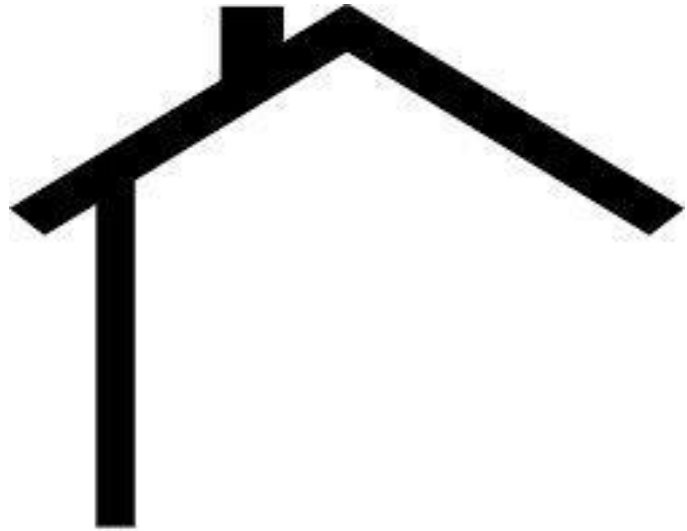




Safety Standards
Appeal Board –
Annual Report April
1, 2019 to March 31,
2020

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Message from the Chair

I am pleased to submit the Annual Report for the 2019/20 fiscal year. During this fiscal year the Board returned to a full complement of members with the appointment of Maureen Baird Q.C. as Vice Chair. Appeal volumes were down slightly from past years, due in part to the COVID-19 pandemic which began to affect Board operations in the closing months of the fiscal year.

That said, the Board has adapted seamlessly to the “new normal” and the day-to-day business of the Board is well positioned to continue to serve the citizens of British Columbia as we move into the next fiscal year.

I would like to take this opportunity to thank the Board’s Members and Registrar for their hard work and dedication over the past year and for their continued commitment to the work of the Board.

Jeffrey A. Hand
Chair

Introduction

This report outlines the activities of the Safety Standards Appeal Board from April 1, 2019 to March 31, 2020, its expectations for the coming year, and its ongoing administrative and legislative commitments.

Background

The Safety Standards Appeal Board is an adjudicative tribunal established under section 43 of the *Safety Standards Act* and is responsible for administering provisions of the *Safety Standards Act*, the *Homeowner Protection Act* and the *Building Act*. Currently, the Board hears appeals of administrative decisions made by Technical Safety BC (formerly the British Columbia Safety Authority) and BC Housing – Licensing and Consumer Services (formerly the Homeowner Protection Office) as well as appeals under part 5 of the *Building Act* relating to the issuance of administrative penalties issued under the *Building Act*.

The Board's purpose is to resolve appeals from decisions made under the *Safety Standards Act*, the *Homeowner Protection Act*, and Part 5 of the *Building Act* to determine if the decisions were fairly made in accordance with the provisions of the legislation and the principles of natural justice.

The Board's objective is to carry out its work in a just, consistent, timely and cost-efficient manner.

When hearing appeals under the *Safety Standards Act* the Board must at all times consider the maintenance and enhancement of public safety as set out in section 52(1) of the Act. When hearing appeals under the *Homeowner Protection Act* the Board must at all times consider the relevant purposes of the Act, which are as follows:

- a. to strengthen consumer protection for buyers of new homes,
- b. to improve the quality of residential construction, and
- c. to support research and education respecting residential construction in British Columbia.

When hearing appeals under the *Building Act* the Board's role is to determine whether the Registrar designated in the Act has acted appropriately in leveling the administrative penalty in question.

The Board operates at arms-length from government in its adjudicative role and independently of the regulatory authorities responsible for administrative decisions which may be appealed to the Board.

The Board recognizes the principle that decisions of administrative tribunals must be made, and must be seen to be made, independently and impartially. Independence requires that Board members are able to reach decisions in the matters before them based solely upon the merits of the appeal and the applicable law. Impartiality means that the Board acts without bias, either actual or perceived.

