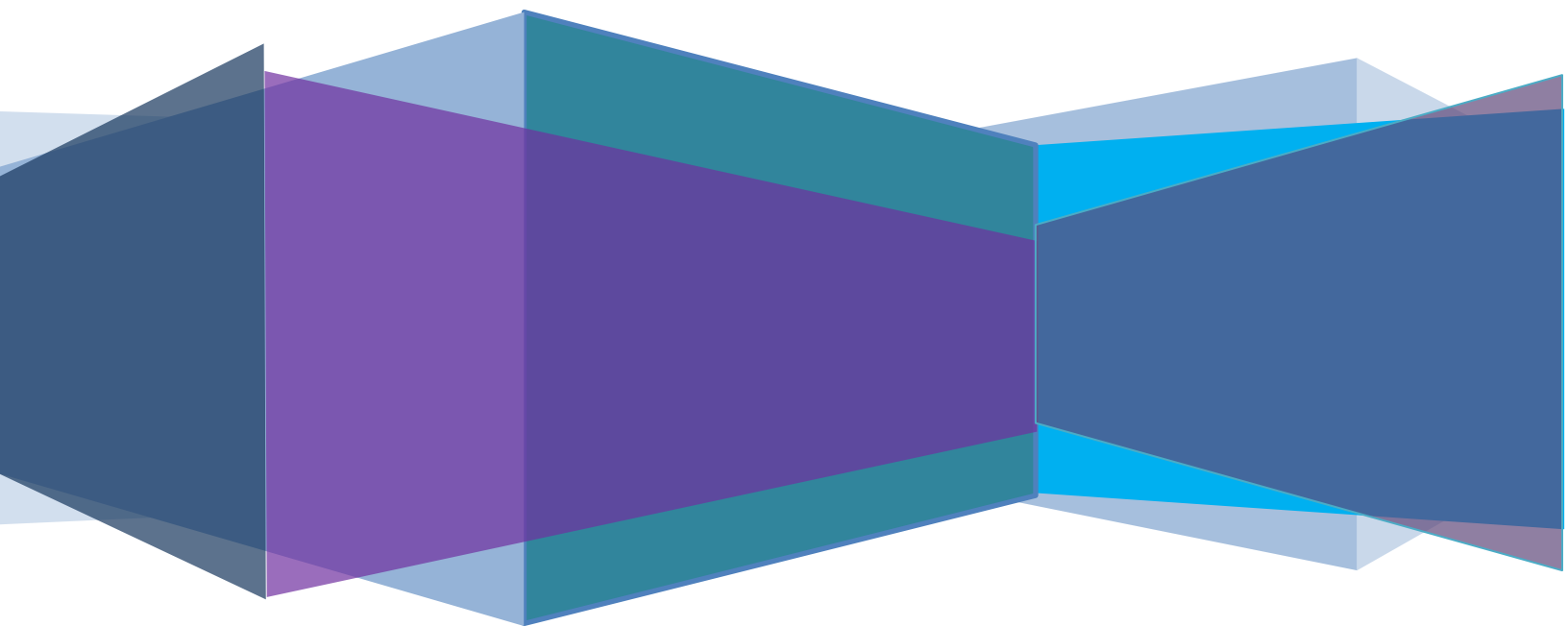




# Financial Services Tribunal

## 2023-2024 Annual Report

Covering the reporting period from  
April 1, 2023 – March 31, 2024





# Financial Services Tribunal

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## *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, 2023, and ending March 31, 2024. 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*.

### **APPEAL ACTIVITY DURING THE REPORTING PERIOD**

Section 59.2(c) of the *Administrative Tribunals Act* requires the Board to provide details on the nature and number of appeals received by the tribunal during the reporting period.

*New Appeals* - During the reporting period, five new appeals were filed with the Tribunal. Two of the new appeals were filed under the *Real Estate Services Act*, and three were filed under the *Mortgage Brokers Act*. Further details regarding these appeals are provided later in this report.

*Appeals Carried Over* - Three appeals were carried over from the previous reporting period. One of these appeals was filed under the *Pension Benefits Standards Act*, one was filed under the *Financial Institutions Act*, and one was filed under *Mortgage Brokers Act*. During the reporting period, the Tribunal closed all three of these carried-over appeals.

*Matters Outstanding* - Of the eight appeals that were before the Tribunal during this reporting period, three appeals were closed and five appeals remained outstanding at the close of the reporting period. The written hearings for the outstanding five appeals are in progress and at the exchange of submission stage at the conclusion of this reporting period. The five outstanding appeals have not been provided to the panel for decision.

