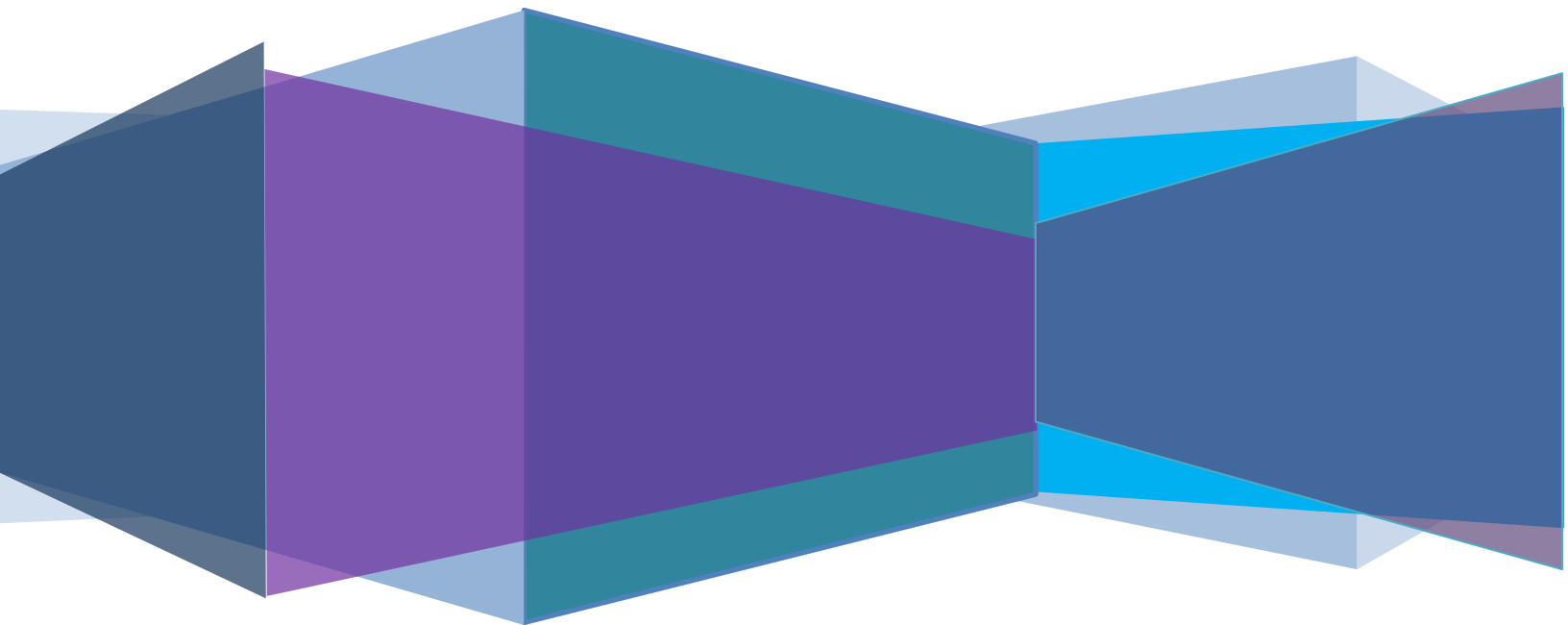




Financial Services Tribunal

2022-2023 Annual Report

Covering the reporting period from
April 1, 2022 – March 31, 2023





Financial Services Tribunal

Fourth Floor, 747 Fort Street, Victoria BC V8W 3E9

Tel: (250) 387-3464

info@bcfst.ca

Fax: (250) 356-9923

www.bcfst.ca

December 4, 2023

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

Dear Attorney General:

Re: Financial Services Tribunal 2022-2023 Annual Report

I respectfully submit the Annual Report of the Financial Services Tribunal for the period April 1, 2022 to March 31, 2023.

Sincerely,

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

Stacy Robertson
Financial Services Tribunal

Encl.

Message from the Chair

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, 2022 and ending March 31, 2023. 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 the reporting period, a total of four new appeals were filed with the Tribunal. One new appeal was filed under the *Real Estate Services Act*, one new appeal was 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 the reporting period.

