

Safety Standards
Appeal Board –
Annual Report April 1,
2015 to March 31,
2016

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Message from the Chair

I am pleased to submit the Annual Report for the 2015/16 fiscal year. The 2015/16 fiscal year has been a year of growth for the Board. The Board's case load continues to increase in complexity and volume.

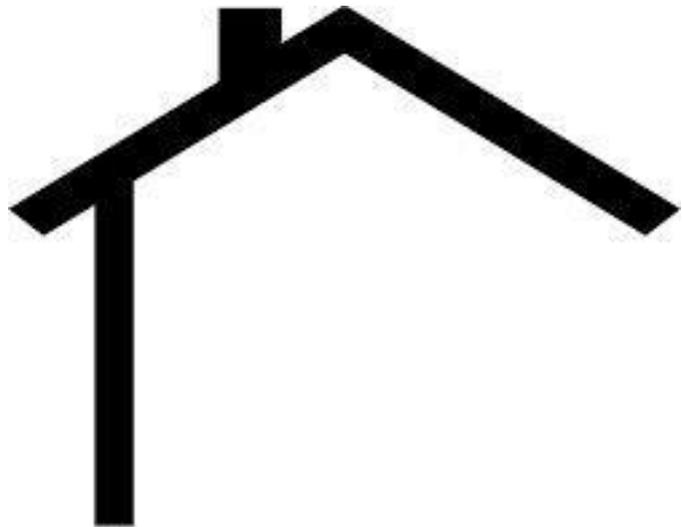
In addition to managing a steady case load of appeals, the Board launched its new website on the gov.bc.ca platform and took further steps to update its Rules of Practice and Procedure and formalize the Board's many unwritten policies regarding the day to day practical realities of running the Board.

The Board handled its highest volume of appeals this fiscal year with 36 appeals being processed by the Board. This volume is a significant increase for the Board as only 30 appeals were processed last fiscal year. In addition to the increase in volume of appeals before the Board, the appeals filed with the Board have increased in complexity.

Membership of the Board experienced changes during the 2015/16 fiscal year. Mr. Marc Dixon was appointed as a member of the Board on May 31, 2015. The 2015/16 fiscal year also saw the creation of a Roster of Technical Experts for the Board's chair to draw upon when board members with specific technical expertise are required on a limited term.

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.

Emily C. Drown
Chair



Introduction

This report outlines the activities of the Safety Standards Appeal Board from April 1, 2015 to March 31, 2016, 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* and the *Homeowner Protection Act*. Currently, the Board hears appeals of administrative decisions made by the British Columbia Safety Authority and the Homeowner Protection Office. The Board will also hear appeals under part 5 of the *Building Act* once the transition period thereunder expires.

The Board's purpose is to resolve appeals from decisions made under the *Safety Standards Act* and the *Homeowner Protection 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.

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. Support to meet the financial and administrative requirements of the Board is provided by the Ministry of Natural Gas Development and Minister Responsible for Housing. The Board, through the Chair, reports directly to and is accountable to the Minister for effective Board management, operations and service delivery.

In addition to its adjudicative function, the Chair of the Board from time to time brings issues and concerns that may assist the Minister in determining public policy direction to the attention of the Minister.

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 Minister of Natural Gas Development and the Minister Responsible for Housing. 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, which was done on February 16, 2015 with the appointment of Martin Vine.

The following Board members served during the fiscal 2015/16 year:

Name	Position	Start Date for Original Appointment	Start Date for Current Appointment	Expiry of Current Appointment
Emily C. Drown	Chair	May 15, 2008	December 31, 2013	December 31, 2017
Jeffrey A. Hand	Vice-Chair	March 5, 2014	November 28, 2014	March 5, 2017
Ted Simmons	Member	May 1, 2004	December 31, 2013	December 31, 2017
Tim Haaf	Member	May 1, 2004	December 31, 2013	December 31, 2017
Terrance (Terry) D. Bergen	Member	March 5, 2014	March 5, 2014	March 31, 2017
Marc Dixon	Member	May 31, 2015	May 31, 2015	May 31, 2017
D. Martin Vine	Member	February 16, 2016	February 16, 2016	August 16, 2016