*Hearings* - At the FST, hearings are conducted in writing before a single panel member. In three of the eight appeals before the FST during the current reporting period, the written hearings concluded in the prior reporting period. In the remaining five appeals, the written hearings were in progress at the conclusion of the current reporting period as stated above.

### **JUDICIAL REVIEWS DURING REPORTING PERIOD**

During this reporting period, no new applications for judicial review of FST decisions were filed with the BC Supreme Court. There were **six** petitions for judicial review carried over from the prior reporting period. One of these six petitions was closed in the current reporting period after a final decision by the court, which dismissed the petition and upheld the FST’s decision.

***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 appearing before a quasi-judicial appeal tribunal. 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. Of note, the FST is not able to mitigate the costs of dealing with self-represented parties who bring petitions for judicial review before the B.C. Supreme Court. These processes require the FST to retain outside legal counsel and the formal court system is not adept at handling self-represented parties or dealing with appeals with little or no merit. This has contributed to the delay in the resolution of the outstanding petitions for judicial review before the courts.

***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. Ongoing work is being undertaken to improve the accessibility of information that is available to the public on the FST's website and in its rules and practice directives, and the FST will report on these developments in the next reporting period.

Stacy F. Robertson  
Chair, Financial Services Tribunal

## Contact Information

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## 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 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*.

## *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/<br/>RESIGNATION</i> |
|-------------------------|-------------|----------------------------|-------------------------------------|
| Stacy Robertson         | Chair       | December 13, 2021          | December 13, 2024                   |
| Dr. Cristie Ford        | Vice Chair  | February 13, 2023          | February 13, 2025                   |
| 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 9, 2023                        |
| Richard (Mike) Tourigny | Member      | December 17, 2018          | December 17, 2024                   |

The FST bid farewell to Jane Purdie, K.C., who served as Member from June 12, 2018 to June 9, 2023. The FST thanks all its members for their service over the reporting period.

### ***BIOGRAPHIES OF TRIBUNAL MEMBERSHIP***

#### **STACY ROBERTSON (CHAIR)**

Stacy Robertson is currently the VP Compliance and Regulatory Affairs of a large independent securities brokerage firm, Wellington-Altus Private Wealth where he is responsible for registration, complaints, internal audits, regulatory audits and inquiries and anti-money laundering and terrorist financing surveillance and compliance. Prior to that he was senior enforcement counsel at the Investment Industry Regulatory Organization of Canada (now the Canadian Investment Regulatory Organization). 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 levels of court 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 British Columbia's Hospital Appeal Board and Financial Services Tribunal. 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 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 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*

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The administrative support functions of the FST are provided as part of the Environmental Appeal Board cluster of tribunals (the “EAB cluster”) in Victoria.

In addition to the FST, the EAB cluster provides administrative support to six other quasi-judicial appeal tribunals. This clustering of 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. In addition to the FST and the Environmental Appeal Board, the other clustered tribunals are:

- Community Care and Assisted Living Appeal Board;
- Energy Resource Appeal Tribunal;<sup>1</sup>
- Forest Appeals Commission;
- Health Professions Review Board;
- Hospital Appeal Board; and the
- Skilled Trades BC Appeal Board.

This clustering has resulted in significant savings to government through a shared services approach, particularly for tribunals with lower volumes of cases such as the FST with part time Chairs and ad hoc panel assignments. This arrangement has proven to be an effective and efficient means for providing administrative support to the Board, which in turn enables the Board to fulfill its appellate mandate effectively and efficiently. The shared services approach and common office has led to greater efficiencies in training new staff and having staff with a larger compliment of knowledge to address novel or complicated issues that arise for the FST.

Effective April 1, 2017, host Ministry responsibilities for administration of the Financial Services Tribunal (i.e. 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. The Tribunal and Agency Support Division (TASD), within the Ministry of Attorney General, has provided much valuable support to the FST when needed, and has been an effective partner in dealing with emerging issues.

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<sup>1</sup> Formerly the Oil and Gas Appeal Tribunal and renamed as of September 1, 2023.

## *Appeal Activity and Decisions Issued*

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There were **five** new appeals filed during this reporting period, and they remained outstanding at the end of the reporting period. In these five appeals the written hearings were in progress at the conclusion of the current reporting period, and decisions on the merits of these appeals will be summarized in the next reporting period.