The principles of impartiality and independence exist within a broader framework of public accountability. During the 2019/20 fiscal year, the Board, through the Chair, reported directly to and was accountable to the Attorney General for effective Board management, operations and service

delivery. The Board’s Chair also maintained a dialogue with the Ministry of Municipal Affairs and Housing for policy and legislative initiatives as appropriate from time to time.

The Board

Membership

The Safety Standards Appeal Board functions with a part-time Chair and several part-time members. The Chair, Vice-Chair and most members are appointed by the Ministry of the Attorney General. This fiscal year Maureen Baird Q.C. was appointed to fill the position of Vice-Chair. Terrance Bergen and David Martin were both reappointed to the Board for 2- year terms. From time to time the Chair may appoint a member to the Board for a short six-month period pursuant to section 6 of the *Administrative Tribunals Act*, SBC 2004, c. 45. The Board did not need to make any such appointment during the 2019/20 fiscal year.

The following Board members served during the fiscal 2019/2020 year:

Name	Position	Start Date for Original Appointment	Start Date for Current Appointment	Expiry of Current Appointment
Jeffrey Hand	Chair	March 5, 2014	November 20, 2018	November 20, 2021
Maureen Baird	Vice-Chair	May 15, 2019	May 15, 2019	May 15, 2021
Ted Simmons	Member	May 1, 2004	December 31, 2017	December 31, 2021
Tim Haaf	Member	May 1, 2004	December 31, 2017	December 31, 2021
Terrance (Terry) D. Bergen	Member	March 5, 2014	March 5, 2020	March 05, 2022
David Martin	Member	March 1, 2018	March 1, 2020	March 1, 2022

Biographical information on the current Board Members is set out in Appendix 1.

Board Staff

The Board has one full-time employee who fulfills the role of Registrar for the Board. The Registrar also acts as an executive and administrative assistant for the Chair and other board members as needed.

Report on Performance

Appeal Activity

The following table sets out the status of appeals filed during the current and preceding three reporting periods:

Activity	2019/2020	2018/2019	2017/2018	2016/17	2015/16
New appeals filed	23	26	29	25	23
Carry over from earlier years	6	7	12	8	13
Total appeal workload	29	33	41	33	36
Appeals completed during the year	28	28	32	21	26
Number of appeals resolved without a hearing	21	15	18	11	17
Appeals concluded by written submissions	9	13	14	9	9
Appeals concluded by oral hearing	0	0	0	1	0
Appeals concluded with oral teleconference component	22	0	0	0	1
Average total days (start to finish)	71	100	114	160	138
Appeals carried over to next reporting period	1	5	9	13	10
Number of appeals resolved by one member panel	27	10	11	5	7
Number of appeals resolved by three person panel	0	1	3	4	2
Number of decisions subject to Judicial Review	2	1	0	0	0

As illustrated in the above table, the Board received 23 new appeals, which is relatively consistent with the volume received over the past five years, although it is down slightly from the high of 29 appeals filed in 2017/2018. The time from filing to disposition was reduced from recent years. There was a significant reduction in time from filing to disposition compared to previous years. The average time for completion is now only 71 days. This is commendable as the Board has seen an increase in complexity of appeals, which require more documentary evidence to be reviewed before a decision can be rendered

by the Board and often require interlocutory applications regarding jurisdiction or document disclosure. These more complex cases also often require more time in decision writing.

Also of significance, is the resolution of 21 cases, out of a total of 28 appeals for the year, that were completed without the need for a hearing. The Board credits effective Appeal Management and the willingness of parties to seek agreement, as the main contributor to this encouraging statistic.

As in past years, the Board continues to use confidential settlement conferences to assist the parties in reaching consensual resolution where appropriate.

Analysis of Appeals

Volume

The volume of new appeals this year has been consistent with those filed in the previous five years, although total cases filed is down slightly from the past year. The Board understands that Technical Safety BC has implemented procedures in its enforcement efforts to encourage early agreement and compliance with the parties they regulate. There has been a move to apply smaller daily monetary penalties rather than larger lump sum penalties for regulatory infractions in an effort to encourage early compliance. The Board would caution however, that this approach potentially creates the risk that affected parties may not pursue the Appeal process, even if they disagree with the penalty, out of concern that daily penalties will continue to accumulate while their appeal is processed and heard.

