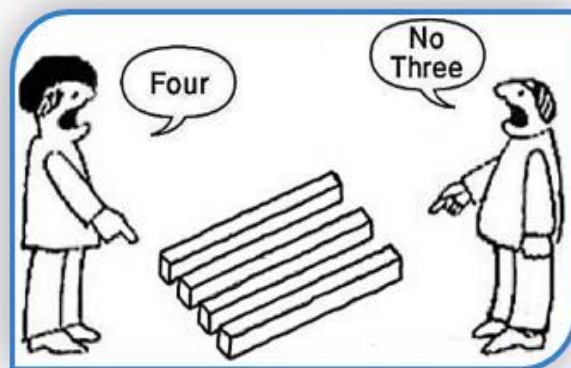


# **BUILDING CODE APPEAL BOARD ANNUAL REPORT**

**April 1, 2023 to March 31, 2024**



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## Message from the Chair

I am pleased to present the Annual Report for the Building Code Appeal Board of the Province of British Columbia for the fiscal year April 1, 2023 to March 31, 2024.

As Acting Chair, Frankie Victor led the Board from April through August in 2023. I am grateful for her capable leadership during that period and for her kind assistance as I joined the Board in September of 2023. The Board also wishes to acknowledge and express gratitude for the many years of service provided by departing Chair, Lyle Kuhnert.

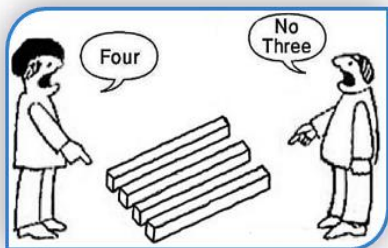
With the support of the Tribunal and Agency Support Division, and beginning in the summer of 2023, the Board entered a period of transformation. A permanent staff member was added – 1/3 FTE – and the Board began a process of decreasing its operational reliance on the Building and Safety Standards Branch and increasing its transparency and accountability as a member of BC's administrative tribunals sector. As an example, this is the inaugural Annual Report prepared by the Board, in accordance with section 59.2 of the *Administrative Tribunals Act* and section 3 of the *Administrative Tribunals Reporting Regulation*.

In future editions of this document I will report on the Board's continual progress on the transformation, on the work done by our dedicated staff and members, and on our efforts to improve the accessibility and timeliness of access to justice within the important building and construction industry in BC.



**Don Pedde**  
Chair

### A Word about our Graphic



Any given circumstance may, depending on the perspective of the observers, appear as one thing to some person, and as another thing to someone else. So it is with Building Code interpretation.

The Code can be opaque, labyrinth, and difficult to understand and apply within the complexity of any given project. Plus, both code users and code enforcers come to the table with financial, practical, reputational, precedential, or other interpretive biases, seen or unseen.

Disputes arise.

The Building Code Appeal Board provides an important mechanism and public service within the building regulatory system – dispute adjudication, based on the fair and reasoned judgement of seasoned experts.

## Introduction

This report outlines the activities, operations, and performance of the Building Code Appeal Board from April 1, 2023 to March 31, 2024. Also, as is suitable for an inaugural Annual Report, some background on the history and evolution of the Board is provided.

## Background

The Building Code Appeal Board was established in 1973, shortly after the first BC Building Code was enacted. At that time, the Director of the Building Standards Branch (today known as the Building and Safety Standards Branch within the Ministry of Housing) was the Chair of the Board. In those early days, the Board would respond to incoming questions and provide guidance regarding the correct interpretation of the Building and Plumbing Codes or the general acceptability of a particular design or construction.

In April of 1990, the Building Code Appeal Board was established in legislation under the *Local Government Act* and the Board's focus was on the "interpretation and application of the codes". The Board, independent of government and resembling the structure and composition we have today, consisted of five members from across industry, selected based on technical knowledge and building code experience. A Secretary to the Board (non-voting) was a technical subject matter expert from the Building and Safety Standards Branch. While the parties to disputes were not identified in the legislation, it was during this period that the Board adopted a practice of identifying the appellant's position, the building official's position, and settling the dispute by publishing the Board's position and decision in the matter.

With the adoption of the *Building Act* in 2015, the Building Code Appeal Board was "continued" in legislation. By reference to the provisions of the *Administrative Tribunals Act*, the *Building Act* both granted authority and assigned responsibilities to the Board, positioning it as a member within the administrative tribunals sector in BC.

## Mandate

The British Columbia Building Code is a provincial building regulation that establishes minimum requirements for residential and commercial building design and construction. Under the *Building Act*, the Building Code Appeal Board resolves disputes between an individual builder, designer, or developer and a local government building official (identified in the Act as a "local authority") on whether a specific building design, construction method or technology complies with provincial building regulations, primarily the BC Building Code, including the BC Plumbing Code.

