

Financial Services Tribunal
Directives and Practice Guidelines





Financial Services Tribunal Directives and Practice Guidelines

1.0 Introduction

These Directives and Practice Guidelines have been issued pursuant to **section 12** of the *Administrative Tribunals Act*, setting out the general practice of the Financial Services Tribunal (“FST”), subject to the relevant statutes.

2.0 The Financial Services Tribunal (FST)

The FST hears appeals from individuals aggrieved by decisions made by the Insurance Council of British Columbia, Real Estate Council of British Columbia, Superintendent of Real Estate, Superintendent of Pensions, Registrar of Mortgage Brokers and Superintendent of Financial Institutions.

The FST only has jurisdiction to hear appeals under the following British Columbia statutes:

Financial Institutions Act
Mortgage Brokers Act
Real Estate Services Act

Credit Union Incorporation Act
Pension Benefits Standards Act
Real Estate Development Marketing Act

Appeals to the FST are governed by the statutes (above) that provide for an appeal to the FST, and by the *Administrative Tribunals Act*. Under **section 242.1 (7)** of the *Financial Institutions Act*, the following sections of the *Administrative Tribunals Act* apply to appeals conducted at the Tribunal: 11 to 16, 18 to 20, 22, 24, 31, 32, 35, 37 to 42, 44, 46.2, 47, 48 to 58 and 60 and 61.

Under **section 242.3 (1)** of the *Financial Institutions Act* (“*the Act*”), the FST has the exclusive jurisdiction to:

- inquire into, hear and determine all those matters and questions of fact and law arising or requiring determination; and
- make any order permitted to be made. (Please see “The decision” section below for further information.)

A decision of the FST on a matter in respect of which the FST has exclusive jurisdiction is final and conclusive and is not open to question or review in any court. (**Section 242.3 (2)** of the *Act*), except that judicial review is always available to challenge a decision made by the FST.

The FST does not hear appeals on certain decisions taken by the Financial Institutions Commission (“FICOM”). Certain FICOM decisions which are not appealable to the FST may be appealed to the BC Supreme Court. For a complete list of the FICOM decisions that may be appealed to the BC Supreme Court, please see **section 242.4 (1)** of the *Act*.

3.0 The Appeal Process

3.1

Who may appeal?

Where one of the relevant statutes provides for an appeal, any person aggrieved by an order or decision under that statute may appeal it to the FST by filing a Notice of Appeal with the Chair of the FST. (For the relevant statutes, please see section 2.0 above.)

3.2

Deadline for filing a Notice of Appeal

A Notice of Appeal must be filed in accord with the statute under which an appeal decision was made or otherwise within **30 days** of the date of the decision being appealed.

If the Chair of the FST is satisfied that special circumstances exist, the Chair may extend the time to file a Notice of Appeal, even if the time to file has expired. In order to ensure that the Chair of the FST understands these special circumstances, appellants are advised that their submission must set out the relevant issues regarding an extension application, including:

- what caused the delay;
- who will be prejudiced if an extension is not granted; or
- who will be prejudiced if an extension is granted.

The Chair of the FST may refuse to accept an extension application if it is not filed within the time set out in these Directives and Practice Guidelines.

In deciding whether to accept an extension application, the Chair of the FST will consider the following factors:

- promptness – the date the extension application was filed with the FST;
- the reasons for the extension; and
- possible prejudice to a party if an extension is or is not granted.

The Chair of the FST will consult the other parties to an appeal for their position on whether an extension application should be granted.

3.3

Completing the Notice of Appeal

The Notice of Appeal **must**:

- be typewritten;
- identify the decision that is being appealed;
- state why the decision should be changed;
- state the outcome requested;
- contain the name, address and telephone number of the appellant, and if the appellant has an agent acting on the appellant's behalf, include the full name of the agent and a telephone number where the agent may be contacted during business hours;
- include an address for delivery for the appellant;
- be signed by the appellant or the appellant's agent;
- be accompanied by the appeal FST fee of **\$850**, payable to the Ministry of Finance; (Please note that a separate \$850 fee is required for each party to an appeal to the FST); and
- must include the names of all parties entitled to participate in the appeal which may include parties with statutory standing.