In addition, the COVID-19 pandemic towards the end of the fiscal year, resulted in far fewer physical inspections of regulated work being performed and this would have had a corresponding impact on enforcement activity and appeal volumes. The Board understands that Technical Safety BC is placing more focus on enforcement for infractions that raise significant safety concerns, at least in the short term while COVID-19 persists.

The Board continued to see a steady stream of appeals from examination results for the qualification of persons to perform regulated work.

Appeals form decisions of the Registrar of BC Housing were less than in previous years. It is not clear why this is so.

Type

The majority of appeals filed with the Board this past year were brought pursuant to the *Safety Standards Act*. The balance were filed pursuant to the *Homeowner Protection Act*. The Board did not hear any appeals under Part 5 of the *Building Act*.

The 24 appeals filed under the *Safety Standards Act* dealt with a number of issues: Most of these appeals concerned scoring on qualification exams administered by the Safety Manager. This represents a significant increase over past years. Conversely appeals of monetary penalties issued by the Safety manager decreased significantly.

There were five appeals under the *Homeowner Protection Act*. Three of these concerned the refusal to grant a License to a Residential Builder. Two appeals concerned Compliance Orders that required builders to obtain home warranty insurance.

Quality of Resolutions

It is difficult to measure the quality of the resolutions of the issues in appeals filed with the Board. It is assumed that when parties reach a settlement prior to adjudication that both parties are mutually satisfied with the resolution as settlement is only reached when each party consents to the final resolution of the dispute. With respect to adjudicated resolutions, there were two judicial reviews taken from Board decisions during the year. The Supreme Court of British Columbia is expected to hear these requests for review some time during the 2020/21 fiscal year.

There were no formal complaints filed with any other oversight body such as the Ombudsperson or Privacy Commissioner.

Decisions of Note

A Builder v BC Housing

This appeal brought pursuant to the *Homeowner Protection Act* concerned the requirements under the Act for the placement and maintenance of Homeowner Insurance by licensed residential builders. A dispute over construction costs between the homeowner and the builder arose during construction of a new home and when their differences could not be resolved the homeowner chose to terminate the builder's services at a point where the home was only partially constructed. The Act purported to require builders to maintain insurance if they had managed all or substantially all of the construction. The Builder took the position they had not completed sufficient work at the home and they cancelled the homeowner insurance policy that had been arranged at the outset of the project. BC Housing issued a Compliance Order requiring the Builder to re-enroll the home in a policy of insurance. On appeal the Board held that the Builder had not managed all or substantially all of the construction and accordingly the requirement to insure the home found in the Act had not been triggered. BC Housing has sought a judicial review of this decision. The Supreme Court of British Columbia is expected to hear the review sometime during 2020/21 and hopefully will bring some guidance to bear on the provisions of the Act relating to insurance which are, in the Board's view, less than clear.

Simply Green vs TSBC

This appeal concerned a monetary penalty in the amount of \$45,000, the largest amount to date to come before the Board. The appellant was a corporate entity that had conducted a large scale door-to-door sales campaign offering the sale and installation of hot water tanks and furnaces to consumers. In several instances their work was performed without the necessary permits and the company received a

compliance order requiring them to identify all work performed over a two-year period and to obtain the necessary permits. When they failed to do so a monetary penalty of \$10,000 was imposed.

A year later a second monetary penalty of \$45,000 was levied because there were a handful of properties that still had not obtained permits. The company appealed the penalty and argued it was excessive given they had taken steps to comply with nearly all of the outstanding permits. The Board allowed the appeal and reduced the penalty to \$8,000, after finding that TSBC had not submitted sufficient evidence to justify a penalty in the amount levied, nor was the amount proportional to the facts that had given rise to the previous penalty.

TSBC has filed for a judicial review of the decision, saying that it ought to have been given the opportunity to make additional arguments and file additional evidence after the appeal submissions closed and prior to the Board making its decision. At issue in the judicial review is to what extent should the Board allow parties to file additional evidence and submissions after the close of the appeal and whether this raises issues of procedural unfairness.