Appeals Carried Over - Five appeals were carried over from the previous reporting period. Three of these appeals were filed under the *Real Estate Services Act*, one of these appeals was filed under the *Pension Benefits Standards Act*, and one of these appeals was filed under the *Financial Institutions Act*. During the reporting period, the Tribunal closed four of these carried-over appeals and one remained outstanding.¹

Matters Outstanding - Of the nine appeals that were before the Tribunal during the reporting period, six appeals were closed. Three appeals remained outstanding at the close of the reporting period.

Hearings - Four of the six 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. Two other appeals were closed without a hearing.

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-21-A002(a) (S225231) and an unpublished preliminary decision (S221726). One notice of appeal was filed with the BC Court of Appeal (CA48479) and abandoned within the reporting period.

¹ The decision in the one outstanding appeal was given on May 26, 2023 and as such will be reported on in the next annual report.

There were six applications for judicial review of FST decisions outstanding before the BC Supreme Court at the commencement of the reporting period (Supreme Court File Nos. S179917, S193245, S215684, S1913100, S221047, and S219605). Two of these applications were dismissed during the reporting period (S219605 and S221047), and the other four applications remained outstanding at the end of the reporting period, for a total of six outstanding judicial review applications.

FORECAST OF WORKLOAD FOR THE NEXT REPORTING PERIOD 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 – specifically, the coming into force of the new *Mortgage Services Act* and the new *Money Services Business Act* - may increase the volume of appeals in subsequent reporting periods. 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. However, the FST is not able to mitigate the additional costs of dealing with self-represented parties who bring applications for judicial review before the B.C. Supreme Court. These processes require the FST to retain outside counsel and the formal court system is not adept at handling self-represented parties or dealing with appeals with little or no merit.

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. During the reporting period, the FST rolled out its new website (www.bcfst.ca) and updated its Practice Directives and Guidelines. The FST also updated its decision template and has begun to post its decisions to CanLII, in addition to on the FST website which increases public awareness of decisions as CanLII is a free decision reporting web-based service. Ongoing work will be done to improve the accessibility of information that is available to the public on the FST's website, and the FST will report on these developments in the next reporting period.



Stacy F. Robertson
Chair, Financial Services Tribunal

Mandate

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 the
- 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 the
- *Real Estate Development Marketing Act*.

Contact Information

MAILING ADDRESS: Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9V1

LOCATION: 4th Floor, 747 Fort Street
Victoria BC V8W 3E9

TELEPHONE: 250 387-3464

FAX: 250 356-9923

EMAIL: info@bcfst.ca

WEBSITE: <http://www.bcfst.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 Robertson	Chair	December 13, 2021	December 13, 2024
Dr. Cristie Ford	Vice Chair ²	February 13, 2023	February 13, 2025
James (Keith) Bracken	Vice Chair ³	June 29, 2020	June 30, 2022
James Carwana	Member	June 29, 2020	June 30, 2027
Michelle Good	Member	December 12, 2018	June 11, 2026
Catherine McCreary	Member	June 29, 2020	June 30, 2027
Mona Muker	Member	February 13, 2023	February 13, 2025
Jane A.G. Purdie, K.C.	Member	July 12, 2018	June 7, 2026
Richard (Mike) Tourigny	Member	December 17, 2018	December 17, 2024

During the reporting period, the FST welcomed new Member Mona Muker and new Member and Vice Chair Cristie Ford in February 2023. The FST bid farewell to James (Keith) Bracken, who served as Member and Vice Chair from June 2020 to June 2022. The FST welcomes its new members and thanks all of its members for their service over the reporting period.

BIOGRAPHIES OF TRIBUNAL MEMBERSHIP

STACY ROBERTSON (CHAIR)

Stacy Robertson is Senior Enforcement Counsel at the Investment Industry Regulatory Organization of Canada. Previously he worked as an associate and partner at several Vancouver based firms practicing in the areas of insurance, construction, employment, labour and administrative law. Mr. Robertson has appeared before all courts in B.C., before the B.C. Labour Relations Board, the Canadian Industrial Relations Board and the B.C. Securities Commission. Active in his community, he is currently the Chair of the Hospital Appeal Board of B.C. and the Financial Services Tribunal of B.C. Previously, Mr. Robertson served as a member on the Employment Assistance Appeal Tribunal and the Eligibility Appeals Committee for B.C. School Sport. He has completed the Partners, Directors and Officers course through the Canadian Securities Institute. Mr. Robertson holds a Bachelor of Law from the University of New Brunswick, a Bachelor of Commerce from McMaster

² From appointment on February 13, 2023.