There were also **three** appeals carried over from the previous reporting period. All three of these appeals were closed in the current reporting period after final decisions on the merits of the appeals were issued.

A summary of each appeal is provided below, followed by a summary of the three appeal decisions given by the FST during the current reporting period.

### **NEW APPEALS FILED**

- **FST-MBA-24-A001 – FILED BY BILLIE AALTONEN ON JANUARY 17, 2024** – Appeal of a December 14, 2023, penalty and costs decision of the Registrar of Mortgage Brokers. The FST previously issued a decision on April 5, 2023, on interim orders issued by the Registrar of Mortgage Brokers pending a full disciplinary hearing before the Financial Services Authority (see below “Appeals Carried Over from Prior Reporting Period”).
- **FST-MBA-24-A002 – FILED BY JESICA PAULA ASHLEY LABONTE ON JANUARY 15, 2024** – Appeal of a December 15, 2023, penalty and costs decision of the Registrar of Mortgage Brokers.
- **FST-MBA-24-A003 – FILED BY MURRAY ALLAN-A-DALE SAVAGE ON FEBRUARY 9, 2024** – Appeal regarding a June 1, 2023, liability decision and a January 12, 2024, sanctions decision of the Registrar of Mortgage Brokers.
- **FST-RSA-23-A001 – FILED BY BRIAN SCHIEBEL ON JANUARY 29, 2024** – Appeal of an October 27, 2023, decision of the Superintendent of Real Estate refusing to issue a licence and setting a two-year timeframe before the Appellant can reapply.
- **FST-RSA-24-A001 – FILED BY WEI (VICKY) WANG ON FEBRUARY 5, 2024** – Appeal regarding a May 16, 2023, liability decision and a January 5, 2024, sanctions decision of the Superintendent of Real Estate.

### **APPEALS CARRIED OVER FROM PRIOR 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. Written

submissions to the FST concluded on June 24, 2022, and the FST’s final decision was issued on May 26, 2023.

- **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 an insurance license application for four years and ordering that he pay a fine and costs associated with the investigation and hearing. Written submissions to the FST concluded on January 4, 2023, and the FST’s final decision was issued on July 7, 2023.
- **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. Written submissions to the FST concluded on March 3, 2023, and the FST’s final decision was issued on April 5, 2023.

### TRIBUNAL DECISIONS

During the reporting period, **three** decisions were issued on the merits of appeals. The following is a summary of these decisions.

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#### **FST-PBA-22-A001(a)**

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|                            |  |
|----------------------------|--|
| <b>Decision Date:</b>      | May 26, 2023   |
| <b>Appellant:</b>          | Board of Trustees of the IWA – Forest Industry Pension Plan  |
| <b>Respondent:</b>         | Superintendent of Pensions   |
| <b>Act:</b>                | <i>Pension Benefits Standards Act</i> , SBC 2012, c 30   |
| <b>Decision Full Text:</b> | <a href="#"><u>Board of Trustees of the IWA – Forest Industry Pension Plan v. Superintendent of Pensions, 2023 BCFST 3</u></a>   |
| <b>Summary:</b>            | <p>This appeal arose out of a decision of the Superintendent of Pensions refusing to register the Appellant’s amendment of its pension plan (the “Plan”) and directing the Plan’s trustees to bring the Plan into compliance with the <i>Pension Benefits Standards Act (PBSA)</i> and <i>Pension Benefits Standards Regulation (PBSR)</i>. That decision of the Superintendent was confirmed on reconsideration, leading to an appeal to the FST.</p> <p>The Pension Plan in issue is a collectively bargained multi-employer target benefit plan. The amendment at issue related to the impact of the withdrawal of an employer from the Plan. In particular, it provided for a reduction of 25% of the accrued pension of an employee of an employer who withdraws from the Plan. The Superintendent found that the amendment did not comply with the <i>PBSA</i> or <i>PBSR</i>, which, the Superintendent found, restrict the circumstances in which accrued benefits may be reduced, and did not include the circumstances identified in the</p> |

amendment. The Superintendent also found that the provision as it existed prior to the amendment also did not comply with the *PBSA* or *PBSR*, and accordingly ordered that it be brought into compliance.

On the merits of the appeal, two issues were identified:

- a)** Did the Superintendent breach the rules of procedural fairness by considering withdrawal provisions of other plans without disclosing them to the appellant?
- b)** Do the legislative provisions permit reduction in benefits to members of a withdrawing employer for the reasons stated in the amendment?

