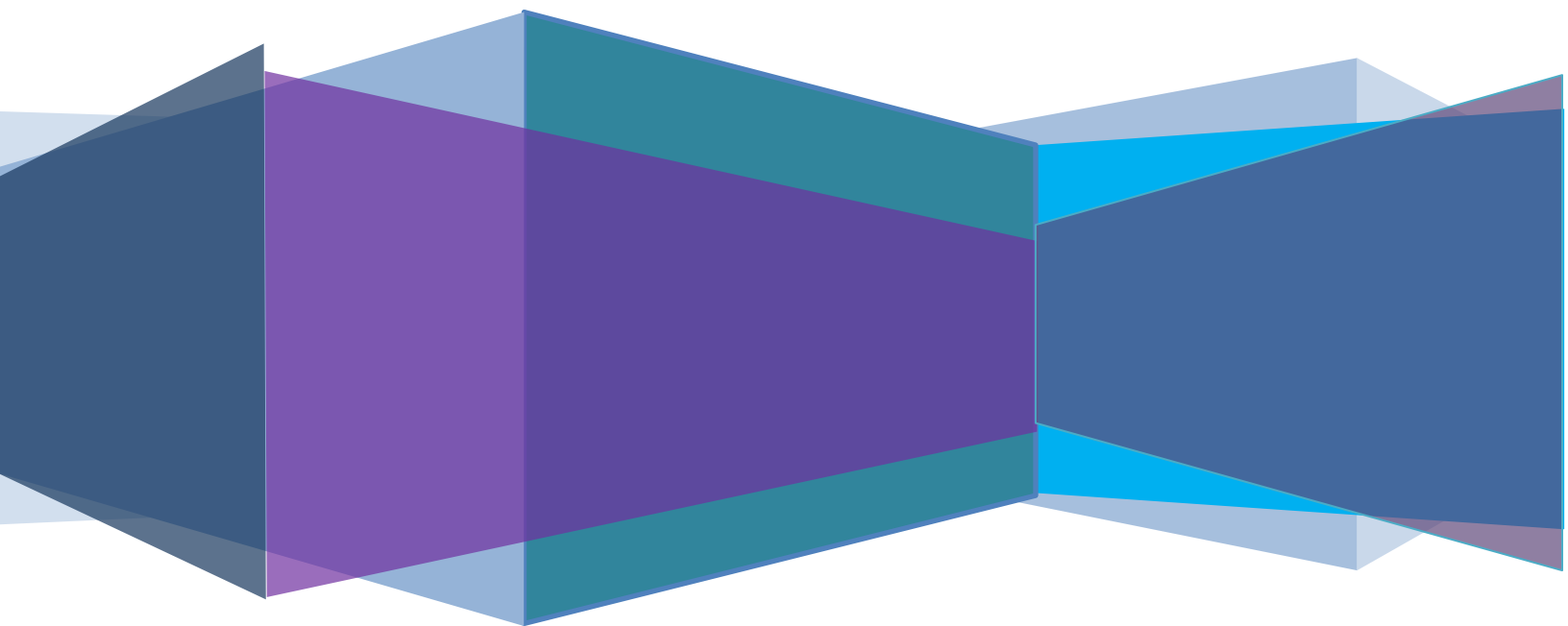




# Financial Services Tribunal

## 2021-2022 Annual Report

Covering the reporting period from  
April 1, 2021 – March 31, 2022





# Financial Services Tribunal

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January 6, 2022

Honourable Nikki Sharma, K.C.  
Attorney General  
Victoria, British Columbia V8V 1X4

Dear Attorney General:

**Re: Financial Services Tribunal 2021-2022 Annual Report**

I respectfully submit the Annual Report of the Financial Services Tribunal for the period April 1, 2021 to March 31, 2022.

Sincerely,

Stacy F. Robertson  
Financial Services Tribunal

Encl.

## *Message from the Chair*

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I am pleased to submit the Annual Report of the Financial Services Tribunal (the “FST” or the “Tribunal”) for the fiscal year beginning April 1, 2021 and ending March 31, 2022. 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*.