The *Building Act* introduced and now regulates new classes of Code enforcement professionals – qualified building officials and exempt building professionals – and assigns exclusive Code compliance decision-making authority to them. The Board's

mandate under the Act, to *confirm, vary, or reverse* the decisions of these enforcement professionals, serves to check and balance that newly legislated authority.

In addition, the *Building Act* expanded the Board's authority by including the power to review local authority decisions on alternative solutions <sup>(see sidebar)</sup> to the Code, increasing the complexity of the regulatory scheme that the Board adjudicates.

As an important, but subsidiary and supplementary, addition to the Board's legislated mandate, the Board also serves as a key contributor to the correct interpretation and understanding of building regulations. The Board maintains a readily available online library of past decisions on a wide variety of Code matters that can be searched by keyword. Access to prior decisions can minimize or even completely avoid the delays that arise from Code disputes.

### **The Alternative Solution**

The Code includes an alternative compliance path that is intended to support innovation and flexibility in building design and construction: the alternative solution. It enables any aspect of building design or construction to achieve Code compliance by demonstrating to the building official that the proposed solution will perform as well as or better than a design or construction method that meets the applicable prescriptive requirements.

The Board is accountable to the Ministry of Attorney General but is independent of the Minister and Ministry in its decision-making capacity and in the management of the appeals before it. As such it operates at an arms-length from government in its adjudicative role. The Board's jurisdiction does not include the City of Vancouver, which has its own Code and appeal process.

## The Board

The Building Code Appeal Board team consists of members, a staff person, and assigned individuals from the Building and Safety Standards Branch who serve in the role of secretary.

The Board's team is formulated to ensure that it has the necessary administrative and operational strength, as well as the technical expertise and detailed knowledge of the building construction sector, to process and hear appeals.

## Members

Board members are appointed by the Minister after a merit-based process, including:

- one member designated as the chair,
- one member designated as the vice chair, and
- other members appointed after consultation with the chair.

Disputes about local government Code compliance decisions are frequently complex, and present conflicting evidence that Board members must use their technical skills, breadth and depth of experience and expertise, and industry knowledge to evaluate. Wisdom – the ability to contemplate, to collaborate, and to apply that knowledge and expertise with good judgement in the public interest – is an essential characteristic of Board members.

Members must have the ability to distill complex arguments down to sound, publishable decisions with a clear reason for the decision. Although Board decisions do not set legal precedents, industry participants and building officials will frequently search the Board’s online library of past decisions to seek guidance on their own Code issues. Members must therefore not only serve the immediate parties to a dispute, but must apply forethought and consideration as to how each Decision might be applied in future similar circumstances by users of the online library.

Board members are part-time appointees; they serve on an “as and when required” basis.

The Board currently has five members, including the chair and vice chair. The membership of the Board changed during the course of this fiscal year. Two consecutive membership lists provide the details:

<b>BCAB Membership April 2023 – August 2023</b>			
<b>Name</b>	<b>Position</b>	<b>Appointment</b>	<b>Expiry</b>
Frankie Victor	Acting Chair	April 6, 2023	Rescinded September 1, 2023
	Vice Chair	November 30, 2022	November 30, 2024
Doug Vance	Acting Vice Chair	April 6, 2023	Rescinded September 1, 2023
	Member	November 28, 2022	November 28, 2024
Edmond Lin	Member	May 1, 2019	May 1, 2023
		May 2, 2023	May 2, 2025
Calvin Wang	Member	May 1, 2019	May 1, 2023
		May 2, 2023	May 2, 2025

<b>BCAB Membership September 2023 – March 2024</b>			
<b>Name</b>	<b>Position</b>	<b>Appointment</b>	<b>Expiry</b>
Don Pedde	Chair	September 1, 2023	September 1, 2026
Frankie Victor	Vice Chair	November 30, 2022	November 30, 2024
Doug Vance	Member	November 28, 2022	November 28, 2024
Edmond Lin	Member	May 2, 2023	May 2, 2025
Calvin Wang	Member	May 2, 2023	May 2, 2025

The Chair did not make any appointments to the Board pursuant to section 6 of the *Administrative Tribunals Act* this fiscal year.

Biographies of the Members are provided in [Appendix A](#).

**Staff**

In the summer of 2023, the Tribunal and Agency Support Division identified a need and implemented the role of the Deputy Registrar. The Deputy Registrar is the singular staff person responsible for the day-to-day administration of the Board as well as two other Boards; the Safety Standards Appeal Board and the Surface Rights Board. For efficiency, the Deputy Registrar position centralizes the support functions for the three boards, and provides dedicated administrative, financial, and communications management to each of the three boards.