On the procedural fairness issue, the Superintendent argued that, while the evidence was not disclosed to the appellant, it was not material to his decision, and accordingly, did not constitute a breach of procedural fairness. The FST agreed, finding that the level of fairness required was not the same as the cases relied upon by the appellant. Moreover, the standard of review for the statutory interpretation exercise was correctness, and the appellant took the position the evidence was irrelevant to that exercise.

The FST reviewed the statutory regime, caselaw, and submissions in detail, and found that the *PBSA* required that a plan specify the consequences of a withdrawal but did not leave those consequences to the discretion of the trustees, as the appellant argued. Rather, he determined that the legislation prohibited the reduction of benefits except under certain prescribed circumstances, largely connected to the solvency of the plan.

The appellant relied on the potential financial risk to a plan whose members withdraw but did not provide (or rely on) any actuarial evidence to establish a current or future solvency risk to the plan. The FST found that lack of actuarial evidence to be problematic, but ultimately found that the amendment did not comply with the legislation primarily on the basis that the legislative regime required even-handedness amongst beneficiaries and rejected the appellant's argument that not reducing a withdrawing member's benefits would prefer the withdrawing member.

For the same reason, the FST found that the existing withdrawal provision also violated the legislation, as it provided the Trustees with an impermissible discretion to reduce benefits.

Finally, the Chair rejected the Superintendent's request for costs, ordering that the parties bear their own costs.

**Disposition:**

The appeal was dismissed and the decision of the Superintendent not to register the Amendment was upheld. Further, the direction of the Superintendent, to amend the provision as it existed prior to the

Amendment to bring it into compliance was also upheld. The Trustees were given 60 days from the date of the receipt of this decision to submit an amendment to the Plan to the Superintendent to bring it into compliance.

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### **FST-FIA-22-A001(a)**

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|                            |   |
|----------------------------|---|
| <b>Decision Date:</b>      | May 6, 2023   |
| <b>Appellant:</b>          | Stephen Craig Hill  |
| <b>Respondent:</b>         | Insurance Council of British Columbia, and the Superintendent of Financial Institutions   |
| <b>Act:</b>                | <i>Financial Institutions Act</i> , RSBC 1996, c 141  |
| <b>Decision Full Text:</b> | <a href="#">Stephen Craig Hill v. Insurance Council of British Columbia, 2023 BCFST 4</a>   |
| <b>Background:</b>         | <p>Stephen Craig Hill (the “Appellant”) was licenced under the <i>Financial Institutions Act</i> (the “FIA”) as a life and accident and sickness insurance agent between 1997 and May 2021, at which point he voluntarily resigned all of his licences and registrations across Canada. The Respondent Insurance Council of British Columbia (the “Council”) is a statutory body established under the FIA.<sup>2</sup> The Council has first instance responsibility for licensing and regulating the conduct of insurance agents such as the Appellant. Council’s overriding goal is the protection of the public.</p> <p>In August 2021, the Council gave the Appellant written notice of its intended decision that he had failed to comply with Council’s Rules and Code (the “Code”) by engaging in the trafficking of life insurance policies and being in conflict of interest with his clients. The Appellant requested a hearing to dispute the intended decision. The hearing was conducted over three days in March 2022 before the Discipline Hearing Committee of Council (the “Committee”).</p> <p>On September 12, 2022, the Committee found the Appellant guilty of professional misconduct. The Appellant appealed the decision to the FST.</p> |
| <b>Decision:</b>           | <p>The Appellant asked the FST to reverse the findings that he trafficked in insurance policies and was in a conflict of interest, and further or alternatively that the licence application prohibition, fine, and costs ordered against him be reduced or eliminated. The Tribunal identified the following issues on appeal:</p> <p><b>a)</b> As a preliminary question, should any new evidence be admitted and considered by the Tribunal on this appeal?</p>  |

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<sup>2</sup> By operation of section 242(3)(a) of the *FIA*, the Superintendent of Financial Institutions is a statutory third party to this appeal. The Superintendent declined to make submissions on this appeal.

**b)** Did the Committee err in finding that the Appellant engaged in the “trafficking” in insurance policies in respect of the four completed transactions?

**c)** Did the Committee err in finding that the Appellant was in a conflict of interest in relation to all five transactions?