³ Until expiry of appointment on June 30, 2022.

University and a diploma from Moscow State University in Political History of Russia and the U.S.S.R.

DR. CRISTIE FORD (VICE CHAIR)

Cristie Ford is professor of law at the University of British Columbia's Peter A. Allard School of Law. Previously, Professor Ford held various teaching and research positions at Columbia University's School of Law, was a senior associate at Davis Polk & Wardwell LLP (New York) and worked as a barrister and solicitor at Guild Yule LLP (Vancouver). She is a member of the Law Society of B.C.'s Innovation Sandbox Advisory Group, the Counter Illicit Finance Alliance of B.C.'s Strategic Advisory Board, the Continuing Legal Education Society of B.C.'s Board of Directors and Access to Justice B.C.'s Leadership Group. Professor Ford has been admitted to the Law Society of British Columbia, and the Bars of the Southern District of New York and State of New York. She holds a Doctor of Juridical Science and a Masters of Law from Columbia University, a Juris Doctor degree from the University of Victoria, and a Bachelor of Arts (History) from the University of Alberta.

(JAMES) KEITH BRACKEN (VICE CHAIR, TERM EXPIRED JUNE 30, 2022)

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.).

JAMES CARWANA

James Carwana is a Mediator and Arbitrator in addition to being a Member of the Financial Services Tribunal. Previously, Mr. Carwana was Vice Chair at British Columbia Labour Relations Board, and Senior Counsel at Coutts, Weiler and Pulver. He has appeared before Committees of the House of Commons and Senate and acted as legal counsel in matters before all levels of court and various administrative bodies. Active in his community, he is Director at Surrey Police Board and with the Beach House Theatre Society. Mr. Carwana's work has earned him a peer review legal rating of "Distinguished for High Professional Achievement with High Ethical Standing". He was previously a Lawyer with the Salvation Army Pro Bono Legal Clinic. Mr. Carwana holds a Bachelor of Laws and a Bachelor of Arts from the University of Toronto.

MICHELLE GOOD

Michelle Good 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 by obtaining her law degree from the University of British Columbia. She is currently a student, a writer and is engaged in consulting work and part-time practice of law and tribunal work. Ms. Good was previously the Principal Lawyer at Michelle Good & Company. Her tribunal work includes four

First Nation Taxation Assessment Appeal Review Boards, Workers Compensation Appeal Board Community Advisory Council and the Employment Standards Tribunal. She also serves as a Director for BC Assessment. In addition to her legal and tribunal work Ms. Good is an author. Her essay A Tradition of Violence selected was for the peer reviewed anthology entitled Keetsahnak, Our Sisters: Walking with Murdered Indigenous Women, Girls and Two-Spirit Peoples. Her novel Five Little Indians won the 2018 HarperCollins/UBC Best New Fiction Prize. Ms. Good received a Bachelor of Laws and Master of Fine Arts in creative writing from the University of British Columbia.

CATHERINE MCCREARY

Catherine McCreary was diagnosed with Multiple Sclerosis in 1986 and the disability is often not apparent, although ever-present. She is a Member of the Financial Services Tribunal. Previously, she was a Member of the BC Human Rights Tribunal, and was a Lawyer, Mediator, Arbitrator and Investigator at Catherine McCreary Law Practice. Active in her community, Ms. McCreary is a Board Member with the British Columbia Council of Administrative Tribunals and was the Interim President at British Columbia Industrial Relations Association, and Board Member for Central1 Credit Union, VanCity Credit Union, and First Calgary Financial Credit Union. She holds the designation of Chartered Director from McMaster University. Ms. McCreary holds a Bachelor of Laws from the University of Calgary.