A decision on this important aspect of administrative law is expected from the BC Supreme Court sometime in late 2020.

Settled Appeals

In addition to the decisions of note set out above, the Board also dealt with several appeals of note where hearings were not required as the issues under appeal were disposed of through the Board's use of alternative dispute resolution processes. While the outcomes of such settled disputes are often confidential according to the agreed upon final terms of settlement, it is worth noting that the Board resolved several complex appeals via case management. The resolution of complex matters through the Board's use of mandatory settlement discussions in certain circumstances illustrates that even complex and highly entrenched positions can be resolved outside of the formal hearing process, saving not only time and resources but also ensuring public safety and compliance with the applicable legislation

Board Rules and Policies

The Board continually reviews and updates its Rules of Practice and Procedure and its Guidelines. The hope is that the revisions to the Rules of Practice and Procedure will facilitate increased settlement rates and shortened time frames for the rendering of Board decisions when appeals do not settle and proceed to hearing and facilitate increased access to justice by making the Board more user-friendly.

During the fiscal year the Board clarified its Rules and Procedures regarding the circumstances in which the Board might award costs to a party.

Board Appointments and Renewal Processes

At the conclusion of fiscal year 2019/20, the Board had a total of five members, including the Chair.

On May 15, 2019, Maureen Baird, Q.C. was appointed by Order in Council to the position of Vice-Chair, following a merit based process to solicit interest from qualified individuals.

On March 1, 2020, existing Board members, Terrance Bergen and David Martin were re-appointed to the Board for terms ending in 2022.

The Chair did not make any appointments to the Board pursuant to section 6 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 this fiscal year.

Board Finances

Expenditures for the 2019/2020 fiscal year totalled \$145,924. A detailed breakdown of this sum is set out below:

Expenses	Budgeted	Actual	Annual Variance Amount	
Employee Salaries	55,000	54799	(201.00)	
Employee Benefits	14,000.00	13,927	(73.00)	
Member Remuneration	70,500	48,989	(21,511)	
Member Travel Expenses	0	3155.00	(383.00)	
Employee Travel Expenses	1000	617.00	(532.00)	
Information Systems	1,500	1202.00	(298.00)	
Office and Business Expenses	2000.00	2168	168	
Prof. services & regulatory	20,000	24,223	4223.00	
TOTAL:	164,000	145,924	(18,076)	

Board expenditures were under budget. This was due to a slight decrease in appeal volume and decreased need for hearings, as well as the impacts of COVID-19

Making predictions in the current pandemic environment is difficult, but it is likely that the Board will be able to operate on a similar budget for fiscal year 2020/21.

Statutory Reporting and Compliance

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 2/11 and its successor 1/17.

The Board received no complaints about its operations or the conduct of its members or staff.

The Chair will continue to monitor all performance indicators and will monitor any and all service complaints and will report immediately to the Minister if there are any signs that the Board's services are being negatively affected.

Challenges and Opportunities for 2020/21

Case Management System

The Board continues to make due without a proper case management system. The current case management system consists of a secure excel spreadsheet that is regularly updated and cross-referenced with the Registrar and Chair's notes. Budgetary constraints prevent investing in something more suitable for the task at hand. Having a case management system would allow the Board to more easily and accurately manage appeals as well as the performance indicators required for reporting on the status and efficiency of the Board.

Website

The Board continues to maintain its own website on the gov.bc.ca platform at www.gov.bc.ca/safetystandardsappealboard. As previously reported, stakeholders have noted that the decisions of the Board posted on the website are not currently searchable. The Board plans to implement search functionality with respect to its published decisions.

Tribunal Transformation

The Board will continue to be involved in the Tribunal Transformation project as set out above.

Budget

The Chair will continue to monitor indicators and will report monthly to the appropriate ministry to ensure that funds are appropriately allocated, and the Board is able to continue optimal operations.