During the current reporting period, the COVID-19 pandemic continued to be a factor in the delivery of services. The FST operated within the guidance of the Provincial Health Officer, and within the framework of its Business Continuity Plan (BCP). Thanks to the ongoing flexibility of staff in the cluster, and the ongoing adaptability of Tribunal members to new ways of working, the FST did not suffer any significant service disruptions related to the pandemic during this reporting period. The office in Victoria remained open to the public throughout, with steps taken to limit the risk of COVID-19 spread (i.e. limiting the number of staff in the office at any given time).

As a result of the ongoing COVID-19 pandemic and larger continuing trends, the FST’s operations continued to be primarily electronic as opposed to paper-based. In addition, during the reporting period, the FST implemented a more secure and efficient way of sharing appeal materials with members, thereby improving data security.

The current reporting period brought other important changes to the FST, as George N.F. Hungerford stepped down as Chair of the Tribunal. Mr. Hungerford served as Chair of the FST from June 2019 to December 2021. On behalf of the staff and membership of the FST, I would like to thank him for his significant contributions to the Tribunal during this time.

### ***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 the reporting period, a total of five new appeals were filed with the Tribunal. Three new appeals were filed under the *Real Estate Services Act*, one new appeal was filed under the *Financial Institutions Act*, and one new appeal was filed under the *Pension Benefits Standards 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 *Mortgage Brokers Act* or the *Real Estate Development Marketing Act* during the reporting period.

***Appeals Carried Over*** – Four appeals were carried over from the previous reporting period. During the reporting period, the FST closed all four of these carried-over appeals.

**Matters Outstanding** - Of the nine appeals that were before the FST during the reporting period, four appeals were closed and five appeals remained outstanding at the close of the reporting period.

**Hearings** - Three of the four appeals that 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 Court Appeals during Reporting Period**

During this reporting period, two new applications for judicial review of FST decisions were filed with the BC Supreme Court. The new applications relate to FST decision FST-RSA-20-A003(b) *Shahin Behroyan v. Real Estate Council of British Columbia* (S219605) and FST decision 2019-FIA-007(a) *Pamela P. H. Yee v. Insurance Council of British Columbia* (S215684). No new appeals or applications for leave were filed with the BC Court of Appeal or the Supreme Court of Canada.

There were four applications for judicial review of FST decisions outstanding before the BC Supreme Court at the commencement of this reporting period (Supreme Court File Nos. S179917, S193245, S1913100, and S221047). All remained outstanding as of the close of this reporting period, and two more applications were added as set out above.

### **Forecast of workload for the next reporting year and trends noted**

Section 59.2(f) of the *Administrative Tribunals Act* requires the Tribunal to provide a forecast of the workload for the following reporting period. The FST's workload for the current reporting period was consistent with the volume of appeals over the past several years. Upcoming legislative changes - including the introduction of new legislation and rules related to mortgage brokers - may increase the volume of appeals. The FST workload will be affected by any increase in the caseload or expanded jurisdiction of the Financial Services Authority flowing from any changes resulting from the BC Commission of Inquiry into Money Laundering in British Columbia recommendations of June 2022. The FST will report further on this after the next reporting period.

Section 59.2(g) of the *Administrative Tribunals Act* requires the Tribunal to report any trends or special problems it foresees. The FST continues to hear a large number of appeals from self-represented individuals, who may have financial sector expertise but who are unfamiliar with the legalistic process of appellate adjudication. The FST has attempted to design its process to be as accessible as possible to all users but continues to face unique challenges with respect to hearing appeals involving self-represented parties.

***Plans for improving the Tribunal's operations***

Section 59.2(h) of the *Administrative Tribunals Act* requires the Tribunal to report on its plans for improving operations in the future. Service delivery will continue to be reviewed over the next reporting period, and the FST will continue to capitalize on technological improvements. Of particular note, the FST has been working on a new website that is expected to be rolled out during the next reporting period. The FST is also working on updating its Practice Directive and Guidelines and improving the accessibility of information that is available to the public. The FST will report on these developments in the next reporting period.