MONA MUKER

Mona Muker is a review officer and adjudicator at WorkSafeBC and a tribunal member and adjudicator with the B.C. Employment Standards Tribunal. Previously, Ms. Muker was a staff lawyer and tribunals program manager at the Access Pro Bono Society of B.C., a lawyer with both the Maple Law Group and John Carlisle Law Corporation, and post-bar law clerk/attorney at the Orange County Public Defender's Office. Active in her community, she is a lawyer for the People's Law School. Ms. Muker is a member of the Canadian Bar Association (BC)'s Provincial Council, chair of the Legislation and Law Reform Committee, and is a Director with the B.C. Law Institute. She has been admitted to the Law Society of B.C. and the State Bar of California. Ms. Muker holds a Juris Doctor from Whittier College School of Law (California), and a Bachelor of Arts (Criminology) from Simon Fraser University.

JANE A.G. PURDIE, K.C.

Jane Purdie 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.

RICHARD (MIKE) TOURIGNY

Mike Tourigny is a Member of the Environmental Appeal Board, Forest Appeals Commission and the Oil & Gas Appeal Tribunal, and a Member of the Financial Services Tribunal. Previously, Mr. Tourigny practiced law for over 30 years as a Commercial Litigation Partner with Lawrence & Shaw, Lang Michener and McMillan LLP. Active in his community, Mr. Tourigny was a Governor with Vancouver Community College and a volunteer lawyer for the BC Law Society Pro Bono Advice Program. He holds a Bachelor of Laws from the University of British Columbia.

Operations

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;
- Skilled Trades BC Appeal Board⁴; and,
- Oil and Gas Appeal Tribunal⁵.

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

⁴ Formerly the Industry Training Appeal Board and renamed as of December 1, 2022.

⁵ This was the name of the tribunal during the current reporting period. It has since been renamed the Energy Resource Appeal Tribunal, as of September 1, 2023.

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

There were four new appeals filed during this reporting period, and five appeals remained open from the previous reporting period.

NEW APPEALS FILED

- ***FST-RSA-22-A001 [INCOMPLETE]*** – The appellant filed a notice of appeal on April 6, 2022. The notice of appeal was determined to be incomplete, as no appeal filing fee was provided, and the appellant was advised in an April 14, 2022 letter from the Chair that the Tribunal did not have the authority pursuant to its legislative jurisdiction to waive the appeal filing fee. The appellant was then given a period of time to complete the appeal by filing the prescribed appeal filing fee. The appellant did not pay the filing fee and filed a judicial review of the FST’s letter stating that it has no jurisdiction to waive the appeal fee required by regulation.
- ***FST-MBA-22-A001, FILED BY STYLES WILLIAM STEWART ON JUNE 3, 2022*** – Appeal of actions of the Registrar taken under section 3(8)(b) of the *Mortgage Brokers Act*, which the appellant argued amounted to a decision under section 9(1). The appeal was resolved without a hearing (withdrawn) and dismissed by the FST on July 7, 2022.
- ***FST-FIA-22-A001, FILED BY STEPHEN CRAIG HILL ON OCTOBER 13, 2022*** – Appeal of a decision of the Insurance Council of BC dated September 12, 2022 prohibiting the appellant from making any insurance license application for four years and ordering that he pay a fine and costs associated with the investigation and hearing.
- ***FST-MBA-22-A002, FILED BY BILLIE AALTONEN ON NOVEMBER 7, 2022*** – Appeal of a decision of the Registrar of Mortgage Brokers dated October 25, 2022 to attach interim conditions to the appellant’s registration pending a disciplinary hearing into allegations of misconduct.

APPEALS CARRIED OVER FROM PRIOR REPORTING PERIOD

- **FST-FIA-21-A001 – FILED BY MAXXAM INSURANCE SERVICES (BURNABY) LTD. AND JOHN ALEXANDER DEWAR ON JULY 9, 2021** – The final decision was issued on July 21, 2022 and is summarized below.
- **FST-RSA-21-A001 – FILED BY WEI QING (WENDY) YANG ON AUGUST 12, 2021** – The final decision was issued on April 22, 2022 and is summarized below.
- **FST-RSA-21-A0002 – FILED BY ANDREW LAITY ON AUGUST 20, 2021** – The final decision was issued on May 6, 2022 and is summarized below.
- **FST-RSA-21-A003 - FILED BY KEVINDEEP (KEVIN) BRATCH AND BRATCH REALTY LTD. ON AUGUST 30, 2021** – The final decision was issued on September 9, 2022 and is summarized below.
- **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.

