



Safety Standards
Appeal Board –
Annual Report April
1, 2021 to March 31,
2022

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Message from the Chair

I am pleased to submit the Annual Report for the 2021/22 fiscal year. During this fiscal year the Board continued to deal with the impact of the COVID-19 pandemic, both in terms of day-to-day operations at the Board as well as its impact on appeal volumes and processes.

The Board transitioned fully to “virtual” operations, with all appeal intake and administration being handled remotely. Appeal Management conferences, Settlement Conferences, and Appeal hearings were successfully completely using MS Teams and/or telephone conferences.

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, 2021 to March 31, 2022, 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 2021/22 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

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 re-appointed as Vice Chair for a term ending May 15, 2024. In addition, Ted Simmons and Tim Haaf were both re-appointed to the Board for terms ending December 31, 2023.

The following Board members served during the fiscal 2021/2022 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, 2021	November 20, 2024
Maureen Baird	Vice-Chair	May 15, 2019	May 15, 2021	May 15, 2024
Ted Simmons	Member	May 1, 2004	December 31, 2021	December 31, 2024
Tim Haaf	Member	May 1, 2004	December 31, 2021	December 31, 2024
Terrance (Terry) D. Bergen	Member	March 5, 2014	March 5, 2020	March 05, 2023
David Martin	Member	March 1, 2018	March 1, 2020	March 1, 2023

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 four reporting periods:

Activity	2021/2022	2020/2021	2019/2020	2018/19	2017/18
New appeals filed	7	14	23	26	29
Carry over from earlier years	3	0	6	7	12
Total appeal workload	10	14	29	33	41
Appeals completed during the year	8	11	28	28	32
Number of appeals resolved without a hearing	2	3	21	15	18
Appeals concluded by written submissions	6	13	14	9	9
Appeals concluded by oral hearing	0	9	0	1	0
Appeals concluded with oral teleconference component	0	1	22	0	0
Average total days (start to finish)	74	85	71	100	114
Appeals carried over to next reporting period	2	3	1	5	9
Number of appeals resolved by one member panel	5	8	27	10	11
Number of appeals resolved by three-person panel	1	1	0	1	3
Number of decisions subject to Judicial Review	0	3	2	1	0

As illustrated in the above table, the Board received 7 new appeals, which is down significantly from previous years. The time from filing to disposition was 74 days which is consistent with the time required to complete appeals in the past three years. This is commendable as the Board has seen an increased 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.

There were two appeals resolved without the need for a hearing. The Board continues to make effective use of the Appeal Management Process and Settlement Conferences as methods of encouraging parties to reach agreement on their disputes without the need for the Board to render a decision.

Analysis of Appeals

Volume

The volume of new appeals this year is down significantly from the average over the past 5 years. The impact of COVID-19 is believed to have impacted, and continues to impact, the extent to which Technical Safety BC and BC Housing conduct their enforcement measures. It is likely that reduced enforcement activity will translate into fewer appeals since appeals generally arise from enforcement steps.

The Board understands that both Technical BC and BC Housing are seeking to improve dialogue between their staff and affected parties so as to lessen the likelihood of disputes which could give rise to appeals.

It remains to be seen when, and to what extent, appeal volumes will return to pre-pandemic levels as COVID protocols are gradually lifted.

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 6 appeals filed under the *Safety Standards Act* dealt with a variety of issues: These include monetary penalties levied by the Safety manager for infractions under the Safety Standards Act, the circumstances under which an individual can write the examination to qualify for a Field Safety Representative, alleged infractions under the Canadian Electrical Code, and hazard notifications relating to regulated gas installations.

The Board heard one appeal from BC Housing concerning the Board's jurisdiction to review a decision relating to building permit.

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. There were no judicial reviews taken from Board decisions during the year.

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

Decisions of Note

The Board rendered three decisions this past year on appeals that raised issues that had not previously been determined that the Board.