Stacy F. Robertson  
Chair, Financial Services Tribunal

## *Mandate*

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

- Insurance 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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**MAILING ADDRESS:** Financial Services Tribunal  
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**LOCATION:** 4<sup>th</sup> Floor, 747 Fort Street  
Victoria BC V8W 3E9

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**WEBSITE:** <http://www.fst.gov.bc.ca/>

## *Tribunal Membership*

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

<i>TRIBUNAL MEMBER</i>	<i>ROLE</i>	<i>INITIAL APPOINTMENT</i>	<i>TERM EXPIRY/RESIGNATION</i>
Stacy F. Robertson	Chair <sup>1</sup>	December 13, 2021	December 13, 2024
George N.F. Hungerford	Chair	June 17, 2019	December 13, 2021
(James) Keith Bracken	Vice Chair	June 29, 2020	June 30, 2022
Michelle Good	Member	December 12, 2018	June 11, 2026
Jane A.G. Purdie, Q.C.	Member	July 12, 2018	June 7, 2026
Michael Tourigny	Member	December 17, 2018	December 17, 2024
Catherine McCreary	Member	June 29, 2020	June 30, 2022
James Carwana	Member	June 29, 2020	June 30, 2022

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

#### ***STACY F. ROBERTSON, CHAIR (FROM DECEMBER 13, 2021)***

Stacy Robertson is currently Senior Enforcement Counsel at the Investment Industry Regulatory Organization of Canada in Vancouver, B.C., which regulates professional discipline for registered securities industry individuals and firms. Previously he worked at several Vancouver based firms practicing in the areas of insurance, construction, employment, labour and administrative law. He has appeared before all courts in B.C. and before the B.C. Labour Relations Board, the Canadian Industrial Relations Board and the B.C. Securities Commission. He is currently the Chair of the Hospital Appeal Board of B.C. and the Financial Services Tribunal of B.C. He has served as a panel member on the Employment Assistance Appeal Tribunal and the Eligibility Appeals Committee for B.C. School Sport. He holds a Bachelor of Law from the University of New Brunswick, a Bachelor of Commerce from McMaster University and a diploma from Moscow State University in Political History of Russia and the U.S.S.R. He is active in his community including community sports organizations.

#### ***GEORGE N. F. HUNGERFORD, CHAIR (UNTIL DECEMBER 13, 2021)***

George Hungerford is an Indigenous finance and economic development executive and lawyer. He was formerly senior counsel with the British Columbia Securities Commission and has extensive experience in the regulation of securities, in particular investment products. Formerly, he has a background in investment banking and consulting. Outside of work, he is an active board member on a number of Indigenous business and policy organizations. He holds an MBA from Stanford University and a law degree from UBC. He holds the CFA and CAIA designations and is called to the

<sup>1</sup> On December 13, 2022, the appointment of George N. Hungerford was rescinded, and Stacy F. Robertson was appointed as Member and Chair of the FST.

bars of British Columbia and the Northwest Territories. He is a member of the Gwich'in First Nation of the Northwest Territories and Yukon.

***(JAMES) KEITH BRACKEN, VICE CHAIR***

Keith Bracken was a member of the RCMP in Saskatchewan for eight and one-half years before leaving to attend University. He received a B.A. and LL.B from the University of Saskatchewan, graduating in 1976. He practiced law in Victoria until he was appointed as a judge of the Provincial Court of British Columbia (Victoria) in 1991. He was appointed to the British Columbia Supreme Court in 2007 and retired from the Court in 2018. He has been a sessional lecturer in law at the University of Victoria and Thompson Rivers Law Schools. He is the co-author of *British Columbia Courtroom Procedure*, Lexis Nexis, 2013, 2018 (2d Ed.).