APPENDIX 1

Jeff Hand – Chair

Jeffrey Hand has practiced law in British Columbia since 1990, acting as counsel in claims involving commercial contracts, construction, design liability, insurance, bodily injury, environmental, workplace, and land development disputes. He has been a mediator and arbitrator since 2006 and holds Chartered Mediator and Chartered Arbitrator designations from the ADR Institute of Canada and the Chartered Arbitrators Institute, London. Since 2011 he has consistently been selected as a leading Commercial Mediator in both Canada and Internationally by Who's Who Legal.

As a mediator he has mediated over 700 disputes involving construction, insurance, bodily injury, motor vehicle, workplace discrimination, wrongful dismissal, motor carrier, and commercial contract claims. He sits on a number of Administrative Tribunals, in addition to the Safety Standards Appeal Board; the Environmental Appeal Board, the Forest Appeals Commission, and the Oil and Gas Appeal Tribunal. Mr. Hand has been an Adjunct Professor at the University of British Columbia Law School since 1995 where he teaches construction law.

Maureen Elizabeth Baird - Vice Chair

Maureen Baird, Q.C. is Senior Counsel at Fraser Litigation Group and has practiced law in British Columbia for over 30 years. Ms. Baird's expertise involves advising regulatory and administrative tribunals on governance and hearing issues. Active in her community, she is currently serving on a number of tribunals including the Environmental Appeal Board and the Civil Resolution Tribunal. Ms. Baird is Legal Member and Chair of the Mental Health Review Board. She is a member of the Discipline Committees of the College of Physicians and Surgeons of British Columbia and the College of Veterinary Surgeons of British Columbia. Ms. Baird also is Arbitration Committees of the Federal Pipeline Arbitration Secretariat. She is an Accredited as a Family Law Mediator from the Law Society of British Columbia. Ms. Baird also holds a Certificate in Mediation from Harvard University, Bachelor of Laws from the University of Toronto, and a Bachelor of Commerce from the University of Toronto.

Terry Bergen - Member

Terry Bergen is a Managing Principal in the Victoria office of Read Jones Christoffersen Ltd., a national engineering firm. His work is focused on the sustainable design, construction and renewal or rehabilitation of building enclosures and structures. He is a certified construction contract administrator and has been actively involved in the delivery of construction projects for over two decades. Mr. Bergen is a member of and participant in several industry associations and is an avid supporter of trades and technical education programs, presenting as guest lecturer for construction

and contract administration topics. He is a member of the ASTM Committee for Standard E60 – Sustainability, and he also sits on the Board of Directors for Construction Specifications Canada.

Tim Haaf - Member

Mr. Haaf is Plant Manager of Prince Rupert Generating Station, as well as Thermal Operations Project Manager with BC Hydro in its' Thermal Generation Area. He is formerly the Operations Manager & Chief Power Engineer of the Burrard Generating Station in Port Moody. Prior to this position, Mr. Haaf has held positions as Chief Power Engineer at both Norampac Papermill, in Burnaby, and Imperial Oil Refinery, in Norman Wells. He is a member of the Institute of Power Engineers, currently serving as Treasurer of the Vancouver Branch, and has served as Vice President and Social Director for the Institute.

Ted Simmons - Member

Mr. Simmons is chief instructor of the Electrical Apprenticeship Program at BCIT. Prior to joining BCIT in 1989, he worked in the electrical field for many years as an electrician, foreman, project supervisor and from 1986 to 1989 as a provincial electrical inspector. Mr. Simmons is a member of the CSA Part I Regulatory Committee for the Canadian Electrical Code and is the current chair of Section 84 Cathodic Protection and current vice chair of Section 50 Solar Photovoltaic Systems. Mr. Simmons is also a long-serving member of the Electrical Wiring and Equipment Standards Committee, a technical subcommittee of the Electrical Safety Advisory Committee.

David Martin - Member

Mr. Martin has practiced law in British Columbia since 1975, and since 1998 in the Yukon Territory. He practices Civil Litigation with an emphasis on Administrative and Public Law. He has appeared for clients at all levels of Court, including the Supreme Court of Canada. He has been recognized by Best Lawyers of Canada in Administrative, Public and Health Law.