Real Estate Council of British Columbia
Act:	<i>Real Estate Services Act</i> , SBC 2004, c 42
Issue:	Whether, the Real Estate Council improperly attached conditions to the Appellant’s license, and whether the Real Estate council properly held a “qualification hearing” in relation to the Appellant.
Disposition:	A Hearing committee of the Real Estate Council of British Columbia held a “qualification hearing” to determine whether the Appellant was suitable to be licensed under the Act. At the conclusion of the hearing, the Committee imposed a number of conditions on the Appellant’s license. Although the Tribunal did not find any problems with the way in which the qualification hearing was held, the Tribunal found that the Hearing Committee improperly attached conditions to the Appellant’s licence in the absence of evidence or reasons to do so. <b><i>The Appeal was allowed and the conditions on the Appellant’s license were struck.</i></b>
Appeal Decision:	<a href="http://www.fst.gov.bc.ca/pdf/2017-RSA-001(a).pdf">http://www.fst.gov.bc.ca/pdf/2017-RSA-001(a).pdf</a>

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### *Matters Outstanding at end of Period*

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There were eleven (11) matters outstanding at the end of this reporting period, nine of which have since been decided, and two of which are currently before an FST member for adjudication. Decisions on the merits of these outstanding matters will be summarized in the next reporting period.

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### *Performance Indicators and Timelines*

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

The FST appeal process has been designed to be fast, efficient and cost effective. Appeals are “on the record” and are primarily conducted in writing. Conducting a hearing in writing generally

saves time and expense for both the parties and the Tribunal. A single member of the Tribunal hears and decides each appeal, again keeping the cost to government for the tribunal at a minimum. The Tribunal has established tight timelines for the parties to file their written submissions on appeal in order to keep the process moving.

For those appeals closed within this reporting period, the overall average time from the date of filing an appeal to its disposition was 229 days. The shortest time from open to close was 119 days and the longest was 336 days. For those matters resolved without a hearing, the average time was 119 days. For those appeals requiring a hearing on the merits and adjudication, the average time from filing to decision was 257 days.

The Tribunal's *Practice Directives and Guidelines*, which are available on the Tribunal's website, provide that the Tribunal will endeavour to issue a copy of the final decision or order, including written reasons, to each party within 60 days from receiving the last submissions of the parties. In 75 percent (3 of 4) of the appeals involving a hearing on the merits that were completed within the reporting period, the decisions were released within those timelines; with the respective appeals being released within 52 days, 24 days and 17 days of the close of submissions. One appeal did not meet the time guideline as the decision was released within 114 days of the close of submissions.

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

## *Judicial Review of FST Decisions*

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

During this reporting period, two separate applications for judicial review of one particular FST decision [2017-RSA-001(a)]<sup>2</sup> were filed in the BC Supreme Court: *Yang v Real Estate Council of British Columbia*, S179842; and, *Real Estate Council of British Columbia v Yang*, S179917.

The Court dismissed *Yang v Real Estate Council of British Columbia*, S179842, and a summary of the decision appears below. *Real Estate Council of British Columbia v Yang*, S179917 remains outstanding before the Supreme Court at the close of the reporting period.

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<sup>2</sup> Decision was issued in this reporting period.

An application for judicial review of an FST decision [2015-RSA-003(b)] which was pending before the Supreme Court at the close of the previous reporting period was dismissed by the Court during this reporting period: *Kadioglu v Real Estate Council of British Columbia*, 2017 BCSC 2252. A summary of the decision appears below.

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

During the reporting period one application for leave to appeal to the BC Court of Appeal was filed in regard to a BC Supreme Court decision upholding an FST decision: *Kadioglu v Real Estate Council of British Columbia et al*, CA44990. That appeal was pending decision at the close of this reporting period.

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

During the reporting period, an application for leave to appeal a BC Court of Appeal Decision<sup>3</sup> to the Supreme Court of Canada (filed in the previous reporting period) was dismissed without reasons: *Mohamed Alie Jalloh v Insurance Council of British Columbia, et al.*, 2017 CanLII 35117 (SCC).