***MICHAEL TOURIGNY, MEMBER***

Mike Tourigny obtained his Bachelor of Law degree from UBC in 1978, was called to the bar of British Columbia in 1979 and retired from the private practice of law in 2015. Mike has extensive trial court, appeal court, administrative tribunal and alternate dispute resolution counsel experience. During his more than 30 years of private practice as a commercial litigation partner in the Vancouver office of a large Canadian law firm, Mike acted on numerous occasions for commercial real estate, business and lending clients and in the process acquired a substantive knowledge of the financial services industry in the province. From December 31, 2015 – December 31, 2017 Mike was an appointed member of the British Columbia Environmental Appeal Board, Forest Appeals Commission and Oil & Gas Appeal Tribunal, and in those capacities adjudicated appeals from decisions of statutory decision makers in the province. Since September 2015 Mike has been an appointed member of the Board of Governors and Chair of the Finance and Audit Committee of Vancouver Community College.

***JANE A.G. PURDIE, Q.C., MEMBER***

Jane graduated from the University of Manitoba Law School after completing a B.A. (Economics/English) at the University of Saskatchewan. She practised in Manitoba and then moved to British Columbia where she has practised since 1980 in the White Rock area. Jane was appointed Queen's Counsel in 1992. Her practice has given her broad experience in the solicitor's area, though she has appeared in all 3 levels of the B.C. courts. She was the Chair of the Joint B.C. Real Estate Association/Canadian Bar Association provincial real estate contract standardization committee, and was a member of the B.C. Real Estate Association Forms committee for 10 years. Jane has been an elected member of the Canadian Bar Association Provincial Bar Council, Chair of the CBA National Elder Law Section and a board member of the General Practice Forum. Jane has taught courses and seminars in various topics including: mortgages and foreclosures, advanced real estate issues, ethics, wills, estates, elder law and family issues. She has been a presenter for the Continuing Legal Education Society, the People's Law School, the Law Society of B.C., the Canadian Bar Association, and various community and corporate organizations. Jane has also served on the board of St. Jude's nursing home in Vancouver and Seniors Come Share, a society providing day centre and outreach services to seniors.

***MICHELLE GOOD, MEMBER***



Michelle is of Cree ancestry and a descendent of the Battle River Cree and a member of the Red Pheasant Cree Nation. She has worked with indigenous organizations since she was a teenager and at 40 decided to approach that work in a different way obtaining her law degree from UBC at 43. She has practiced law in the public and private sector since then. In 2011 she took her life-long passion for writing and entered the UBC Master of Fine Arts (Creative Writing) program at UBC, graduating in 2014. Her poetry, and short stories have appeared in *W49*, *The Puritan* and *Gatherings*. Her poem, *Defying Gravity* was selected for inclusion in *Best Canadian Poetry I English* in 2016 and then again for inclusion in *Best of the Best Canadian Poetry, A Tenth Anniversary Edition*. Most recently her essay, *A Tradition of Violence* was selected for inclusion in a peer reviewed anthology out of the University of Alberta Press entitled *Keetsahnak, Our Sisters: Walking with Murdered Indigenous Women, Girls and Two-Spirit Peoples*. Her soon to be released novel *Five Little Indians* won the 2018 HarperCollins/UBC Best New Fiction Prize. She currently sits on a number of administrative boards and tribunals.

**CATHERINE MCCREARY, MEMBER**

Catherine McCreary attended law school and practiced law in Calgary until she moved to Vancouver in 1997. She worked as in-house counsel for a union and then served as a Vice-Chair at the BC Labour Relations Board. She worked independently for several years and then was appointed as a Member of the BC Human Rights Tribunal. Ms. McCreary has been active in the credit union industry, serving on the board of VanCity and Central 1 credit unions.

**JAMES CARWANA, MEMBER**

Mr. Carwana holds his Bachelor of Arts and Bachelor of Laws degrees from the University of Toronto. In 1985, he was called to the Bar of British Columbia and practised labour, employment, and administrative law in Vancouver. He has worked with a broad group of clients in both the private and public sectors and has provided advice in many areas including workplace reorganizations, collective bargaining, and legislative changes. Mr. Carwana has appeared before Committees of the House of Commons and Senate in Ottawa and acted as legal counsel in matters before all levels of court and various administrative bodies. His work has earned him a peer review legal rating of “Distinguished for High Professional Achievement with High Ethical Standing”. From 2012 to 2018 Mr. Carwana served as Vice Chair at the BC Labour Relations Board, where he adjudicated and mediated many disputes. He has been involved in the writing of approximately 200 published Labour Board decisions and is the author of over 40 published articles on Risk Management topics. Active in his community, Mr. Carwana has previously volunteered at the Salvation Army Pro Bono Legal Clinic; been a Director and Past President of the Crescent Beach Swimming Club in Surrey; and is currently a Director of the Beach House Theatre Society in Surrey.