BCSSAB 48-2021 Anthony Wright v. Technical Safety BC

An electrical contractor was engaged by a homeowner to reconnect the electrical service to a rural property that had been damaged in a windstorm. Service to the property was conveyed from the power grid to the home via a service line supported by electrical poles located on the property. A service box was installed by the contractor on one of those power poles from which underground service was then brought to the home. These power poles had been installed many decades ago, although the historical data was less than complete.

The Canadian Electrical Code requires contractors to obtain the permission from a utility authority before attaching any consumer owned equipment to a power pole that is owned by the utility or is maintained by the utility. In this instance Fortis BC objected to the use of their pole to support the service box installed by the contractor and TSBC in turn issued a Certificate of Inspection that refused to grant the contractor the right to energize the equipment.

The contractor filed an appeal seeking to have the Certificate of Inspection set aside and asserting that the power pole in issue was privately owned.

The Board had to consider records provided by Fortis BC concerning their maintenance and use of the pole in question as well as the provisions of the Fortis BC Electrical Tarriff, which deemed the utility to have ownership of any poles it maintained. The Board found that the contractor was required to obtain permission to install consumer owned equipment on the Fortis BC pole and that without that approval, the Certificate of Inspection was properly issued.

BCSSAB 49-2021-50-2022 Savina Huff v. Technical Safety BC

Two appeals were brought by a homeowner who had hired contractors to perform regulated gas work at the home. The first contractor was terminated, and work was completed by a replacement contractor. These appeals asked the Board to “re-open” installation permits that concerned work that had been inspected, approved, and then closed. The appeals also asked that once re-opened, that the Board direct that the permits be amended to note safety hazards. Lastly, the appeals raised concerns about the conduct of Safety Officers and asked the Board to find the Safety Officers had contravened the Act.

These complex appeals contained a written record that extended for some two years. The appeals required the Board to consider the provisions of the *Safety Standards Act* as it related to appealable decisions and the jurisdiction of the Board to issue the requested remedies.

The Board determined that its jurisdiction in hearing appeals was to confirm, vary, or set aside certain enumerated decisions of the Safety Manager or Safety Officers. Where no ‘decision’ had been made on

one of those enumerated types of decisions, there was no jurisdiction bestowed on the Board to hear an appeal. The Board held that not every action taken by the regulator constitutes an appealable “decision”.

The Board also determined that appeals concerning the issuance of permits could only be brought by the person who obtained the permit. Third parties who did not take out a permit cannot bring appeals asking that those permits be altered.

Lastly, the Board determined that it did not have a general oversight role for which the public could bring complaints concerning the service they received from Technical Safety BC. Its jurisdiction was confined to deciding appeals from decisions made on certain enumerated issues.

Board Rules and Policies

The Board continually reviews and updates its Rules of Practice and Procedure and its Guidelines. In this fiscal year the Board updated its Rules and Forms to be consistent with the provisions of the *Safety Standards Act*, *Homeowner Protection Act*, and the *Building Act*.

Board Appointments and Renewal Processes

At the conclusion of fiscal year 2021/22, the Board had a total of six members, including the Chair.

On May 15, 2021, Maureen Baird, Q.C. was re-appointed by Order in Council to the position of Vice-Chair for a three-year term.

On March 1, 2020, existing Board members, Timothy Haaf and Ted Simmons were re-appointed to the Board for terms ending December 31, 2024.

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 2021/2022 fiscal year totalled \$145,924. A detailed breakdown of this sum is set out below:

Expenses	Budgeted	Actual	Annual Variance Amount	
Employee Salaries	60,000	62,751.06	(2751.06)	
Employee Benefits	15,000	15,938.26	(938.26)	
Member Remuneration	65,000	58,437	6562.00	
Member Travel Expenses	0	0	0	

Employee Travel Expenses	1000	0	1000	
Information Systems	1,500	21.60	1478.40	
Office and Business Expenses	2000.00	2168	(168.00)	
Prof. services & regulatory	20,000	13061.65	6938.35	
TOTAL:	164,000	151955.62	12044.38	

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

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 1/17 and its successor 1/20.

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 operate 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 800 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.

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.