



**Financial Services Tribunal**

# ***Practice Directives and Guidelines***

Revised January 2023

## 1.0 Introduction

The purpose of these Practice Directives and Guidelines is to facilitate the just and timely resolution of appeals by setting out the general policy, practice, procedural steps and time periods for processing an appeal before the Financial Services Tribunal (FST).

The Practice Directives and Guidelines must be read together with the ***Financial Institutions Act*** (the Act), the ***Administrative Tribunals Act*** (the ATA), and the other relevant statutes.

This document includes the practice directives required by section 12 of the ATA respecting the usual time period for completing the procedural steps within an appeal and the usual time period within which the FST's final decision and reasons are to be released.

## 2.0 - The Financial Services Tribunal (FST)

The FST hears appeals from decisions made by the Insurance Council of British Columbia, the Superintendent of Real Estate, the Superintendent of Pensions, the Registrar of Mortgage Brokers and the Superintendent of Financial Institutions 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 ATA. Section 242.1(1)(7) of the Act sets out the specific sections of the ATA which apply to appeals before the FST.

Under section 242.3(1) of 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.

A decision of the FST on a matter in respect of which the tribunal has exclusive jurisdiction is final and conclusive and is not open to question or review in any court (s. 242.3 (2) Act). However, FST decisions are subject to proceedings under the **Judicial Review Procedure Act**.

The FST does not hear appeals of certain decisions made by the British Columbia Financial Services Authority (BCFSA). Those decisions which are not appealed to the FST may be appealed to the BC Supreme Court. For a complete list of the BCFSA 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 to the FST, any person aggrieved by an order or decision under that statute may appeal by filing a Notice of Appeal, in accordance with the statute under which the decision to be appealed was made. For the relevant statutes, please see section 2.0 above.

### 3.2 - Deadline for filing a Notice of Appeal (s. 24 ATA)

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 should ensure that their application to extend the time to file sets out the relevant issues regarding an extension including:

- whether there was an intention to appeal before the appeal period expired, and if so, was that intention communicated to the original decision-maker;
- what caused the delay in filing the notice of appeal;
- who will be prejudiced if an extension of time is not granted; or
- who may be prejudiced if an extension is granted.

In deciding whether to extend the time to file an appeal, the FST will examine whether special circumstances exist and may consider the following factors or any other factor the tribunal considers relevant in making the determination:

- promptness – the date the application to extend was filed with the FST;
- the reasons a notice of appeal was not filed within the required time;
- possible prejudice to a party if an extension is or is not granted;
- whether there is a reasonable, arguable ground of appeal; and
- whether it is in the interests of justice that an extension be granted.

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 (s. 22 ATA)**

A suggested form of notice of appeal has been created by the tribunal and titled "**Form 1**". If you choose not to use this form, your notice of appeal **must**:

- be typewritten;
- 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 a physical address for delivery for the appellant (and may also include an e-mail address, if the appellant wishes to receive documents electronically);
- be signed by the appellant or the appellant's agent; and
- must include the names of all parties entitled to participate in the appeal which may include parties with statutory standing.

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A Notice of Appeal **must** be accompanied by the appeal fee of **\$850**, payable to the Minister of Finance.

Please note: 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, and/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 without further detail. The grounds for the appeal should 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 3 copies of the Notice of Appeal, along with the filing fee, to the Financial Services Tribunal. Filing may be done in person, by email, by mail, by courier, or by fax.

The business address for the FST is as follows:

Physical Address	Mailing Address	Fax/EMAIL
Financial Services Tribunal 4th Floor, 747 Fort Street Victoria BC V8W 3E9	Financial Services Tribunal PO Box 9425 Stn Prov Govt Victoria BC V8W 9V1	(250) 356-9923 <a href="mailto:info@bcfst.ca">info@bcfst.ca</a>

The business hours of the FST are from **8.30 am to 4.30 pm**, Monday to Friday, except public holidays. A document received after regular hours of operation is deemed delivered on the next day the FST office is open.

### 3.5 - Deficient Notice (s. 22(4) ATA)

If the FST determines that a notice of appeal is deficient, or if the prescribed fee is outstanding, the Chair or the Chair's delegate may allow a reasonable period of time within which the notice may be corrected or the fee is to be paid.

Once a notice of appeal is perfected and the appeal fee is received, the FST will provide the other parties to the appeal with a copy of the Notice of Appeal and the Chair will consider the appeal or assign the matter to a member of the tribunal for hearing.

