



Financial Services Tribunal

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DECISION NO. 2019-FIA-001(b)

In the matter of an appeal under section 242 of the *Financial Institutions Act*, RSBC 1996 c 141

BETWEEN:	Xiaomei (May) Zou	APPELLANT
AND:	Insurance Council of British Columbia	RESPONDENT
AND:	British Columbia Financial Services Authority	RESPONDENT
BEFORE:	A Panel of the Financial Services Tribunal Jane A. G. Purdie, Q.C., Panel Member	
DATE:	Conducted by way of written submissions concluding on January 29, 2020	
APPEARING:	For the Appellant: Self-represented For the Respondent (ICBC): Naomi Kreuger, Counsel For the Respondent (BCFSA): Sandra A. Wilkinson, Counsel	

Decision on Costs of the Appeal

[1] On December 30, 2019, I issued my decision in this appeal. I gave the parties the opportunity to provide further submissions to address the issue of costs of the appeal.

[2] The Appellant made no submissions regarding the costs of the actual appeal but had previously requested a reimbursement of the appeal fee of \$850.00.

[3] The Respondent British Columbia Financial Services Authority (the "BCFSA") does not seek costs in this appeal and submits that no costs should be awarded against it because it did not make substantive argument and, accordingly, no party was required to respond to its argument.

[4] The Respondent Insurance Council of British Columbia (the "Council") submits that each party should bear its own costs of the appeal because in the absence of exceptional circumstances and a completely successful party, no costs should be awarded.

Power to award costs

[5] The power to award costs explicitly comes from section 47 of the *Administrative Tribunals Act* and section 242.1(7)(g) of the *Financial Institutions Act*. This legislation authorizes the Financial Services Tribunal ("FST") to require a party to pay all or part of the costs of another party and, in specific situations, to pay all or part of the actual costs and expenses of the FST.

[6] The FST created Practice Directives and Guidelines to facilitate the just and timely resolution of appeals, including the issue of costs arising from them.

[7] Guideline 3.3 states that, "[s]ubject 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...".

[8] Guideline 3.24 then sets out the criteria for awarding costs. The criteria which I may consider include:

- whether there was conduct that was improper, vexatious, frivolous or abusive;
- whether the participant submitted a position that was manifestly unfounded;
- whether the participant unreasonably delayed or prolonged the proceeding including any failure to comply with an FST undertaking or order;
- whether the participant assisted the Tribunal in understanding the issues;
- whether the participant unreasonably failed to cooperate with the other parties during the appeal;
- whether the participant failed to attend a hearing or other proceeding, or to send a representative, despite receiving notice;
- the degree of success in the proceeding; and
- any other matter the Tribunal considers relevant.

[9] While the FST has the legislated power to award costs and there are criteria set out in its Practice Directives and Guidelines to assist it in doing so, the FST concluded in *Brewers' Distributor Ltd. v Superintendent of Pensions*, Decision No. 2010-PBA-001(c) (*Brewers*) that (at para 13):

While one would normally expect the *Guidelines* to be applied where applicable, despite their non-binding status, it can equally be said that the assessment of costs, including as to quantum, is traditionally very much a matter for the decision-maker's discretion, and not one to be rigidly carried out.

[10] Several subsequent decisions of the FST, including *Kadioglu v Real Estate Council of British Columbia and Superintendent of Real Estate*, 2015-RSA-003(c) (*Kadioglu*), have referenced *Brewers* in relation to the assessment of costs. *Kadioglu* concluded that ultimately it is in the decision-maker's discretion as to what, if any, costs should be awarded, and that costs are not routinely awarded to the successful party.

[11] While previous decisions are not binding on me, I accept the reasoning that costs are not routinely awarded to the successful party, and that I should exercise my discretion but take into consideration the criteria set out in the Practice Directives and Guidelines. It is for me to determine if there are factors to be considered in this appeal that place it outside the routine and convince me to award costs to one or other party.

Discussion

[12] In this appeal, neither party was entirely successful.

[13] The Council was successful in the substantive part of the appeal, but I made an order that the matter of Hearing costs be remitted back to the Council for reconsideration and reasons.

[14] Neither the Appellant nor the Council was successful in their respective applications to have new evidence heard at the appeal.

[15] Beyond considering the degree of success in the proceeding, and having reviewed the criteria set out in the Practice Directives and Guidelines, neither party could be found to have been guilty of any of the listed conduct that would lead one to award costs against it, nor were the issues so complex that they required a party to assist the Tribunal in understanding the issues. I have not found any other factor which I consider relevant to the matter of costs.

[16] While costs are not routinely awarded, even for a successful party, it falls to each decision-maker to determine what factors bring the matter outside the parameters of routine to result in an order of costs being made. Neither party was entirely successful and I do not find any factors which bring this appeal outside the parameters of a routine decision.

[17] In exercise of my discretion I decline to make an order of costs.

"Jane A. G. Purdie"

Jane A. G. Purdie, Q.C.
Panel Member
Financial Services Tribunal

February 18, 2020