MATTERS OUTSTANDING AT THE END OF THIS REPORTING PERIOD

There were **three** matters outstanding at the end of the current reporting period, and all three 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.

- **FST-FIA-22-A001, FILED BY STEPHEN CRAIG HILL ON OCTOBER 13, 2022** – The appeal is mentioned above. Submissions closed January 4, 2023, and the appeal was before the assigned Tribunal Member at the end of the reporting period.⁶
- **FST-MBA-22-A002, FILED BY BILLIE AALTONEN ON NOVEMBER 7, 2022** – The appeal is mentioned above. Submissions closed March 3, 2023, and the appeal was before the assigned Tribunal Member at the end of the reporting period.⁷
- **FST-PBA-22-A001 - FILED BY BOARD OF TRUSTEES IWA - FOREST INDUSTRY PENSION PLAN ON MARCH 22, 2022** – The appeal is mentioned above. Submission closed June 24, 2022, and the appeal was before the assigned Tribunal Member at the end of the reporting period.⁸

⁶ The final decision was issued July 7, 2023 and will be reported on in the next annual report.

⁷ The final decision was issued April 5, 2023 and will be reported on in the next annual report.

⁸ The final decision was issued May 26, 2023 and will be reported on in the next annual report.

TRIBUNAL DECISIONS

During the reporting period, **four** decisions were issued on the merits of appeals and **one** decision on costs was issued. **One** other significant⁹ preliminary decision was issued. The following is a summary of all decisions issued during the reporting period.

FST-RSA-21-A001(c)

Decision Date: April 22, 2022

Appellant: Wei Qing (Wendy) Yang

Respondent: Superintendent of Real Estate

Act: *Real Estate Services Act*, SBC 2004, c 42

Decision Full Text: [Wei Qing \(Wendy\) Yang v. Superintendent of Real Estate, 2022 BCFST 1](#)

Summary: The appellant filed an appeal of a July 29, 2021 decision of a Discipline Hearing Committee of the Real Estate Council of British Columbia¹⁰ suspending her license for one year, prohibiting her from acting as an unlicensed assistant during this time, requiring her to complete an education and ethics course, and ordering her to pay enforcement expenses totaling \$150,000. The appellant argued that the penalty decision was not justified, transparent, and intelligible and asked that the FST vary the suspension order and fine. The appellant also challenged the enforcement expenses on a number of grounds, including on the basis that the Council failed to establish she had acted in a predatory manner.

As a preliminary matter, the Tribunal Member addressed an issue relating to new evidence. When the appellant filed her submissions, she attached an affidavit containing new evidence. The respondent did not object but filed its own evidence in response, which the appellant objected to. The Tribunal Member decided to admit the new evidence filed by both parties.

The Tribunal Member found that the suspension decision was unreasonable as the Council had not adequately explained why it was imposed and had failed to take into account the impact on the appellant. The Tribunal Member decided against remitting the matter

⁹ The FST issues numerous preliminary decisions on issues such as extensions of time and uncontested applications for temporary adjournment. It only publishes and reports on preliminary decisions which are significant and of precedential value.

¹⁰ 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.

and instead reduced the suspension period. The Tribunal Member declined to vary or reduce the enforcement expenses of \$150,000.

Disposition: ***The appeal was allowed in part and the suspension period was reduced to 9 months.***

FST-RSA-21-A002(a)

Decision Date: May 6, 2022

Appellant: Andrew Brian Laity

Respondent: Superintendent of Real Estate

Act: *Real Estate Services Act, SBC 2004, c 42*

Decision Full Text: [*Andrew Brian Laity v. Superintendent of Real Estate, 2022 BCFST 2*](#)