## *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<sup>2</sup>; 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 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 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 five new appeals filed during this reporting period, while four appeals remained open from the previous reporting period. The new appeals filed are described below.

***FST-FIA-21-A001 – FILED BY MAXXAM INSURANCE SERVICES (BURNABY) LTD. AND JOHN ALEXANDER DEWAR ON JULY 9, 2021*** - Appeal of a June 9, 2021 decision of a Hearing Committee of the Insurance Council of British Columbia, which found the Appellants liable for several breaches of the Council's Rules and Code of Conduct. The Hearing Committee imposed fines of \$20,000 on Maxxam and \$5,000 on the Agency's nominee, Mr. Dewar. It also ordered Maxxam to pay investigation costs and the Appellants to pay the costs

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<sup>2</sup> This was the name of the tribunal during the current reporting period. It has since been renamed the Skilled Trades BC Appeal Board, as of December 1, 2022.

of the hearing on a joint and several basis. The appeal was before the assigned Tribunal Member at the end of the reporting period.

***FST-RSA-21-A001 – FILED BY WEI QING (WENDY) YANG ON AUGUST 12, 2021*** – Appeal of a July 29, 2021 decision of a Discipline Hearing Committee of the Real Estate Council of British Columbia<sup>3</sup> suspending the Appellant’s license for one year, requiring her to complete an ethics course, and ordering her to pay enforcement expenses totaling \$150,000. The appeal was before the assigned Tribunal Member at the end of the reporting period.

***FST-RSA-21-A0002– FILED BY ANDREW LAITY ON AUGUST 20, 2021*** – Appeal of a July 28, 2021 decision of a Hearing Committee of the Real Estate Council of British Columbia finding that the Appellant had not established that he was of good reputation and suitable for licensing and determining that no further application for licensing would be considered for a period of three years. The appeal was before the assigned Tribunal Member at the end of the reporting period.

***FST-RSA-21-A003 - FILED BY KEVINDEEP (KEVIN) BRATCH AND BRATCH REALTY LTD. ON AUGUST 30, 2021*** – Appeal of a July 29, 2021 sanction decision of the Real Estate Council of British Columbia, which ordered that the Appellants be liable for a disciplinary penalty of \$45,000, that they pay enforcement expenses in the amount of \$50,000, and that they be prohibited from applying for licensing until one year passed and various conditions were met. The appeal was before the assigned Tribunal Member at the end of the reporting period.

***FST-PBA-22-A001 - FILED BY BOARD OF TRUSTEES IWA - FOREST INDUSTRY PENSION PLAN ON MARCH 22, 2022*** – Appeal of a February 22, 2022 reconsideration decision of the Superintendent of Pensions regarding registration of an amendment to a plan text document. The appeal was before the assigned Tribunal Member at the end of the reporting period.

### ***TRIBUNAL DECISIONS – SUMMARY***

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

- **Three** decisions were issued on the merits of appeals.
- **One** preliminary decision resulting in dismissal of an appeal was issued.
- **Two** other significant<sup>4</sup> preliminary decisions were issued.

The following is a summary of the decisions issued during the reporting period:

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<sup>3</sup> Through amendments to the *Real Estate Services Act* effective August 1, 2021, the Real Estate Council of BC was dissolved and its operations, authorities and affairs subsumed into the BC Financial Services Authority (BCFSA). As a result, the respondent in this and other appeals involving decisions of the Real Estate Council of BC became the Superintendent of Real Estate.

<sup>4</sup> The FST issues numerous preliminary decisions on simple issues such as extensions of time and uncontested applications for temporary adjournment. The FST only publishes and reports on preliminary decisions which are significant and of precedential value.