The Notice of Appeal may include an e-mail address of the appellant, if the appellant wishes to receive documents electronically.

Once the Chair of the FST has received the Notice of Appeal and the appeal fee of **\$850**, the Chair will assign the appeal to a Tribunal Member. Subject to the discretion vested in the FST on the awarding of costs on an appeal, the FST cannot waive or refund the appeal fee in whole or in part, even if the appellant wins the appeal or it is withdrawn or settled.

The Notice of Appeal should clearly set out why the appellant believes the original decision was wrong, and/or why the process leading to the decision was unfair. General statements such as “the decision is contrary to the law” or “it is against the weight of the evidence” may not be sufficient to have an appeal accepted without further detail.

The grounds for the appeal must clearly contain a concise statement of the error of fact, error of law, or error in process that the appeal is based upon.

3.4

How to file a Notice of Appeal

The appellant must file the original and two copies of the Notice of Appeal with the Chair of the Financial Services Tribunal. Filing may be done in person, by registered mail, or with the permission of the FST, by fax, or as otherwise directed by the Chair of the FST.

The business address for the FST is the same as the Financial Institutions Commission:

**Financial Services Tribunal
Suite 1200 – 13450 102nd Avenue
Surrey, BC V3T 5X3**

The business hours of the Commission are from **8.30 am to 4.30 pm**, Monday to Friday, except public holidays.

The FST will immediately provide the other parties to the appeal with a copy of the Notice of Appeal.

3.5

Dismissal of an application

As permitted under section 31 (1) of the **Administrative Tribunals Act**, the FST may, at any time after an application is filed, dismiss all or part of an application if any of the following circumstances apply:

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

Before the FST dismisses the application, the applicant will be given an opportunity to make written submissions. If an application is dismissed, the FST will inform all parties to the appeal (or interveners) of its decision in writing and will give reasons for the decision to dismiss the application.

3.6

Proceedings

In general, an appeal to the FST does not operate as a stay. However, some statutes providing for an appeal to the FST may, in certain circumstances, provide that an appeal is a stay. (Please see **section 9** of the **Mortgage Brokers Act** for an example of these circumstances.)

Subject to the restrictions in the relevant statute, the Tribunal Member may, upon application of an interested party:

- stay the decision under appeal for any length of time, with or without conditions; or
- lift the stay of a decision under appeal for any length of time, with or without conditions.

Applications to stay proceedings must be in writing. The FST will serve the application on the other parties who may file a reply within **10 days**.

The Tribunal Member hearing the appeal also has the authority to make orders in respect of matters that arise out of the conduct of the appeal.

The Tribunal Member may also proceed with the appeal in the absence of the appellant, if the appellant has been given at least **10 days** notice of the FST's intentions.

3.7

Appeals involving similar questions

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

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

The FST has the right to make orders regarding procedures to be followed in the event that appeals involve similar questions.

3.8

The record

The FST will usually request a copy of the record from the decision-maker within **7 days** of the appellant filing a Notice of Appeal.

Under **section 242.2 (7)** of the **Act**, the original decision-maker must forward the record to the Chair of the FST within **14 days** of receiving the Chair's request for it. The FST will provide all parties with a copy of the record.

Section 242.2 (6) of the **Act** defines the record as consisting of the following:

- the record of oral evidence, if any, before the original decision-maker;
- copies of originals of documentary evidence before the original decision-maker;
- other things received as evidence by the original decision-maker; and

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

To facilitate the efficient processing of appeals at the Tribunal, the FST requires that the original decision-maker provide one copy of the record for each party to the appeal, one copy of the record for the FST's files, and one copy of the record for the Tribunal Member hearing the appeal. The record must also contain a list of documents and be tabbed for easy reference.

The FST will then distribute a copy of the record to each party to the appeal and to the Tribunal Member hearing the appeal.