Summary: The appellant appealed the Real Estate Council of BC's refusal to renew his real estate license on the basis that he had not established that he was "of good reputation and suitable to be licensed" as required by RESA. The concerns of the Council related to unprofessional and disrespectful communication with staff, bookkeeping and record keeping issues, and conduct giving rise to criminal charges (which were stayed). The Tribunal Member hearing the appeal summarized the grounds of appeal as follows: (a) Did the Hearing Committee breach the right to a fair hearing? (b) Did the Council err in its assessment of the evidence of the Senior Director, Accounting and Audit? (c) Did the Hearing Committee err in finding that the appellant has not met the onus of showing he was of good reputation and suitable for licensing? (d) Did the Hearing Committee err by imposing a three-year waiting period before a new application could be made? The Tribunal Member concluded that (a) the Hearing Committee did not breach procedural fairness, (b) the Hearing Committee did not need to rely on the testimony of the Senior Director, Accounting and Audit as it found that the appellant's conduct throughout the proceeding was unprofessional and rude, and the assessment of the evidence was not unreasonable, (c) upon hearing witnesses, assessing the evidence, and making determinations of credibility, the Hearing Committee reasonably concluded that the appellant did not meet the onus of demonstrating that he was of good reputation and suitable to be licensed, and (d) the three-year waiting period was not outside the range of reasonable outcomes.

Disposition: ***The appeal was dismissed. Note: The appellant brought a petition for judicial review of this decision.***

FST-RSA-21-A002(b)

Decision Date:	June 15, 2022
Appellant:	Andrew Brian Laity
Respondent:	Superintendent of Real Estate
Act:	<i>Real Estate Services Act</i> , SBC 2004, c 42
Decision Full Text:	Andrew Brian Laity v. Superintendent of Real Estate, 2022 BCFST 3
Summary:	Following the decision on the merits, the parties provided written submissions on costs. After reviewing the FST Guidelines and previous decisions, the Tribunal Member reviewed the submissions and circumstances of the case and concluded that this was an exceptional case that would trigger an order for costs.
Disposition:	<i>The FST awarded costs to the Superintendent of Real Estate in the amount of \$2,200.</i>

FST-FIA-21-A001(a)

Decision Date:	July 21, 2022
Appellant:	Maxxam Insurance Services (Burnaby) Ltd. and John Alexander Dewar
Respondent:	Insurance Council of British Columbia (the "Council")
Third Party:	British Columbia Financial Services Authority
Act:	<i>Financial Institutions Act</i> , RSBC 1996, c 141
Decision Full Text:	Maxxam Insurance Services (Burnaby) Ltd. v. Insurance Council of British Columbia, 2022 BCFST 4
Summary:	The appellants appealed from the 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 of the hearing. The appellants argues that (a) the Hearing Committee misapprehended the evidence and made findings of fact with no supporting evidence, (b) the Hearing Committee failed to consider material evidence before it, (c) the Hearing Committee made adverse credibility findings without sufficient explanation, and (d) the

Hearing Committee exhibited bias. The primary issue was the proper interpretation of the terms of the agreement between Maxxam and another insurance agency, including which agency was responsible to supervising agents. The Tribunal Member rejected each ground of appeal, concluding that the Hearing Committee's findings of fact were reasonable and its application of the facts to the issues of contract interpretation were correct. The allegation of bias was rejected on the basis that there was no evidence to support it.

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

FST-RSA-21-A003(a)

Decision Date: September 9, 2022

Appellant: Kevindeep Singh Bratch and Bratch Realty Ltd.

Respondent: Superintendent of Real Estate

Act: *Real Estate Services Act*, SBC 2004, c 42

Decision Full Text: [*Kevindeep Singh Bratch v. Superintendent of Real Estate, 2022 BCFST 5*](#)

Summary: The appellants appealed the July 29, 2021 sanction decision of a Hearing Committee 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 Mr. Bratch be prohibited from applying for licensing until one year passed and various conditions were met. As Mr. Bratch's license had been suspended after an *ex parte* hearing in 2017, the duration of the suspension amounted to over four years. The appellants argued that the penalty and enforcement expenses were too high and that the suspension, when viewed in light of the previous three years of suspension, was outside the appropriate range. The Tribunal Member found that, while the Hearing Committee provided clear and cogent reasons for the enforcement expenses, it did not do so for the specific fine and suspension imposed. She upheld the enforcement expenses, but overturned the monetary penalty and suspension as unreasonable and exercised her remedial power to substitute her own sanction. In doing so, she accepted the findings related to the liability decision as reasonable but noted several instances where they did not support the seriousness of the penalty imposed.