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**2019-FIA-20-A007(a)**

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Decision Date:	April 13, 2021
Appellant:	Pamela P. H. Yee
Respondent:	Insurance Council of British Columbia
Third Party:	British Columbia Financial Services Authority
Act:	<i>Financial Institutions Act</i> RSBC 1996, c 141 (“FIA”)
Summary:	<p>The Appellant sought an extension of time to file an appeal of a June 25, 2019 order of the Insurance Council cancelling her license with no opportunity to reapply for two years and imposing a fine of \$5,000, investigation costs of \$1,862.50, and hearing costs of \$20,209.10. The notice of appeal and application for extension were not filed until August 28, 2019.</p> <p>The FST Chair considered the extension application with reference to section 24 of the <i>Administrative Tribunals Act</i> (the “ATA”) and the FST Practice Directives and Guidelines. He noted that, although “special circumstances” is not defined in the ATA, the FST Practice Directives and Guidelines provide some guidance. The Chair considered the special circumstances cited by the Appellant and considered these in the context of the FST Practice Directives and Guidelines: promptness, reasons for delay, prejudice to the parties, reasonable or arguable grounds of appeal, and the interests of justice. The Chair concluded that there were no special circumstances to warrant granting the extension request.</p>
Disposition:	<b><i>The application was denied and the appeal was dismissed under section 31(1)(b) of the ATA, on the ground that it was not filed within the applicable time limit.</i></b>
Appeal Decision:	<a href="http://www.fst.gov.bc.ca/decisions.htm">http://www.fst.gov.bc.ca/decisions.htm</a>

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**FST-RSA-20-A005(a)**

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Decision Date:	April 15, 2021
Appellant:	Jacob G. Siemens
Respondent:	Real Estate Council of British Columbia (the “Council”)
Third Party:	Superintendent of Real Estate
Act:	<i>Real Estate Services Act</i> SBC 2004, c 42 (“RESA”)
Summary:	The Appellant was found by the Council to have committed professional misconduct. He was ordered to pay a penalty of \$5,000, to complete a remedial education course, and to pay enforcement expenses of \$26,000.

The Appellant sought that the decision of Council be set aside and a new hearing ordered. In the alternative, he asked that the penalty be reduced and the appeal filing fee be returned.

The Appellant raised a number of questions on appeal, including whether the Committee misapprehended the evidence, whether the Committee misstated the standard of proof, whether the Committee erred in finding that the Appellant committed professional misconduct, and whether the penalty and enforcement expenses were unreasonable.

The Tribunal Member concluded that there was nothing unreasonable or unfair in the Council's decision that would warrant interference by the FST and dismissed the appeal. Although the Council sought costs, the Tribunal Member declined to order costs against the Appellant.

Disposition: ***The appeal was dismissed.***

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

### ***2019-FIA-002(b)***

Decision Date: July 16, 2021

Appellant: Manjit K. Brar

Respondent: Insurance Council of British Columbia (the "Council")

Third Party: British Columbia Financial Services Authority

Act: *Financial Institutions Act* RSBC 1996, c 141 ("FIA")

Summary: The Council ordered that the Appellant's license be cancelled with no opportunity to reapply for a period of four years, together with costs of the investigation and hearing and a requirement to take an ethics course. The Appellant challenged only the imposition of the investigation and hearing costs, primarily on the basis that she was not aware costs could be awarded, at least in the magnitude they were.

The Tribunal Member hearing the appeal found that the Appellant had not been notified of the possibility or magnitude of hearing costs until, at the earliest, the Friday before the hearing was to begin. In the circumstances, she found this to be a breach of the Appellant's right to procedural fairness. With respect to remedy, rather than return the matter to Council for reconsideration, the Member exercised her remedial discretion to cancel the hearing and investigation costs.