All parties to an appeal may raise concerns regarding the integrity or completeness of the record of the decision being appealed. Expressions of concern regarding the integrity of the record should be filed with the FST within the **21 day** period required for the filing of the appellant's first submissions. Expressions of concern over the integrity of the record may not be accepted after this **21 day** period has expired.

3.9

Written submissions

Appeals to the Commission are appeals on the record, and **must** be based on written submissions unless otherwise permitted (**section 242.2 (5)** of the **Act**).

It is anticipated that submissions will normally be less than 25 pages. If a party wishes to make submissions longer than 25 pages, they should contact the staff of the FST if it is necessary to exceed this page limit. A book of authorities filed with submissions is in addition to the submissions and is not subject to a page limitation.

The appellant must file with the FST an original and two copies of the written submissions of the appellant within **21 days** of the receipt of the record. Filing may be done by registered mail, or with the permission of the FST, by fax or e-mail, or as directed by the Chair. The FST will serve a copy of the submission on the original decision-maker and on other parties to the appeal.

The original decision-maker and any other party to the appeal must file an original and two copies of their written submissions within **21 days** from the date of receiving the appellant's submission. The FST will serve a copy of these submissions on the appellant.

The appellant may file a written reply to the submissions of the decision-maker and other parties within **14 days** from the date of receiving these submissions.

The reply must be limited to new issues raised in the submissions of the original decision-maker and other parties. The FST will serve the reply on the original decision-maker and the other parties.

The written submissions and replies must fully set out the arguments of a party and include copies of any legal authorities (legislation) that are being relied on. The arguments should be sound and detailed, and provide specific cross-references to the relevant part of the record and legal authorities.

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

3.10

The service of documents by the FST

If the FST is required to provide a Notice of Appeal or any document to a party or other person in the appeal, it may do so by means of:

- ordinary mail;
- e-mail, if the party gives an e-mail address; or
- electronic transmission, including telephone transmission of a facsimile.

3.11

Failure to serve does not invalidate proceedings

If a Notice of Appeal or document has not been served in accordance with the Directives and Practice Guidelines, the proceedings will not be invalidated if:

- the contents of the Notice of Appeal or document were actually known (by the person to be served) within the time required for such service;
- the person to be served consents; or
- the failure to serve does not result in prejudice to the person (or any such prejudice can be satisfactorily addressed by an adjournment or some other means).

3.12

Are oral hearings permitted?

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

However, under **section 242.2 (8) (a)** of the **Act**, on application by a party, the Tribunal Member considering the appeal has the discretion to allow new evidence and oral submissions. A party to the appeal may apply in writing for permission to make oral submissions. The application should set out why oral submissions are necessary.

In the event that the Tribunal Member holds an oral hearing, the hearing will be open to the public. However, dependent on the circumstances surrounding the hearing, the Tribunal Member may choose to conduct certain portions of the hearing on an *in camera* basis.

The FST may record its oral proceedings.

3.13

New evidence

Under **section 242.2 (8)(b)** of the **Act**, the Tribunal Member has the discretion to permit the introduction of new evidence (i.e., evidence that was not introduced at the original hearing), oral or otherwise, if they are satisfied that the new evidence:

- is substantial and material to the decision; and
- did not exist at the time the original decision was made, or did exist at that time, but was not discovered and could not through the exercise of reasonable diligence have been discovered.

Usually, an application to submit new evidence is filed by the appellant at the time they file their Notice of Appeal. The respondent party will be given an opportunity to file a response to the new evidence application, and the appellant will then be given a final opportunity to make a final reply in support of their new evidence application.

If a respondent party wishes to submit an application to submit new evidence, they usually will file their application when they file their respondent submissions. If a respondent files an application to submit new evidence, the appellant will be given an opportunity to file any response they wish to make regarding the application. The respondent party will then be given a last opportunity to file any final reply they may wish to make in support of their new evidence application.

