

Can I give oral evidence or give the FST some new evidence in an appeal?

In unusual circumstances, the FST may consider new evidence that was not heard by the Insurance Council, or allow you to speak directly to the member of the FST hearing the appeal.

Please see the FST Directives and Practice Guidelines for more information on when oral submissions or new evidence may be heard as part of the FST appeal process.

How long does an FST appeal normally take?

An appeal to the FST usually takes 4 to 6 months to complete, but can take longer.

Please note, if you appeal, the FST will require you to file your submissions and other documents within strict time periods. Please see the FST Directives and Practice Guidelines for details as to these time periods.

Do I get a copy of my decision?

Yes. As the person making the appeal, you will receive a copy of the decision. The decisions are also posted on the FST's website at www.fic.gov.bc.ca/fst. Please also see the **Active Appeals, Decisions and Judicial Reviews** section on the FST's website for some examples of FST decisions.

If I win my appeal, can I be awarded costs?

The FST has the power to award costs, but rarely does so. Please see the FST Directives and Practice Guidelines for more information on how and when the FST may award costs. You may view specific cases where the FST awarded costs in the **Decisions** section of the FST website at www.fic.gov.bc.ca/fst/decisions.htm

Can I have my money back if I win or decide to settle or withdraw my appeal?

No. The FST cannot refund the appeal fee in whole or in part, even if you win, settle or withdraw your appeal.

Can I appeal a decision of the FST?

You cannot appeal a decision of the FST. However, the Supreme Court of BC can review a decision on a judicial review application. Please see a lawyer for more information on how to make an application for a judicial review of an FST decision.

For more information:

The Financial Services Tribunal is located at the business offices of the Financial Institutions Commission.

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

**Telephone: (604) 953-5300
Fax: (604) 953-5301
Email: FinancialServicesTribunal@gov.bc.ca**



*A Layperson's Guide to
Insurance Appeals at*

The Financial Services Tribunal



This pamphlet provides background information for insurance licencees who are considering an appeal of a decision of the Insurance Council to the Financial Services Tribunal (“FST”). It does not provide legal advice, and only interprets statutes such as the *Financial Institutions Act* and the *Administrative Tribunals Act*, as well as the FST Directives and Practice Guidelines. The Guidelines are available online at www.fic.gov.bc.ca/fst/.

You may also wish to contact a lawyer for legal advice concerning your appeal. If you do not have a lawyer and would like more information on how to get one to help with your appeal, contact the Canadian Bar Association (BC Branch) Lawyer Referral Service.

Should I appeal?

Being unhappy with a decision may not be enough reason to appeal. For your appeal to be successful, you must prove that the Insurance Council made a **specific** error in reaching its decision. There are three types of errors:

Error of Fact

The Insurance Council misinterpreted the evidence and reached a wrong factual conclusion. You must be able to demonstrate an “error of fact” by pointing to evidence.

Error of Law

The Insurance Council misinterpreted the law. You must be able to demonstrate an “error of law” by citing statutes or legal decisions.

Error of Mixed Fact and Law

The Insurance Council did not apply the law correctly to the facts. You must be able to demonstrate an “error of mixed fact and law” by pointing to evidence and citing statutes or legal decisions.

A general statement such as “they reached the wrong decision” is not enough for an appeal to be successful. If you appeal, you are responsible for showing why the original decision of the Insurance Council should be overturned. A lawyer may be able to help you to frame your appeal to increase your chances of success.

What are the deadlines for an appeal?

In most cases, you will have to file your appeal within **30 days** after the Insurance Council issues its decision. However, if you have a summary order issued against you by the Insurance Council under section 238 of the *Financial Institutions Act*, you will have only **14 days** in which to file your appeal. The order you received from the Insurance Council should indicate if section 238 applies.

Please see your order or consult a lawyer if you are unclear about your filing deadline.

How do I file an appeal at the FST?

To appeal a decision of the Insurance Council, you must:

- File an original and two copies of the completed Notice of Appeal. Please see the FST Directives and Practice Guidelines at www.fic.gov.bc.ca/fst for more information and for a suggested template for the Notice of Appeal.
- Pay a fee of \$850 for each party appealing the decision. The FST will not process the appeal until it receives this fee.

If I appeal, does the appeal automatically suspend the decision against me?

Decisions of the Insurance Council are not automatically suspended by filing an appeal at the FST.

However, if certain conditions are met, you may apply to the FST to suspend the application of the Insurance Council’s decision against you. If this happens, in response, the Insurance Council will be given the opportunity to apply to the FST to have the order take effect immediately.

What is the role of the Financial Institutions Commission or the Superintendent of Financial Institutions in the appeal process?

Under section 242 (3) (b) of the *Financial Institutions Act*, the Financial Institutions Commission may appeal the Insurance Council’s decisions to the FST. The Commission, in turn, has delegated this appeal power to the Superintendent of Financial Institutions. In addition to the power to appeal an Insurance Council decision, the Superintendent also has the power under section 242 (3) (a) of the *Financial Institutions Act* to join an appeal of any person appealing a decision of the Insurance Council.

Can I have a new hearing at the FST?

The FST will not redo the original hearing, or provide a “fresh start”. Appeals to the FST are based on what was on “the record” of the decision at the Insurance Council. This means the FST will only review the:

- documents filed at the Insurance Council;
- transcripts of oral evidence given at the Insurance Council hearing;
- any other objects that were taken as evidence by the Insurance Council in making their decision; and
- written reasons of the Insurance Council.

The FST will also review the written submissions filed by you and the other parties to the appeal.