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

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

### ***FST-RSA-20-A003(b)***

Decision Date: August 30, 2021

Appellant:	Shahin Behroyan
Respondent:	Real Estate Council of British Columbia (the “Council”)
Third Party:	Superintendent of Real Estate
Act:	<i>Real Estate Services Act</i> SBC 2004, c 42 (“RESA”)
Summary:	<p>In 2017, a discipline committee of the Council issued a decision on the liability of the Appellant, finding that five allegations of professional misconduct had been established. In May 2018, they issued a penalty decision ordering that the Appellant’s license be suspended for a period of 12 months and requiring him to pay a \$7,500 fine and \$58,708 in enforcement costs and to complete an ethics course. The Appellant appealed to the FST, arguing that the committee erred in its findings and that the penalty was excessive. The Superintendent of Real Estate also appealed and argued that a greater penalty should have been imposed. The FST heard the appeals together. On August 29, 2019, the FST issued its decision on liability. It found that two findings of misconduct were made in error but upheld three findings. On October 18, 2019, the FST issued its decision on remedy and ordered that the matter be remitted to a new committee of the Council for reconsideration of the penalty.</p> <p>The new committee rendered its decision on March 24, 2020, ordering that the Appellant’s license be cancelled, that he be prohibited from reapplying for five years, and that he pay enforcement expenses of \$50,000. The Appellant appealed this reconsideration decision to the FST. The main issue on appeal was whether the committee exceeded its jurisdiction by reconsidering the penalty in its entirety, and whether the decision was arbitrary and unreasonable.</p> <p>The Tribunal Member hearing the appeal found that the committee had the jurisdiction to make the reconsideration decision and concluded that the decision was not unreasonable.</p>
Disposition:	<b><i>The appeal was dismissed.</i></b>
Appeal Decision:	<a href="http://www.fst.gov.bc.ca/decisions.htm">http://www.fst.gov.bc.ca/decisions.htm</a>

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***FST-RSA-21-A001(a) and A001(b)***

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Decision Date:	September 20, 2021 and December 21, 2021
Appellant:	Wei Quing (Wendy) Yang
Respondent:	Superintendent of Real Estate <sup>5</sup>
Act:	<i>Real Estate Services Act</i> SBC 2004, c 42 (“RESA”)

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<sup>5</sup> See footnote 3. While the decision under appeal was issued by the Real Estate Council of British Columbia, the Respondent to the appeal was the Superintendent of Real Estate as a result of changes to RESA.

Summary:	<p>The appeal was filed on August 11, 2021, and the decision on penalty was rendered on July 29, 2021. This was three days prior to amendments to <i>RESA</i> that, among other things, eliminated the automatic statutory stay under section 55. The Appellant applied for a stay of the decision and an interim stay of the decision pending the determination of the stay application.</p> <p>On September 20, 2021 (FST-RSA-21-A001(a)), the Tribunal Member hearing the appeal granted an interim stay, as the Council had not identified any particular risk to the public and the Appellant had raised a serious issue of the legislative change.</p> <p>On December 21, 2021 (FST-RSA-21-A001(b)), the Tribunal Member found that the automatic stay under section 55 did not apply because the appeal was filed after the repeal of this section. However, he applied the three-part test for whether a stay should be granted and concluded that the balance of convenience favoured granting the stay.</p>
Disposition:	<b><i>The applications were granted.</i></b>
Appeal Decision:	<a href="http://www.fst.gov.bc.ca/decisions.htm">http://www.fst.gov.bc.ca/decisions.htm</a>

### *Matters Outstanding at end of Period*

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There were five matters outstanding at the end of this reporting period, and all five matters were before the assigned Tribunal Member for adjudication. Decisions on the merits of these outstanding matters will be summarized in the next reporting period.

### *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 at a minimum. The Tribunal has established timelines for the parties to file their written submissions on appeal in order to keep the process moving.

For the appeals that were closed within this reporting period, the overall average time from the date of filing an appeal to its disposition was 552 days, compared to 323 days during the last reporting period. The shortest time from open to close was 287 days and the longest was 827 days. The average length of time was negatively affected by the closure of two long-standing appeals that were filed in 2019 and involved multiple preliminary issues which were adjudicated during the previous reporting period.