The application to introduce new evidence must be in writing, and must clearly demonstrate why the new evidence should be judged as substantial and material to the original decision. The application should also set out why the new evidence did not exist at the time the original decision was made, or, if it did exist, why the new evidence could not through the exercise of reasonable diligence have been discovered as part of the original decision process.

The Tribunal Member may consider any evidence, whether or not it is admissible in a court of law. **Section 34 (5)** of the ***Evidence Act*** does not apply to the FST.

The Tribunal Member may make an order regarding the application to introduce new evidence in advance of the appeal decision, especially if the new evidence is admitted and must therefore be produced and added to the record, or the order may be included in the appeal decision.

The Tribunal Member hearing the appeal has the authority to make an order to produce (either for the Member or for a party) a document or other thing in a person's possession or control that is admissible and relevant to an issue in an appeal. (For further information, please see **section 242.2 (10) (b) (ii)** of the **Act**.)

In order to evaluate the relevance of new evidence, the Tribunal Member hearing the appeal may require that parties participate in any proceeding that might assist in clarifying or narrowing the facts or issues, or that may otherwise facilitate the appeal process.

The Tribunal Member may require a witness, by summons, to attend and give evidence on oath or affirmation, at the cost of the party requesting the witness. The appellant must file an application for a summons which clearly demonstrates why the witness is needed and what the witness is expected to say at the hearing. The application for a summons should include a cheque for the witness fees which must be deposited with the FST before a summons will be issued. An affidavit of service will be required if a witness does not attend the hearing.

3.14

The parties to a hearing

The **Act** defines a “party” as including any person who is making an appeal to the FST, the original decision-maker, or any other person who is authorized by the Tribunal Member conducting the hearing to appear as a party to an FST hearing.

Parties may be represented by counsel or agents and may make submissions as to facts, law and jurisdiction.

A party has the right to receive notice of all proceedings connected with the appeal.

3.15

Adjournments

A hearing may be adjourned from time to time by a Tribunal Member based on their assessment of the situation or on application of a party where it is shown to the satisfaction of the Tribunal Member that the adjournment is required.

In considering whether a hearing should be adjourned, the Tribunal Member will consider the following factors:

- the reason for the adjournment;
- whether an adjournment would cause unreasonable delay;
- the impact of refusing the adjournment on the applicant;
- the impact of granting an adjournment on the other parties; and
- the impact of the adjournment on the public interest.

3.16

Maintenance of order

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

3.17

Contempt proceedings for an uncooperative witness or other person

The failure or refusal of a person summoned as a witness to do any of the following:

- attend a hearing;
- take an oath or affirmation;
- answer questions; and/or
- produce records or things in their custody or possession;

will make that person, on application to the court by the FST, liable to be committed for contempt as if in breach of an order or judgment of the court. (Please see **section 49** of the *Administrative Tribunals Act*.)

3.18

The decision

As permitted under **section 242.2 (11)** of the *Act*, the Tribunal Member hearing the appeal may confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration to the person or body whose decision is under appeal.

Decisions by the Tribunal Members must be in writing and will contain reasons.

The decision is effective the date it is issued by the Tribunal Member, unless otherwise specified.

The FST provides public access to the decisions and orders. The decisions may be altered to ensure compliance with the *Freedom of Information and Protection of Privacy Act* before being released publicly.

FST decisions are available at <http://www.fic.gov.bc.ca/fst/decisions.htm>

3.19

Notice of decision

The FST will endeavour to provide a copy of the final decision or order, including the written reasons, within **45 days** from receiving the last submissions of the parties, to each party and any intervener who participated in the hearing.

If for any reason, the FST is of the opinion that it is impractical to send the final decision or order to any of the parties individually, the FST may, instead of doing so, cause reasonable notice of the decision to be given to such parties by public advertisement or otherwise as the FST may direct.

In cases where the FST decides not to send copies of the decision individually, it will inform the parties of a place where copies of the decision may be obtained.

On the FST's own initiative, or if a party requests it, the FST may amend a final decision to correct any of the following:

- a clerical decision or a typographical error;
- an accidental or inadvertent error, omission or similar mistake; and/or
- an arithmetical error made in a computation.