**d)** Did the Committee err in finding that the Appellant’s conduct in trafficking policies of insurance where he was in a conflict of interest was contrary to Code sections 3 (Trustworthiness) and 4 (Good Faith)?

**e)** Were the penalty and costs ordered against the Appellant by the Committee unreasonable?

On the issues outlined above, the FST concluded that:

**a)** The Appellant had not brought an application to introduce new evidence as required by s. 242.2(8)(b) of the *Financial Institutions Act*, and further that the evidence the Appellant sought to adduce was insubstantial and immaterial, and so should not be considered on the appeal;

**b)** The Committee reasonably defined ‘trafficking’ as a transfer of benefits and passing of consideration, and had more than sufficient evidence before it to find that the transactions in question amounted to trafficking;

**c)** The Committee engaged in a comprehensive and well-reasoned analysis of whether conflicts of interest had been proven;

**d)** The Committee reasonably assessed the evidence before it in relation to the alleged breaches of the requirements for trustworthiness and good faith; and

**e)** The decision of the Committee in respect of penalty and costs orders was reasonable and should be confirmed.

**Disposition:**

The appeal was dismissed in its entirety.

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**FST-MBA-22-A002(b)**

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**Decision Date:** April 5, 2023

**Appellant:** Billie Aaltonen

**Respondent:** Registrar of Mortgage Brokers

**Act:** *Mortgage Brokers Act*, RSBC 1996, c 313

**Decision Full Text:** [Billie Aaltonen v Registrar of Mortgage Brokers, 2023 BCFST 2](#)

**Decision:** This case involved an appeal by the Appellant, Billie Aaltonen, of a decision by the Respondent, the Registrar of Mortgage Brokers (the “Registrar”), to impose certain conditions on her mortgage broker registration pending a disciplinary hearing, scheduled for June 5 – 9, 2023.

The conditions under appeal were initially imposed by the Registrar in October 2022, and the Appellant appealed the conditions to the FST on November 7, 2022. Subsequently the Registrar conducted a reconsideration of the conditions through a delegate, the outcome of which resulted in some revisions, including the removal of several conditions. The Appellant maintained her appeal of the remaining conditions.

Turning to the merits of the appeal, the issues were as follows:

- a) Was the original decision of the Registrar procedurally fair?
- b) Was the delegate’s reconsideration decision denying an oral hearing procedurally fair?
- c) Was the reconsideration decision reasonable?

The FST determined that the Appellant ought to have been given an opportunity to be heard prior to the original decision having been made, and that the failure to do so was a clear breach of procedural fairness. In doing so, the FST noted that a registrant should not have to appeal to the FST in order to obtain the opportunity to be heard.

The question of whether the reconsideration decision cured the defect in the original decision was not fully argued by the parties. However, the FST noted that the appellant had not demonstrated that things would ultimately have been different had the conditions been reviewed with her prior to their imposition. As a result, although the FST would have set aside the original decision based on procedural unfairness, it was unnecessary to do so in this case, given the reconsideration decision.

With respect to the fairness of the reconsideration decision, the only challenge made by the appellant in that regard was related to the refusal to hold an oral hearing. In reviewing that issue, the FST reviewed and applied the factors set out in *Baker* with respect to the content of procedural fairness due to the appellant in this case. The FST found that these factors

did not support the contention that an oral hearing was required, particularly as it related to the imposition of interim conditions pending a full oral hearing on the merits.

Finally, in reviewing the reconsideration decision on the merits, the FST determined that the delegate's approach was reasonable, and that it was also reasonable for the delegate to determine that the conditions were required for the protection of the public and were the least restrictive method of dealing with those risks.

### **Disposition:**

The appeal was allowed in part. The FST ordered a minor variation in the conditions to remove the requirement to "immediately" report certain information and substitute a requirement that the information be reported "as soon as reasonably practicable in the circumstances at the time".

## *Judicial Review of FST Decisions*

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During this reporting period, **no new** petitions for judicial review of FST decisions were filed with the BC Supreme Court.

There were **six** petitions for judicial review carried over from the prior reporting period. One of these six petitions was closed in the current reporting period after a final decision by the court, dismissing the petition and upholding the FST's decision.

A summary of each petition for judicial review is provided below, followed by a summary of the one judicial review decision during the current reporting period.