### **3.6 - Summary Dismissal of an appeal (s. 31 ATA)**

As permitted under section 31(1) of the ATA, the FST may, at any time after an appeal has been filed, dismiss all or part of an appeal if any of the following circumstances apply:

- the appeal is not within the jurisdiction of the tribunal;
- the appeal was not filed within the applicable time limit;
- the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
- the appeal was made in bad faith or filed for an improper purpose or motive;
- the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
- there is no reasonable prospect that the appeal will succeed; or
- the substance of the appeal has been appropriately dealt with in another proceeding.

Before the FST considers summarily dismissing an appeal, the appellant will be given an opportunity to make written submissions. If an appeal is dismissed, the FST will inform all parties to the appeal of its decision in writing and will give reasons for the decision to dismiss the appeal.

### **3.7 - Stay of decision pending appeal**

In general, an appeal to the FST does not operate as a stay or suspend the operation of the decision under appeal (s. 242.2 (2) Act).

However, some statutes providing for an appeal may, in certain circumstances, provide that an appeal operates as a stay, unless the FST makes an order otherwise. Please see section 9 of the ***Mortgage Brokers Act*** or section 98 of the ***Credit Union Incorporation Act*** for examples of these circumstances.

In some circumstances, an appellant may apply to the FST for a stay where the statute does not provide for an automatic stay.

Under section 242.2 (10)(a)(i) of the Act, subject to the restrictions in the relevant statute, the member hearing the appeal 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 to stay proceedings pending appeal must be in writing. The FST will serve the application on the other parties who may file a reply within **10 days, or such other time** as directed by the member.

### **3.8 - Appeals involving similar questions (s. 37 ATA)**

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

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

The FST may make orders regarding procedures to be followed where appeals involving similar questions are dealt with under section 37 of the ATA.

### **3.9 - The parties to an appeal**

An appeal will always have at least two “parties” - the appellant (the person who is making an appeal to the FST) and the respondent (the person whose decision is

under appeal). The legislation under which a right of appeal is granted sets out who is entitled to make an appeal and which decisions may be appealed.

The various acts providing a right of appeal may also set out additional parties in respect of certain appeals. In addition, the tribunal member conducting an appeal may authorize any other person whose interests will be directly affected by the proceeding to appear and participate as a party to an FST hearing. Any party other than the appellant and respondent will be referred to as a “third party”.

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 and to participate fully in a hearing, including producing evidence (where the tribunal allows new evidence), and cross-examining witnesses in an oral hearing (s. 38 ATA).

The member hearing the appeal may also permit a person who is not a party to the appeal to provide submissions in respect of the appeal if, in the opinion of the member, the submissions would substantially assist in the determination of the appeal (s. 242.2 (10)(c) Act).

### 3.10 - The record

The FST will usually request a copy of the record from the decision-maker whose decision is under appeal 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 FST within **14 days** of receiving the request for it. The FST will provide all parties with a copy of the record. This time limit is subject to extension by the Chair under section 242.2(4)(a) of the Act.

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 under appeal and written reasons for it, if any, given by the original decision-maker.



In addition to the material outlined in section 242.2(6) of the Act, the tribunal member considering the appeal may direct the original decision maker to produce other materials.

To facilitate the efficient processing of appeals, the FST requires that the original decision-maker provide an electronic copy of the record to the FST, along with one hard copy of the record for each party to the appeal, and two hard copies of the record for the FST.

The record must contain an index or list of documents and be tabbed and bound or secured in a binder for easy reference.

The FST will distribute an electronic and hard copy of the record to each party to the appeal and to the tribunal member hearing the appeal.

Any party to an appeal may raise concerns regarding the integrity or completeness of the record. 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 (see next section).

### **3.11 - Written submissions**

Appeals to the FST are appeals "on the record" and **must** be based on written submissions unless otherwise permitted by the tribunal member considering the appeal (s. 242.2 (5) Act).

The FST will send a letter to the parties outlining when each party's submissions are due and what should be included in the submissions. Unless otherwise specified by the FST, the FST will request written submissions on the following timelines and with the following directions:

1. Within **21 days** of the receipt of the record the appellant will be required to send the FST an electronic copy and two hard copies of their written submissions. At the same time, the appellant will be required to send an electronic copy of their submissions to the respondent and any other parties participating in the appeal.
2. The respondent and any other party to the appeal will be required to send the FST an electronic copy and two hard copies of their written submissions within **21 days** from the date of receiving the appellant's

submissions. At the same time, the respondent and any other party to the appeal will be required to send the appellant an electronic copy of their submissions.