**Secretary**

The Building and Safety Standards Branch within the Ministry of Housing assists the Board by providing the services of senior individuals who act as secretary, providing technical and administrative support. This support includes:

- being a recording secretary at Board meetings,
- providing research support, including the provision of historical perspectives and insights on the development of specific Code requirements,
- providing and maintaining storage of records and archives,
- providing an intake portal for mail and email, including communications with appellants and local authorities, and
- managing the Board’s website [Building Code Appeal Board - Province of British Columbia \(gov.bc.ca\)](http://Building Code Appeal Board - Province of British Columbia (gov.bc.ca)).

The Board continues to acknowledge and appreciate the unwavering and important assistance and support provided to the Board by the leadership and staff at the Building and Safety Standards Branch.

## Statistics and Performance

Statistics on the volume of applications received by the Board, the number of Decisions reached, and the Subject Code in those Decisions are provided in the following table. The number of other dispositions is also indicated and, for comparison, similar statistics for the four previous fiscal years are provided.

### Volume, Subject, and Disposition of Applications

Volume and Subject of Applications to the Building Code Appeal Board Fiscal Year Comparison					
Fiscal Year	Number of Applications Received	Decisions <sup>1</sup> Reached	Subject Code <sup>2</sup>	Applications Cancelled <sup>3</sup>	Applications Withdrawn <sup>4</sup>
2023/2024	19	16	Building - 15 Plumbing - 1	3	1
2022/2023	22	19	Building - 18 Plumbing - 1	2	1
2021/2022	27	21	Building - 21 Plumbing - 0	5	1
2020/2021	15	12	Building - 11 Plumbing - 1	0	3
2019/2020	21	17	Building - 17 Plumbing - 0	1	3

**Notes to Table:**

<sup>1</sup> “Decision” means the Board’s ruling to confirm, vary, or reverse the local authority’s decision and includes the Board’s reasons for the ruling.

<sup>2</sup> Under the *Building Act*, the Board’s authority extends exclusively to disputes related to provincial “building regulations”. To date, appeals have related exclusively to Book 1 (General), referred to here as the “Building Code”, and Book 2 (Plumbing Systems), referred to here as the “Plumbing Code”. The two Books, in combination, officially form the British Columbia Building Code.

<sup>3</sup> “Cancelled” means the Board determined that:

- the appeal was not within the jurisdiction of the Board, or
- the appeal was made in bad faith or for an improper purpose or motive.

Accordingly, the Board notified the appellant and the local authority that the appeal was cancelled.

<sup>4</sup> “Withdrawn” means that the Board received notification from the appellant, prior to the Board’s hearing of that application, that the application was withdrawn by the appellant.



## Timeliness of Decisions

In informal interviews, appellants, prospective appellants, local authorities, and other interested parties consistently indicate that timeliness (or lack thereof) is the most important consideration, and sometimes, barrier, to participation in the appeals process.

Timeliness is critical in the construction industry where the cost of delays, such as those that might occur due to Code-compliance disputes, can be significant.

For that reason, “Timeliness of Decisions” is selected by the Board as the foremost and key performance indicator. Statistics regarding the number of days from application to decision are reported, in the table below, for the first time. These statistics form a benchmark from which future efforts to improve timeliness can be measured.

<b>Timeliness of Decisions by the Building Code Appeal Board</b> Applications received during Fiscal Year 2023/2024			
Application	Application Date	Date of Decision	Number of Days from Application to Decision
BCAB 1928	February 27/24	April 18/24	51 days
BCAB 1927	February 20/24	Cancelled	
BCAB 1926	January 13/24	February 15/24	34 days
BCAB 1925	January 16/24	February 15/24	31 days
BCAB 1924	November 17/23	December 21/23	35 days
BCAB 1923	November 17/23	Withdrawn	
BCAB 1922	September 28/23	October 19/23	22 days
BCAB 1921	August 23/23	September 28/23	37 days
BCAB 1920	June 7/23	October 19/23	134 days
BCAB 1919	September 7/23	Cancelled	
BCAB 1918	June 30/23	October 5/23	98 days
BCAB 1917	July 17/23	Cancelled	
BCAB 1916	July 19/23	October 5/23	79 days
BCAB 1915	September 6/23	October 5/24	30 days
BCAB 1914	June 20/23	September 28/24	101 days
BCAB 1913	June 20/23	September 28/24	101 days
BCAB 1912	July 19/23	August 24/23	37 days

BCAB 1911	June 28/23	July 20/23	23 days
BCAB 1910	April 3/23	May 23/23	51 days
<b>Average number of days between Application and Decision</b> <b>57.6 days</b>			

Decisions of Note

Under the *Building Act*, the Board is given authority to *confirm, vary, or reverse* a decision made by a local government building official (defined in the Act as a “local authority”) on the compliance of a building’s design or construction with the technical requirements of the Code.