Within **30 days** of being served with a final decision, a party may apply to the FST for clarification of the final decision, and, in such cases, the FST may amend the final decision **only** in cases where the amendment will clarify it.

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

3.20

Power to award costs

The FST has the power to issue an order for payment of costs as follows:

- a party may be required to pay part of the costs of another party or an intervener in connection with an application;
- an intervener may be required to pay part of the costs of a party or intervener in connection with the application; or
- where the FST considers the conduct of a party has been improper, vexatious, frivolous or abusive, requiring the party to pay part of the actual costs and expenses of the tribunal.

3.21

The costs award process

A party (or intervener) may apply for costs at any other time during the appeal process. The FST may also request submissions on costs and will set a timeframe for the exchange of submissions on the costs application.

3.22

The criteria for awarding costs to the parties or interveners

In determining whether a party (or intervener) is liable to pay the costs of another party (or intervener), the FST will consider:

- whether the party (or intervener) engaged in conduct that is improper, vexatious, frivolous or abusive;
- whether the party (or intervener) submitted a position that was manifestly unfounded;
- whether the party (or intervener) unreasonably delayed or prolonged the proceeding, including any failure to comply with an FST undertaking or order;
- whether the party (or intervener's) participation assisted the Tribunal in understanding the issues;

- whether the party (or intervener) unreasonably failed to cooperate with other parties during the appeal;
- whether the party (or intervener) failed to attend a hearing or other proceeding, or to send a representative, despite notice having been provided to the party (or intervener);
- the party's (or intervener's) degree of success in the proceeding; and
- any other matter the Tribunal considers relevant.

3.23

Costs of the Tribunal

The FST may, after considering submissions from a party (or intervener) that may be subject to an order, order its costs to be paid by that party (or intervener).

The costs of the FST consist of the expenses that the Tribunal has incurred in connection with the proceeding.

In determining whether a party or intervener is liable to pay costs of the Tribunal, the FST will consider the same factors identified in section 3.21 above.

3.24

Costs of parties and interveners

If the Tribunal Member hearing the case decides to award costs to one of the parties or interveners, the FST will calculate these costs using the BC Supreme Court Rules as a general guideline.

4.0 Miscellaneous

4.1

Constitutional questions

The FST does not have jurisdiction over constitutional questions.

4.2

Human rights issues

Under section 46.2 of the ***Administrative Tribunals Act***, the FST may decline jurisdiction to apply the ***Human Rights Code***, and does not have jurisdiction over a question of whether there is a conflict between the ***Human Rights Code*** and any other enactment.

For the Financial Services Tribunal



J. Stewart Cunningham

*Chair of the Financial Services Tribunal
February 2008*

Summary of Filing Requirements and Time Periods

- A Notice of Appeal must be filed in accordance with the statute under which an appeal decision was made or otherwise within 30 days of the date of the decision being appealed. (Original and 2 copies)
- FST will deliver a Notice of Appeal to respondent(s)
- FST will request a copy of the record from the original decision-maker
- Original decision-maker files record within 14 days of the receipt of the request for the record from the FST
- FST will deliver* a copy of the record to all parties (Please see below)
- Within 21 days of receiving a copy of the record from the FST, the appellant must file with the FST one original and two copies of their written submissions
- The FST will deliver to the respondent(s) a copy of the appellant's written submissions
- Within 21 days of receipt of the appellant's submissions, the respondent(s) must file with FST the respondent's written submissions
- The appellant will be given 14 days to reply to the respondent's submissions

*A note on delivery by the FST

Every appellant must provide an address for delivery to the Tribunal on the Notice of Appeal.

The Tribunal will deliver information to the appellant to the address for delivery provided by the appellant.

If an appellant's address for delivery changes during the appeal process, the appellant must promptly notify the Tribunal of the change.

Information delivered by the Tribunal to the address for delivery provided by the appellant will be treated as having been delivered to the appellant. Mail slotting by courier or by Canada Post are sufficient to meet the delivery requirement.