### ***CARRIED OVER JUDICIAL REVIEWS***

- **Petition filed by Real Estate Council of British Columbia (S179917)** of FST decision no. 2017-RSA-001(a) and (b), issued August 25, 2017 and October 6, 2017. Petition filed October 24, 2017. The matter has not been set down for a hearing.
- **Petition filed by Arvind Shankar (S193245)** of FST decision no. 2018-MBA-001(a) issued January 15, 2019. Petition filed March 25, 2019. The matter has not been set down for a hearing.
- **Petition filed by Real Estate Council of British Columbia (S1913100)** of FST decision no. 2018-RSA-004(a) and (b) issued September 20, 2019, and November 13, 2019. Petition filed November 19, 2019, and amended November 28, 2019. The matter has not been set down for a hearing.



- **Petition filed by Pamela Peen Hong Yee (S215684)** of FST decision 2019-FIA-007(a), issued April 13, 2021. Petition filed June 14, 2021. The matter has not been set down for a hearing.
- **Petition filed by Robin Andrew Brown & Rob Brown and Associates Corp (221726)** from the FST's 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 initially set down to be heard in fall 2023. The court subsequently adjourned the matter at the request of the petitioner with no specific terms to reset the hearing date.
- **Petition filed by Andrew Brian Laity (S225231)** from decision FST-RSA-21-A002(a), issued June 15, 2022. Petition filed June 28, 2022, and matter heard on June 22 and 23, 2023. The Court's decision is summarized below.

### *JUDICIAL REVIEW DECISIONS*

The BC Supreme Court issued **one** judicial review decision of a FST decision during the reporting period. The Court dismissed this petition, and that decision is summarized below.

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#### ***Laity v. British Columbia (Financial Services Tribunal), 2023 BCSC 1165***

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**Decision Date:** July 7, 2023

**Petitioner:** Andrew Brian Laity

**Respondents:** Financial Services Tribunal and the Superintendent of Real Estate

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

**Court's Decision:** [\*Laity v. British Columbia \(Financial Services Tribunal\), 2023 BCSC 1165\*](#)

**Summary:** This was a judicial review of the FST decision [\*Andrew Brian Laity v. Superintendent of Real Estate, 2022 BCFST 2\*](#), issued May 6, 2022. The petition for judicial review was filed on June 28, 2022, and amended April 14, 2023, and the matter was heard by the court on June 22 and 23, 2023.

The petitioner, Mr. Laity, was formerly a licensee under the Real Estate Services Act. The Real Estate Council, which was charged with regulating the real estate industry at the time, refused to renew his real estate license in 2018 after he disclosed that he had been charged with three criminal offences.

Mr. Laity appealed the Council's decision to the FST. In the FST decision, dated May 6, 2022, the panel dismissed the appeal in its entirety and ordered that he pay costs.

The petitioner applied for judicial review of the FST decision. On the application for judicial review, the questions were whether the FST's process was unfair and whether the FST Decision was patently unreasonable.

Considering the emphasis the petitioner placed on allegations of fraud and perjury as well as the seriousness of those allegations, Justice Warren herself carefully considered the Applicant's evidence and concluded that the allegations "remain wholly unsubstantiated." For example, Justice Warren considered the Applicant's allegation that the inclusion of an Office Records Inspection Report in the appeal book amounted to perjury because it differed from an original copy insofar as it was missing a cover page and signature. Justice Warren confirmed there was no substantive difference between the two versions of the report, and concluded that the Applicant's claim of perjury on that issue and others that were presented to the court were "wholly unsubstantiated."

The court concluded that the FST's process was fair and that the FST decision was not patently unreasonable. The Court noted that Mr. Laity failed to establish any basis for interfering with the FST decision, and also highlighted that he had demonstrated hostile and ungovernable behaviours throughout the judicial review hearing in court.

**Disposition:** The petition was dismissed.

## *Performance Indicators and Timelines*

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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.

The FST appeal process has been designed to be fast, efficient, and cost effective. Appeals are primarily conducted in writing and are "on the record" only, which means that the entire case is **not** relitigated before the FST.

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 to keep the process moving. However, given the presence of unrepresented appellants, the identification of appealable issues and the cogency of written submissions before the FST, it is often challenging for panel members to decipher and analyze the issues appealed which can

lead to panel members seeking further clarifications from the parties which extends the submissions stage of the proceedings.

For the three 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 282 days, compared to 228 days and 552 days in the two prior reporting period. The actual number of days for each of these three appeals in the current reporting period were 149, 268, and 429.