BCAB Decision #1916 ([BCAB #1916 - Province of British Columbia \(gov.bc.ca\)](https://www.gov.bc.ca/bcdev/1312/info-decisions/1916)) is notable in that it was the first Decision in which the Board explicitly *varied* the decision of the local authority.

The appeal involved the design and construction of a single-family dwelling. During the project, the building’s owner and the local government building official differed on the correct interpretation of a Code requirement (see sidebar) related to fire and life safety.

Some of the Code’s requirements which limit the size and location of windows facing a property line are densely worded, inter-related with other requirements, and difficult to understand. In this case, the appellant contended that a bathroom window should be permitted in addition to a bedroom window on the property line side of the house. In contrast, the building official interpreted that the bedroom window was permitted, but the additional bathroom window was not.

The Board found that neither the bathroom nor the bedroom window was permitted on that side of the house.

<b>Code Explainer</b>
In the event of a significant fire within a building, adjacent buildings are at risk of catching fire due to the radiant heat and flame emitted by the burning building. In the early stages of the fire, the heat radiates primarily from the wall openings, including windows, of the burning building. Also in the early stages, window glass breaks, thereby emitting the flame front. To minimize these risks, the Code limits the size and location of windows in buildings when they are in close proximity to one another, or when they are in close proximity to property lines (which may lead to buildings on adjacent properties being in close proximity to one another).

The Board *varied* the decision of the local authority. By doing so, the Board provided for correct interpretation and application of Building Code requirements, thereby minimizing the fire and life safety hazard that would have been present had the appeal application not come forward. Further, by publishing the Decision on its website, the Board contributed to a proper understanding of the Code requirement for other Code users.

## Finances

The Board's budget for this fiscal period was \$35,000, an amount roughly in line with historical expenditures by the Board.

Given the costs associated with the addition of the Deputy Registrar position and with other transformation initiatives, it became abundantly apparent during the second quarter that the budget was insufficient to cover Board operations.

Near the beginning of the third quarter, the Board submitted a Budget Modification Request to the Tribunal and Agency Support Division and was granted access to contingency funds. Also, BCAB was granted a budget reallocation with funds drawn from budgets of other boards in the tribunal sector.

At fiscal year end, BCAB's expenditures were approximately \$7,000 below the (adjusted) budget.

**Full details are provided in the table on the next page.**

The operation and financial management of the Board meets the standards of the *Financial Administration Act*, RSBC 1996, c. 148.

The Board is in full compliance with Treasury Board Directive 1/20 and its recent successor 1/24.

Remuneration reports, including details on the classification of the Board and the compensation rates for Board members, are posted on the Board's website at [Building Code Appeal Board - Province of British Columbia \(gov.bc.ca\)](http://www.gov.bc.ca/buildingcodeappeal).

		Year-by-Year Comparison of Board Expenditures				
		Fiscal Year			Actuals	
Past Reporting Periods	2020/2021				\$27,814	
	2021/2022				\$41,383	
	2022/2023				\$38,825	
Current Reporting Period	2023/2024		Board Expenditures in this Fiscal Year			
			Expenditure Type	Budget + Contingency <sup>1</sup> + Reallocation <sup>2</sup>	Actuals	Variance
			Employee Salary	\$0	\$21,972.26	\$21,972.26
			Employee Benefits	\$0	\$5,580.96	\$5,580.96
			Board Member fees and expenses	\$35,000	\$44,030.29	\$9,030.29
			Information systems	\$0	\$434.08	\$434.08
			Office and business	\$0	\$417.21	\$417.21
			<b>Total Expenditures</b>	<b>\$35,000 + \$4,987 + \$39,500 = \$79,487</b>	<b>\$72,434.80</b>	<b>\$7,052.20</b> (under adjusted Budget)
			<b>Notes to Table:</b> <sup>1</sup> In October of 2023, BCAB submitted a Budget Modification Request to the Tribunal and Agency Support Division (TASD). Upon review, TASD provided BCAB with access to \$4,987 in Contingency funds from within the Tribunal Sector Budget.  <sup>2</sup> Also as part of the mid-year financial review, TASD provided BCAB with a budget reallocation of \$39,500 (drawn from the budgets of other Boards in the Tribunal Sector) to cover increased costs associated with the addition of the Deputy Registrar role and other BCAB transformation initiatives.			