Disposition: ***The appeal was allowed in part. The portion of the sanction decision relating to penalty and suspension was set aside and replaced with a 3-year suspension (already served) and no fine.***

FST-MBA-22-A002(a)

Decision Date:	January 10, 2023
Appellant:	Billie Aaltonen
Respondent:	Registrar of Mortgage Brokers
Act:	<i>Mortgage Brokers Act</i> , RSBC 1996, c 313
Decision Full Text:	<u>Billie Aaltonen v Registrar of Mortgage Brokers, 2023 BCFST 1</u>
Summary:	The appellant appealed an October 2022 decision by the Registrar of Mortgage Brokers to impose 23 conditions on the renewal of her mortgage broker registration pending a disciplinary hearing scheduled for June 2023. The initial decision was made without the opportunity to be heard. Following the filing of the appeal, the Registrar reached out to the appellant to offer her the opportunity to be heard. The appellant provided written submissions and also requested an oral hearing. The Registrar applied to the FST for an adjournment of the appeal proceedings pending a decision on reconsideration, arguing that it would be inefficient to conduct the reconsideration and appeal simultaneously. The appellant opposed the adjournment request based on concerns about delay. In coming to a decision on the application, the Tribunal Member balanced the public interest in effective and efficient administration of appeals with the public interest of facilitating a just and timely resolution and granted only a short adjournment.
Disposition:	<i>The FST granted a brief adjournment until January 20, 2023 or until the decision on reconsideration, whichever occurred first.</i>

Performance Indicators and Timelines

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

Section 59.2(b) and (d) of the *Administrative Tribunals Act* requires the Board to report on performance indicators and provide details of the elapsed time from filing to the date of final decision.

For the six appeals that were closed within this reporting period, the average length of time from the Appellant filing their Notice of Appeal until close of the file was 228 days, compared to 552 days during the last reporting period. The shortest time from open to close was 34 days and the longest was 377 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 120 days from receiving the last submissions of the parties. In the four appeals involving a decision on the merits that were closed within the reporting period, the decisions were released an average of 181 days after the close of submissions. The actual number of days for each of the four appeals were 74, 107, 268, and 277.

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 required for final decisions to be issued. The FST continues to review its procedures and operations and its practice directives to ensure that the Tribunal has set realistic expectations considering the 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

There were **six** applications for judicial review of FST decisions outstanding before the BC Supreme Court at the beginning of the reporting period (Supreme Court File Nos. S179917, S193245, S215684, S1913100, S221047, and S219605), and **two** new applications were filed (Supreme Court File Nos. S225231 and S221726).

JUDICIAL REVIEW DECISIONS

The BC Supreme Court issues **two** judicial review decisions of FST decisions during the reporting period resulting in both petitions being dismissed. These decisions are summarized below.

Deng v. Real Estate Council of BC, 2022 BCSC 879

Decision Date:	May 25, 2022
Petitioner:	Cui Zhu (Danielle) Deng
Respondents:	Real Estate Council of BC, Superintendent of Real Estate, and Financial Services Tribunal
Act:	<i>Real Estate Services Act</i> , SBC 2004, c 42
Court's Decision:	<u><i>Deng v Real Estate Council of British Columbia, 2022 BCSC 879</i></u>
Summary:	<p>Judicial review of decisions 2018-RSA-004(a) issued September 20, 2019 and November 13, 2019. The petition was filed on November 18, 2019 and amended July 28, 2020, and the matter was heard on May 4, 2023.</p> <p>The original decision of the Real Estate Council of BC was set aside by the FST due to a breach of procedural fairness. The reconsideration decision confirmed the liability finding and increased enforcement expenses, and this decision was largely confirmed by the FST other than a reduction of the enforcement expenses. On judicial review, the petitioner sought an order setting aside the FST's decision on the merits (2018-RSA-004(a)) and its costs decision (2018-RSA-004(b)), based in part on breaches of natural justice and procedural fairness. The court concluded that the petition was an "improper and unsupported attack on the disciplinary proceedings" and that the FST "acted with fairness and dignity throughout its dealings with the petitioner" [para. 37].</p>
Disposition:	<i>The petition was dismissed.</i>