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

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

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Decision Date:	May 22, 2018
Appellant:	Cai Ming Yang
Respondents:	Real Estate Council of BC
Act:	<i>Real Estate Services Act</i> , SBC 2004, c 42
Issue:	The Appellant petitioned for judicial review on the basis that the FST did not find in his favour on one of two issues he raised before the tribunal; that being whether a qualification hearing was properly held.
Disposition:	The appeal was dismissed
Court's Decision:	<a href="https://www.courts.gov.bc.ca/jdb-txt/sc/18/09/2018BCSC0933.htm">https://www.courts.gov.bc.ca/jdb-txt/sc/18/09/2018BCSC0933.htm</a>
Court's Summary:	The Appellant, a real estate licensee, petitioned for judicial review of the decision of the FST finding in his favour on one issue which resulted in the removal of conditions attached to his Real Estate Licence, but finding against him on another issue having to do with whether a qualification hearing of the Respondent Real Estate Council was properly held. The

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<sup>3</sup> The BCCA decision had upheld a BC Supreme Court Decision which had upheld an FST decision.



Chambers judge dismissed the appeal on the basis of mootness/and or that the judicial review would serve no useful purpose if it were to proceed, as the Appellant had already been successful at the FST level.

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*Kadioglu v. Real Estate Council of British Columbia, 2017 BCSC 2252*

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Decision Date:	December 07, 2017
Appellant:	Murat Kadioglu
Respondents:	Real Estate Council of BC Superintendent of Real Estate Financial Services Tribunal
Act:	<i>Real Estate Services Act, SBC 2004, c 42</i>
Issue:	The Appellant petitioned for judicial review on the basis that the FST unreasonably upheld the decisions of the Real Estate Council of British Columbia finding him guilty of professional misconduct and ordering penalties against him.
Disposition:	The appeal was dismissed
Court's Decision:	<a href="https://www.courts.gov.bc.ca/jdb-txt/sc/17/22/2017BCSC2252.htm">https://www.courts.gov.bc.ca/jdb-txt/sc/17/22/2017BCSC2252.htm</a>
Court's Summary:	The Appellant, a real estate licensee, petitioned for judicial review of the decision of the FST upholding the decisions of the Real Estate Council of British Columbia which found that he had engaged in professional misconduct and which assessed various penalties against him as a result. The Supreme Court upheld the FST decision and found that the Tribunal fully and fairly considered the Appellant's arguments and the record of evidence and came to its decision reasonably. The Court also addressed the Appellant's argument that his <i>Charter</i> rights had been violated and held that " <i>there is no factual foundation underlying [the Appellant's] assertion that his Charter rights have been affected</i> " (at para 58).

## Statement of Financial Performance

(For the fiscal year ending March 31, 2018)

In fiscal year 2017/2018, the FST received \$11,050 from 13 appellants for appeal filing fees, and incurred expenses of \$91,509 as detailed below. We have provided a six year chart for comparative purposes. In addition to the larger than usual number of appeals filed during this reporting period (13 new appeals), the FST also provided professional development to members during this period and appeared, via legal counsel, on several judicial review applications to make submissions on important issues being considered by the court.

<i>Operating Result</i>	<b>2012/2013</b> \$	<b>2013/2014</b> \$	<b>2014/2015</b> \$	<b>2015/2016</b> \$	<b>2016/2017</b> \$	<b>2017/2018</b> \$
Appellant Fees	2,550	850	850	5,950	4,250	11,050
Funding	21,276	13,661	8,964	45,383	86,013	80,459
Direct Expenses	(23,826)	(14,511)	(9,814)	(51,333)	(90,263)	(91,509)
Net	0	0	0	0	0	0
<i>Direct Expense Details</i>	<b>2012/2013</b> \$	<b>2013/2014</b> \$	<b>2014/2015</b> \$	<b>2015/2016</b> \$	<b>2016/2017</b> \$	<b>2017/2018</b> \$
Salaries and Benefits	0	0	0	0	0	0
Professional Services	6,690	8,470	7,557	24,177	42,931	41,511
Board Fees & Expenses	16,607	5,839	2,217	26,920	46,588	48,635
Other	529	202	40	236	744	1363
Total direct Expenses	23,826	14,511	9,814	51,333	90,263	91,509
<b>Total FST Expenses</b>	<b>\$23,826</b>	<b>\$14,511</b>	<b>\$9,814</b>	<b>\$51,333</b>	<b>\$90,263</b>	<b>\$91,509</b>