The Tribunal's *Practice Directives and Guidelines*, which are available on the Tribunal's website, provide that the Tribunal will endeavour to issue a copy of the final decision or order, including written reasons, to each party within 120 days from receiving the last submissions of the parties. In the three appeals involving a hearing on the merits that were completed within the reporting period, the respective decisions were released an average of 251 days after the close of submissions. The actual number of days for each of the three appeals was as follows: 73, 274, and 405. For the appeal where the time from close of submissions to issuance of the final decision was 405 days, the panel issued two separate decisions during this time: a preliminary decision on an application to lift the stay (see FST-RSA-20-A003(a), issued during the previous reporting period) and the final decision on the appeal (see FST-RSA-20-A003(b)).

As noted above, the Tribunal has observed that appeals which come before the FST have been of increasing complexity, and many have been subject to numerous complex pre-hearing applications. Because appeals are written and "on the record" oftentimes these pre-hearing matters are determined as part of the final decision on the merits (rather than as stand-alone matters prior to final determination), thus expanding the scope of the final decision and increasing the length of time for final decisions to be issued. The FST will continue to review its procedures and operations and will also review its practice directives to ensure that the Tribunal has set realistic expectations considering the volume and complexity of FST appeals.

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

## *Judicial Review of FST Decisions*

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There were four applications for judicial review of FST decisions that were outstanding before the BC Supreme Court at the commencement of this reporting period (Supreme Court File Nos. S179917, S193245, S1913100 and S221047). During this reporting period two new applications for judicial review of FST decisions were filed with the BC Supreme Court, for a total of six matters before the BC Supreme Court. The new applications relate to FST decision FST-RSA-20-A003(b) Shahin Behroyan v. Real Estate Council of British Columbia (S219605) and FST decision 2019-FIA-007(a) Pamela Peen Hong Yee v. Insurance Council of British Columbia) (S215684).

No judicial review decisions were issued, and no new appeals or applications for leave were filed with the BC Court of Appeal or the Supreme Court of Canada during the reporting period.

## *Statement of Financial Performance*

*(For the fiscal year ending March 31, 2022)*

In fiscal year 2021/2022, the FST received \$3,400 from appellants in appeal filing fees, and incurred expenses of \$91,557 as detailed below. We have provided a six-year chart for comparison purposes. In addition to the appeals filed during this reporting period, the FST also provided professional development to members and retained legal counsel to manage several judicial review applications.

<b>Operating Result</b>	<b>2016/2017</b>	<b>2017/2018</b>	<b>2018/2019</b>	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>
<b>Appellant Fees</b>	4,250	11,050	4,250	6,800	4,250	<b>3,400</b>
<b>Funding</b>	86,013	80,459	122,391	150,406	152,784	<b>88,157</b>
<b>Direct Expenses</b>	(90,263)	(91,509)	(126,641)	(157,206)	(157,034)	<b>(91,557)</b>
<b>Net</b>	0	0	0	0	0	<b>0</b>
<b>Direct Expenses</b>	<b>2016/2017</b>	<b>2017/2018</b>	<b>2018/2019</b>	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>
<b>Salaries and Benefits</b>	0	0	0	0	0	<b>0</b>
<b>Professional Services</b>	42,931	41,511	56,379	36,650	25,621	<b>10,831</b>
<b>Board Fees &amp; Expenses</b>	46,588	48,635	69,821	120,556	131,413	<b>80,726</b>
<b>Other</b>	744	1363	441	0	0	<b>0</b>

<b>Total Direct Expenses</b>	<b>90,263</b>	<b>91,509</b>	<b>126,641</b>	<b>157,206</b>	<b>157,034</b>	<b>91,557</b>
<b>Total FST Expenses</b>	<b>\$90,263</b>	<b>\$91,509</b>	<b>\$126,641</b>	<b>\$157,206</b>	<b>\$157,034</b>	<b>\$91,557</b>

<b># of active Appeals</b>	<b>10</b>	<b>17</b>	<b>16</b>	<b>15</b>	<b>12</b>	<b>9</b>
<b># of active Court Proceedings</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>6</b>