Behroyan v. Financial Services Tribunal, 2022 BCSC 1190

Decision Date:	July 14, 2022
Petitioner:	Shahin Behroyan
Respondents:	Financial Services Tribunal, Real Estate Council of BC, and Superintendent of Real Estate
Act:	<i>Real Estate Services Act, SBC 2004, c 42</i>
Court's Decision:	<u><i>Behroyan v. Financial Services Tribunal, 2022 BCSC 1190</i></u>
Summary:	<p>Judicial review of decision FST-RSA-20-A003(b) issued August 30, 2021. The petition was filed on October 29, 2021, and the matter was heard on June 21-22, 2022.</p> <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. 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> <p>The petitioner applied for judicial review of the decision. The court noted that the optics of a significant increase in penalty were poor, it was open to the Council to reach the decision it did. The court also</p>

found that the process followed by the Council was consistent with what the petitioner had argued for during the proceedings.

Disposition: ***The petition was dismissed.***

OUTSTANDING JUDICIAL REVIEWS AT THE END OF THE REPORTING PERIOD

At the end of the reporting period, the below **six** judicial reviews remained outstanding:

- **Petition filed by Real Estate Council of British Columbia (S179917)** of decision no. 2017-RSA-001(a) and (b) issued August 25, 2017 and October 6, 2017. Petition filed October 24, 2017 and matter not set down for a hearing.
- **Petition filed by Arvind Shankar (S193245)** of decision no. 2018-MBA-001(a) issued January 15, 2019. Petition filed March 25, 2019 and matter not set down for a hearing.
- **Petition filed by Real Estate Council of British Columbia (S1913100)** of decision no. 2018-RSA-004(a) and (b) issued September 20, 2019 and November 13, 2019 (same decisions that are the subject matter of [*Deng v Real Estate Council of British Columbia, 2022 BCSC 879, summarized above*](#)). Petition filed November 19, 2019 and amended November 28, 2019. Matter not set down for a hearing.
- **Petition filed by Pamela Peen Hong Yee (S215684)** of decision 2019-FIA-007(a), issued April 13, 2021. Petition filed June 14, 2021 and matter not yet set down for a hearing.
- **Petition filed by Robin Andrew Brown & Rob Brown and Associates Corp (221726)** from letter of April 14, 2022 stating that the FST does not have authority to waive the appeal fee. Petition filed June 3, 2022 and matter set down to be heard in fall 2023.
- **Petition filed by Andrew Brian Laity (S225231)** from decision FST-RSA-21-A002(a), issued June 15, 2022 and summarized above. Petition filed June 28, 2022 and matter heard on June 22-23, 2023. The Court's decision will be reported on in the next annual report.

COURT OF APPEAL MATTERS

The petitioner in 2022 BCSC 1190, Shahin Behroyan, filed a notice of appeal with the BC Court of Appeal during the current reporting period, but the appeal was subsequently abandoned. There are no outstanding matters before the BC Court of Appeal.

Statement of Financial Performance

(For the fiscal year ending March 31, 2023)

In fiscal year 2022/2023, the FST received \$3,400 from appellants in appeal filing fees, and incurred expenses of **\$110,314** as detailed below. A six-year chart for comparison purposes is provided.

In addition to dealing with the appeals filed during this reporting period, the Tribunal also provided professional development to members and retained legal counsel to manage judicial review applications.

Operating Result	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
	\$	\$	\$	\$	\$	\$
Appellant Fees	11,050	4,250	6,800	4,250	3,400	3,400
Funding	80,459	122,391	150,406	152,784	88,157	106,914
Direct Expenses	(91,509)	(126,641)	(157,206)	(157,034)	(91,557)	(110,314)
Net	0	0	0	0	0	0
Direct Expenses	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
	\$	\$	\$	\$	\$	\$
Salaries and Benefits	0	0	0	0	0	0
Professional Services	41,511	56,379	36,650	25,621	10,831	27,112
Board Fees & Expenses	48,635	69,821	120,556	131,413	80,726	83,202
Other	1363	441	0	0	0	0
Total Direct Expenses	91,509	126,641	157,206	157,034	91,557	110,314
Total FST Expenses	\$91,509	\$126,641	\$157,206	\$157,034	\$91,557	\$110,314
# of active Appeals	17	16	15	12	9	9
# of active Court Proceedings	4	5	5	5	6	8