3. The appellant may send the FST a written reply (an electronic and two hard copies) to the submissions of the respondent and any other parties within **14 days** from the date of receiving those submissions. If the appellant chooses to send a written reply, at the same time that they send their reply to the FST, they will be required to send an electronic copy of their written reply to the respondent and any other parties participating in the appeal. **The reply must be limited to new issues raised in the submissions of the respondent and other parties.**

If any party requires an extension of time to file their written submissions, a request must be made in writing to the FST **prior to** the expiration of the deadline for submissions.

The parties' written submissions and any replies must fully set out in detail their positions and arguments on the appeal, and must include a statement of the result the party is seeking. They must include specific references to the evidence (contained in the record or such other evidence allowed by the presiding tribunal member) that supports their argument. The written submissions must also include reference to, and copies of, any legal authorities (legislation or cases) that are being relied on in support of the party's argument.

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

### **3.12 - Service of documents by the FST (s. 19 ATA)**

If the FST is required to provide a Notice of Appeal or any document to a party or other person in the appeal, it will do so by personal service of a copy of the notice or document or by sending a copy to the person by:

- ordinary mail;
- e-mail, if the party gives an e-mail address; or
- facsimile (fax).

### **3.13 - Failure to serve does not invalidate proceedings (s. 20 ATA)**

If a Notice of Appeal or document has not been served in accordance with section 19 of the ATA as noted above, 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).

### **3.14 - Oral hearings**

The FST will normally conduct a written hearing and make its decision based on the record and on the written submissions, including legal authorities, before it.

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, including witness testimony, and/or oral submissions.

A party to the appeal may apply in writing for permission to introduce oral evidence or make oral submissions. The application should set out why written submissions and evidence are not sufficient or appropriate and why oral evidence or submissions are necessary.

In the event that the tribunal member holds an oral hearing, the hearing will be open to the public (s. 41(1) ATA). However, depending on the circumstances surrounding the hearing, the tribunal member may direct that all or part of the information be received by the tribunal to the exclusion of the public (s. 41(2) ATA).

The FST may transcribe or record its oral proceedings (s. 35 ATA).

### **3.15 - Application to admit new evidence (not included in the record)**

Under section 242.2(8)(b) of the Act, the tribunal member hearing the appeal has discretion to permit the introduction of new evidence (i.e., evidence that was not introduced at the original hearing), oral or otherwise, if the member is 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.

The tribunal member hearing the appeal also has the discretion to admit evidence relating to matters of procedural fairness in the underlying proceeding.

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 be given a final opportunity to make a reply in support of their new evidence application.

If a respondent party wishes to submit an application to submit new evidence, they will usually 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 be given a final opportunity to file any 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 decision to be made on appeal. 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-making process. If the application to introduce new evidence relates to an issue of procedural fairness in the underlying proceeding, the application must clearly demonstrate why the evidence is necessary to understand the issue of procedural fairness.

The tribunal may receive and accept any evidence or information it considers relevant, necessary and appropriate, whether or not it would be admissible in a court of law (s. 40 ATA). Section 34(5) of the **Evidence Act** does not apply to the FST.

At any time after an application is filed the tribunal member may make an order regarding the request to introduce new evidence. This will sometimes happen in advance of the appeal decision, especially if the new evidence is admitted and must therefore be produced and added to the record, or where the request is for

oral evidence. The order may also be included in the appeal decision, if the new information is documentary only and has already been produced or where the new evidence will not be admitted.

When an oral hearing has been ordered or new evidence permitted, the tribunal member hearing the appeal may require that parties participate in a prehearing conference that might assist in clarifying or narrowing the facts or issues, or that may otherwise facilitate the appeal process.

### **3.16 - Order requiring a person to attend a hearing or produce documents**

Under section 242.2(10)(b)(i) of the Act, the tribunal member hearing an appeal may require a person, by order, to attend an oral or electronic hearing to give evidence on oath, at the cost of the party requesting the witness.

The party seeking to compel a witness to attend must file an application for an order to attend which clearly states why the witness is needed, what the witness is expected to say at the hearing and the efforts the party has made to have the witness attend voluntarily. The application for an order should include a cheque for reasonable witness fees and expenses which must be deposited with the FST before an order will be issued. An Affidavit of service will be required if a witness does not attend the hearing. An order to attend is not necessary if a witness agrees to attend the hearing voluntarily.

The tribunal member hearing the appeal also 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.

### **3.17 - Adjournments (s. 39 ATA)**

A hearing may be adjourned from time to time by a tribunal member based on their assessment of the situation or on application of a party 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.

