



# Financial Services Tribunal

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November 8, 2017

Appeal Files: 2017-FIA-002 to 2017-FIA-008

**Re: Appeals to the Financial Services Tribunal (“FST”) – Financial Institutions Commission (FICOM) v. Insurance Council of British Columbia (Council) and Seven Additional Respondents (Licensees) File nos. 2017-FIA-002-2017-FIA-008**

## **DECISION ON FICOM’S APPLICATION FOR JOINDER OF APPEALS**

[1] As the parties are well aware, and as discussed in my decision conveyed by letter of October 13, 2017, FICOM, being the appellant in this matter, has by its letter of September 20, 2017 to the FST applied for an order that these seven appeals be heard together by a single decision-maker.

[2] The authority of the FST to order that appeals be heard together derives from section 37 of the Administrative Tribunals Act, SBC 2004, c. 45, which is made applicable to the FST by section 242.1(7) of the Financial Institutions Act, RSBC 1996, c. 141 (the latter provision incorporating all of Part 4 of the Administrative Tribunals Act, which is where section 37 falls, except for certain sections as specified, and which exceptions do not include section 37).

[3] Paragraph 3.8 of the FST’s Practice, Directives and Guidelines essentially tracks the language of section 37.

[4] All of the respondents across these appeals have been given notice of FICOM’s application and an opportunity to make a written submission in respect of it. Certain of the parties refrained from making any submission while others availed themselves of that opportunity, but no party has opposed the Order sought.

[5] The respondent, Insurance Council of British Columbia (“Council”), advised the FST by letter of September 28, 2017 that it was agreeable to the combining of these appeals for hearing, subject to any concerns raised by the other respondents.

[6] One of the respondents, Ms. Babcock, initially responded through her counsel that she wished to receive copies of the records in the other six appeals before expressing her position on the FICOM joinder application. That request was the subject of my October 13, 2017 decision, which called for the provision of the various appeal records to the different respondents, on the terms I described there.

[7] As I noted in that decision, all of these appeals by FICOM are from decisions of Council sanctioning insurance agents in separate disciplinary proceedings for conduct pertaining to the overriding of bridge toll debts. While there are circumstantial distinctions between the cases, to be sure, there is significant commonality of subject matter, and on this application FICOM states that it is raising the same question in each of these appeals, being whether the penalty imposed was unreasonable. I agree that the hearing of these appeals together by a single member of

this tribunal is sensible, and I believe this would promote an efficient and just process for all concerned.

[8] Following the production to the respondents of the various appeal records, in responding to this application through her counsel's letter of November 2, 2017 Ms. Babcock stated that she was agreeable to the order sought but went on to say that she wished an opportunity to indicate whether personal information should be redacted from any additional records produced during the appeal process, while further asking that recordings of (presumably meaning, of conversations with) her, and her co-workers, supervisors and employees, not be shared with the other licencees. It is unknown at this stage whether any documents will be admitted into evidence on these appeals beyond those contained in the current records – while there has been mention by certain parties of a broader documentary base, no motion to adduce new evidence has yet been brought – and the record as it stands for Ms. Babcock's appeal does not include any such recordings. These qualifying terms sought by Ms. Babcock may well then be entirely moot. Out of caution, however, I will nonetheless direct that if any party seeks to adduce documentary or other evidence in these appeals beyond the records as they presently exist, the application shall initially be made to this tribunal without disclosure of the evidence in issue to any other party, following which the FST will rule on how the matter is to proceed.

[9] These seven appeals will accordingly now proceed and will be heard together by a single member of the FST. As the different applications have caused a pause in the process of these appeals, I hereby direct that the usual hearing process resume with the next steps and submission timelines to be set out by separate letter from the FST office.

"Patrick F. Lewis"

Patrick F. Lewis  
Vice-Chair  
Financial Services Tribunal