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 the parties within 120 days from receiving their last submissions. In the three appeals involving a decision on the merits that were closed during the current reporting period, the decisions were released an average of 184 days after the close of submissions. The actual number of days for each of the three appeals were 33, 184, and 336.

As noted above, the Tribunal has observed that appeals which come before the FST have been increasingly complex, 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.

## *Surveys*

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

## *Public Interest Disclosure Act Reporting*

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The *Public Interest Disclosure Act (PIDA)* provides employees of some public bodies with protection from reprisal if they bring forward concerns about specific kinds of serious wrongdoing (i.e. whistleblower protection). The FST is one of the government bodies subject to *PIDA*.

Section 38 of *PIDA* requires the FST to report the number of disclosures of wrongdoing we receive and the results of any investigations we undertake each year. During this reporting period the FST did not receive any *PIDA* disclosures. The FST is unaware of any reports in which it, its staff, or its members (past or present) is alleged to have committed any wrongdoing.

## *Statement of Financial Performance*

*(For the fiscal year ending March 31, 2024)*

In fiscal year 2023/2024, the FST received **\$4,250** from appellants in appeal filing fees, and incurred expenses of **\$111,372** as detailed below.

### **SIX-YEAR COMPARATIVE CHART**

| <b>Operating Result</b>              | <b>2018/2019</b> | <b>2019/2020</b> | <b>2020/2021</b> | <b>2021/2022</b> | <b>2022/2023</b> | <b>2023/2024</b> |
|--------------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|
|                                      | <b>\$</b>        | <b>\$</b>        | <b>\$</b>        | <b>\$</b>        | <b>\$</b>        | <b>\$</b>        |
| Appellant Fees                       | 4,250            | 6,800            | 4,250            | 3,400            | 3,400            | <b>4,250</b>     |
| Funding                              | 122,391          | 150,406          | 152,784          | 88,157           | 106,914          | <b>107,122</b>   |
| Expenses                             | (126,641)        | (157,206)        | (157,034)        | (91,557)         | (110,314)        | <b>(111,372)</b> |
| Net                                  | 0                | 0                | 0                | 0                | 0                | <b>0</b>         |
| <b>Expenses</b>                      | <b>2018/2019</b> | <b>2019/2020</b> | <b>2020/2021</b> | <b>2021/2022</b> | <b>2022/2023</b> | <b>2023/2024</b> |
|                                      | <b>\$</b>        | <b>\$</b>        | <b>\$</b>        | <b>\$</b>        | <b>\$</b>        | <b>\$</b>        |
| Salaries and Benefits                | 0                | 0                | 0                | 0                | 0                | <b>0</b>         |
| Professional Services                | 56,379           | 36,650           | 25,621           | 10,831           | 27,112           | <b>43,788</b>    |
| Board Fees & Expenses                | 69,821           | 120,556          | 131,413          | 80,726           | 83,202           | <b>67,584</b>    |
| Other                                | 441              | 0                | 0                | 0                | 0                | <b>0</b>         |
| <b>Total FST Expenses</b>            | <b>\$126,641</b> | <b>\$157,206</b> | <b>\$157,034</b> | <b>\$91,557</b>  | <b>\$110,314</b> | <b>\$111,372</b> |
| <b># of active Appeals</b>           | <b>16</b>        | <b>15</b>        | <b>12</b>        | <b>9</b>         | <b>9</b>         | <b>8</b>         |
| <b># of active Court Proceedings</b> | <b>5</b>         | <b>5</b>         | <b>5</b>         | <b>6</b>         | <b>8</b>         | <b>6</b>         |

**TERMINOLOGY NOTES**

**Salary and Benefits** encompass the full-time staff who support the FST. This number is zero because the Tribunal's staff are shared with a cluster of other tribunals who bear that cost instead.

**Professional Services** are the cost of retaining outside legal counsel to support professional development for Tribunal members, manage judicial reviews, and to provide legal advice where needed. It also encompasses outside professional services such as court recorders for hearings.

**Board Fees and Expenses** reflects the fees for the Chair and appointed members of the Tribunal, as well as other expenses incurred by the Tribunal for day-to-day operations. The Chair and members are appointed on an as-and-when needed basis and only paid for the time they work in accordance with the BC Ministry of Attorney General's *Tribunal Performance Framework and Remuneration Plan*. The expenses incurred by the Tribunal include costs for meeting space and refreshments, routine office expenses for its registry staff, and the IT infrastructure which support's the Tribunal's website and case management system.