### **3.18 - Maintenance of order at oral hearings (s. 48 ATA)**

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

### **3.19 - Contempt proceedings (uncooperative witness/other person) (s. 49 ATA)**

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.

### **3.20 - 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.

Final decisions of the tribunal must be in writing and will contain reasons (s. 51 ATA).

The decision is effective on the date it is issued, unless otherwise specified in the decision (s. 50(3) ATA).

The FST provides public access to its decisions and orders online at [www.bcfst.ca](http://www.bcfst.ca).

### 3.21 - Notice of decision (s. 52 ATA)

The FST will endeavour to provide a copy of the final decision or order, including the written reasons, within **120 days** from receiving the last submissions of the parties, to each party and any non-party who participated in the appeal.

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.

### 3.22 - Amendment of Final Decision (s. 53 ATA)

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. In such cases, the FST may amend the final decision **only** where the amendment will clarify it.

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

### 3.23 - Power to award costs (s. 47 ATA)

The FST has the power to issue an order requiring a party or another person making submissions in respect of the appeal under section 242.2(1)(c) of the Act

(collectively referred to in this section as a 'participant') to pay part of the costs of another participant in connection with an appeal and, 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 incurred in connection with the appeal.

A participant may apply for an award of costs in their closing 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 exchange of submissions on the issue of costs.

### **3.24 - The criteria for awarding costs**

In determining whether a participant is liable to pay the costs of another participant or the tribunal, the FST may consider:

- whether there was conduct that was improper, vexatious, frivolous or abusive;
- whether the participant submitted a position that was manifestly unfounded;
- whether the participant unreasonably delayed or prolonged the proceeding, including any failure to comply with an FST undertaking or order;
- whether the participant assisted the tribunal in understanding the issues;
- whether the participant unreasonably failed to cooperate with other parties during the appeal;
- whether the participant failed to attend a hearing or other proceeding, or to send a representative, despite receiving notice;
- the degree of success in the proceeding; and
- any other matter the tribunal considers relevant.

If the tribunal member hearing the case makes an order requiring a participant to pay part of the costs of another participant, the FST will calculate these costs using the BC Supreme Court Rules as a general guideline.

## **4.0 - Miscellaneous**



#### 4.1 - Constitutional Questions (s. 44 ATA)

The FST does not have jurisdiction over constitutional questions, which is defined in the ATA as “any question that requires notice to be given under section 8 of the **Constitutional Questions Act**”.

#### 4.2 - Human Rights Issues (s. 46.2 ATA)

The FST may decline jurisdiction to apply the **Human Rights Code** in any matter before it, and does not have jurisdiction over a question of whether there is a conflict between the **Human Rights Code** and any other enactment.

In considering whether to decline jurisdiction to apply the **Human Rights Code**, the FST may consider whether there is a more appropriate forum in which the **Human Rights Code** may be applied.

#### 4.3 - Review of Tribunal Decisions

Section 242.3(2) of the Act states that a decision of the tribunal is final and conclusive and is not open to question or review in any court. However, tribunal decisions are subject to proceedings under the **Judicial Review Procedure Act**.

***For the Financial Services Tribunal***

A handwritten signature in black ink, appearing to read 'Stacy F. Robertson', with a long horizontal flourish extending to the right.

Stacy F. Robertson  
*Chair of the Financial Services Tribunal*

## 5.0 - 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 3 copies).
- FST will deliver a Notice of Appeal to the respondent and any third parties.
- 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.
- Unless otherwise specified by the FST, within **21 days** of receiving a copy of the record from the FST, the appellant must file with the FST an electronic and two hard copies of their written submissions (depending on the number of other parties) and must send an electronic copy of their submissions to the other parties in the appeal. Unless otherwise specified by the FST, within 21 days of receipt of the appellant's submissions, the respondent and any third parties must file with the FST one original and two or three copies of their written submissions (depending on the number of other parties), and
- Unless otherwise specified by the FST, the appellant will be given 14 days to file a final reply to the submissions of the respondent or any third parties, should they wish to do so.
- The FST member hearing the appeal will usually issue a written decision and reasons within 120 days of receiving the last submission

### **\*A Note on Delivery by the FST**

Every appellant must provide an address for delivery to the tribunal on the Notice of Appeal. If an appellant's address for delivery changes during the appeal process, the appellant must promptly notify the tribunal of the change.

The tribunal will deliver information and notice of the proceedings to the appellant to the address for delivery provided by the appellant. 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.