## Looking Forward

The Board has plans and intentions to continue with the work of transformation that was started in the summer of 2023. In future versions of this document, we will report on our efforts to:

- decrease operational reliance on the Building and Safety Standards Branch,
- onboard communications through creation of a Board-dedicated email address, a mailing address, and a phone number,
- create a dedicated intake portal for appeal applications,
- adjust Board operations to improve timeliness,
- create appropriate separation between the Board's records and those of the Building and Safety Standards Branch,
- initiate reporting required by the *Public Interest Disclosure Act*,
- continue reporting required by the *Administrative Tribunals Act*,
- reappoint, or recruit replacements for, the Board members with expiring terms,
- participate in the administrative tribunals sector, including attendance at sector-focussed training sessions,
- establish and publish "Rules of Practice and Procedure",
- prepare and publish a new Application Form, matched to the requirements of the new "Rules of Practice and Procedure",
- develop and implement a Case Management System,
- standardize communications with appellants and local authorities,
- undertake outreach to key interested parties, prospective appellants, and responsive local authorities, building industry awareness of the availability and benefits of the dispute-resolution mechanism provided by the appeal process and the Board,
- initiate communications (email) with interested parties, keeping them apprised of any changes in Board operations,
- onboard responsibility for maintenance and updates to the Board's website.

We know that Building Code compliance disputes create delays and bottlenecks in building construction, inhibiting productivity. Providing timely settlement of Code disputes, along with a readily available library of prior decisions on a wide variety of Code interpretation and application matters, enables more efficient building design and construction, lowers industry costs, and improves affordability.

Therefore, in addition to these initiatives, the Board will report on our efforts to actively identify, and our work to reduce, barriers to participation in the appeal process. The objective is to provide accessible, timely, efficient, and effective access to justice for British Columbians.

## Appendix A: Our Members

### **Don Pedde, Chair**

Don Pedde is currently a consultant in the areas of building codes, zoning, and development. This follows a thirty-seven year career in the building construction and safety industry. Previously Mr. Pedde was a Senior Codes Administrator with the Building and Safety Standards Branch of the Ministry of Housing. He has been active in his community as a Ministerial appointee to the Executive Committee and Complaint's Committee of the Building Officials' Association of British Columbia. Mr. Pedde is a lifelong learner and holds a Local Government Administration Certificate from Capilano University and a Carpentry Journeyman from Camosun College. He previously held the Building Code Qualified and Registered Building Official designations from the Building Officials' Association of British Columbia.

### **Frankie Victor, Vice Chair**

Frankie Victor is a Professional Licensee, Engineering (EGBC) specialising in fire protection and building code consulting and has been with GHLC Consultants Ltd since 2002. Ms. Victor is actively involved with the Building Officials Association of BC as a Presenter at educational seminars and conferences and served as Secretary to the Executive Committee. Ms. Victor holds a Diploma of Technology in Building (Honours) from the British Columbia Institute of Technology.

### **Robert (Douglas) Vance**

Douglas Vance has been with the City of Coquitlam since 1992, working as Manager, Building Permits Inspections since 2010 and as a Plumbing and Gas Inspector before then. In his community, Doug serves as a Building Officials' Association of British Columbia (BOABC) representative for the Building Code Interpretation Committee and as Vice President, Plumbing, on the BOABC Executive Committee. Mr. Vance completed his apprenticeship with the Pacific Vocational Institute.

### **Edmond Lin**

Edmond Lin has over thirty years of public and private sector experience in fire protection research, testing, Code consulting and building permit administration. He holds a Bachelor of Applied Science and a Masters in Engineering for Fire Protection from the University of British Columbia. He is a registered professional engineer in BC and is also a Certified Professional. He is the Chief Building Official for the University of British Columbia. Active in his community, Mr. Lin was a past president of a community Little League and past treasurer for the U18 Boys team in the Richmond Air Attack Volleyball Club.

## **Calvin Wang**

Calvin Wang is currently Building Code Specialist for the City of Vancouver and Assistant Instructor at the British Columbia Institute of Technology. Previously he was District Building Inspector for the City of Vancouver, Plan Checker and Building Inspector for the District of North Vancouver and Architectural Designer at Paul Leong Architect Inc. Active in his community, Mr. Wang is a licensed architect and a Certified Professional. He is currently a Member of the Certified Professional Exam Committee. He holds a Bachelor of Architecture from Harbin University of Architecture and Civil Engineering in China and a Diploma of Building Technology from the British Columbia Institute of Technology.