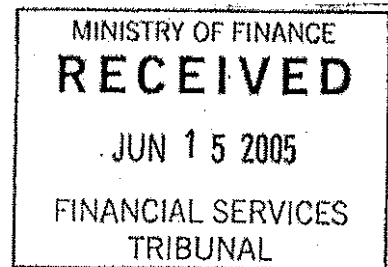
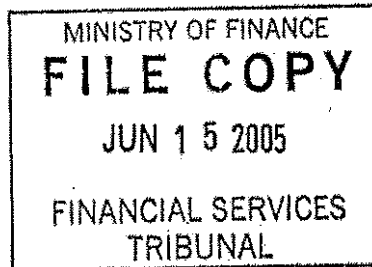


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June 15, 2005

By Facsimile to: 604-660-3170  
Original by Mail

Financial Services Tribunal  
1900 - 1050 West Pender Street  
Vancouver, B.C. V6E 3S7

**Attention: Graham Kennedy, Deputy Registrar, Financial Services Tribunal**

Dear Mr. Kennedy:

**Re: Financial Services Tribunal ("FST") Appeal of the decision of the Insurance Council of British Columbia dated February 28, 2005 (the "Appeal") respecting Mr. Branislav Novko ("Mr. Novko")**  
**Our File: 12255**

By virtue of FST letter dated March 29, 2005, the writer was appointed the member of the FST to consider the Appeal. Prior to considering the decision under appeal, on May 16, 2004 I received confirmation from the FST that legal counsel for the Superintendent of Financial Institutions had both initiated the Appeal and had filed appellant's submissions with respect to the Appeal. Mr. Novko and legal counsel for the Insurance Council of British Columbia received the same notification.

By way of letter dated May 26, 2005, legal counsel for the Superintendent of Financial Institutions notified the FST that the Appeal had been filed on behalf of the Superintendent of Financial Institutions pursuant to section 242(3) of the *Financial Institutions Act*. However, on January 1, 2005, prior to the filing of the Appeal and prior to the filing of the appellant's submissions with respect to the Appeal, the Superintendent of Financial Institutions no longer had the right of appeal with respect to these matters. Rather, the right of appeal was vested in the Financial Institutions Commission. Legal counsel advised that the Appeal in the Mr. Novko matter was filed, therefore, on behalf of the incorrect party.

Legal counsel for the Superintendent of Financial Institutions also acts as legal counsel for the Financial Institutions Commission. In that latter capacity, the said legal counsel applied for leave of the FST for an order of substitutions of parties pursuant to section 14 of the

*Administrative Tribunals Act*, the effect of the order if granted being to record and substitute the Financial Institutions Commission as the proper appellant in the Mr. Novko Appeal proceedings.

Legal counsel for the Financial Institutions Commission referred the FST to section 14 of the *Administrative Tribunals Act* which legislative provision enables the member of the FST appointed to hear the Appeal to make certain orders which will allow the just and timely resolution of an application to the FST.

It is important to note that the opening language of section 14 reads: "In order to facilitate the just and timely resolution of an application the tribunal, if requested by a party or an intervener, or on its own initiative, may make any order...". (emphasis added)

Mr. Novko and legal counsel for the Insurance Council of British Columbia were notified by the FST of the application for substitutions of parties. Submissions were made by legal counsel for the Insurance Council of British Columbia but no submissions were provided to the FST on behalf of Mr. Novko.

I have received and reviewed the submissions that have been filed. It is my view that the Appeal as initially filed is of no legal effect. It is my view that an appeal of an administrative ruling may be compared to an appeal of a court judgement or order. In the latter instance, only a party to the proceedings may appeal the lower court decision. Similarly, an appeal of an administrative ruling may only be made by a party to the proceedings or in special situation possibly another person was found by the appeal tribunal to have standing before it to file such an appeal. As of the date that the Appeal was filed, the Financial Institutions Commission was neither a party to the proceedings nor a person with standing before the FST. Thus, in effect, no appeal has been filed with respect to the February 28, 2005 decision of the Insurance Council of British Columbia.

Legal counsel for the Financial Institutions Commission advised that the incorrect party had filed the initial Appeal documentation due to counsel error. Further, should the FST deny the application for substitutions of parties, the filing of a new appeal with a new filing fee as well as an application to seek leave for late filing would be required. I am mindful of the fact that in cases where an improper filing occurs due to counsel error, unless there is unreasonable prejudice to another party to the proceedings, a tribunal such as the FST should endeavour to allow those applications that would enable the matter in question to proceed properly and fairly. However, where it is the view of the FST that no appeal has been filed, such as in this case, then even though there does not appear to be unreasonable prejudice to any of the other parties, the application for substitutions of parties is not possible. It is therefore ordered that the application for substitutions of parties be denied and that the Financial Institutions Commission be at

liberty to apply for leave for late filing of an appeal of the subject decision of the Insurance Council of British Columbia dated February 28, 2005, which application shall be provided to the FST for the determination by the member assigned by the FST to consider the application.

Yours truly,

**CLEVELAND & DOAN**

Per: 

DALE R. DOAN, in his capacity as member of the Financial Services Tribunal

DRD/ts