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

Board Staff

The Ministry of Natural Gas Development and Minister Responsible for Housing currently provides the Board with 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	2015/16	2014/15	2013/14	2012/13
New appeals filed	23	20	24	15
Carry over from earlier years	13	10	1	3
Total appeal workload	36	30	28	18
Appeals completed during the year	26	17	24	10
Number of appeals resolved without a hearing	17	9	12	9
Appeals concluded by written submissions	9	8	12	5
Appeals concluded by oral hearing	0	0	0	0
Appeals concluded with oral teleconference component	1	1	Not available	Not available
Average total days (start to finish)	138	126	141	165
Appeals carried over to next reporting period	10	13	3	7
Number of appeals resolved by one member panel	7	8	7	3
Number of appeals resolved by three person panel	2	3	5	3
Number of decisions subject to Judicial Review	0	0	0	0

As illustrated in the above table, the Board experienced its busiest year yet. While the time from filing to disposition was somewhat higher than last year, it was still reduced from previous years and can be explained by the number of settled cases that did not require a hearing of any sort before the tribunal. In the regulatory framework, settlement of disputes often requires lengthy discussions between the parties and other parties not involved with the appeal directly. This can prolong settlement discussions, but is to be encouraged as it brings regulatory compliance.

Early Dispute Resolution

Similar to last year, approximately half of all appeals resolved during the year were resolved through the use of early dispute resolution. In this regard, the Board utilizes a variety of different early dispute resolution mechanisms including formal settlement conferences with a member mediating the dispute either in person or via teleconference and facilitated discussions regarding realistic appeal outcomes at initial appeal management conferences.

Given the public safety and consumer protection mandate of the Board, resolution of appeals through the use of early dispute resolution mechanisms is preferred. Where appeals before the Board stem from issues of legislative non-compliance, a mutually agreeable resolution to an appeal assures compliance with the safety or consumer protection provisions at issue in the appeal. When appeals before the Board stem from the issuance of monetary penalties then early dispute resolution outcomes not only help assure regulatory compliance but also help to avoid ongoing collection issues for the regulatory authorities appearing before the Board.

Analysis of Appeals

Volume

The volume of new appeals remained similar to that of last year. However, the volume of new appeals filed in the last three fiscal years has markedly increased over the number of appeals filed in previous years. This trend is expected to continue due to the increased vigilance of regulators, the increased use of monetary and administrative penalties, and the growing awareness of regulated persons concerning the existence of the Board and their appeal rights.

While the volume of new appeals remained similar to that of last year, the Board saw a large increase in the number of appeals processed during the fiscal year as many appeals filed in the 2014/15 fiscal year were carried over into the 2015/16 year. As a result, the 2015/16 year was the busiest yet for the Board in terms of adjudication and case management. The Board processed 36 appeals, up from 30 last year.

The average time from filing to disposition was 138 days, compared to 126 in 2014/15, 141 in 2013/14 and 165 in 2012/13. While much is made about time from filing to disposition, it should be noted that these statistics do not accurately reflect the average time to disposition. All it takes is one particularly complex case to derail the statistics. Likewise, settled disputes often have an extended period for settlement discussions to take place as compromised settlements must often be approved or implemented by various regulators or third parties such as home warranty providers or contractors. While such negotiations can skew the statistics regarding time to disposition of the Board's appeals, they should be encouraged as a negotiated resolution ensures compliance with the legislated safety and consumer provisions that the board adjudicates disputes arising from.

The complexity of the appeals filed with the Board is also increasing. In 2015/16 the Board adjudicated a number of highly contentious appeals with above average volumes of evidence and submissions filed with the Board. Longer than average time was required by members hearing these appeals to thoroughly review the evidence filed with board and come to a decision.

Type

Similar to last year, the number of appeals filed with the Board were split between decisions made under the *Safety Standards Act* and decisions made under the *Homeowner Protection Act*. There were thirteen new appeals filed under the *Safety Standards Act*. These decisions were fairly evenly split between appeals stemming from the issuance of monetary penalties and those dealing with issues of compliance.

There were ten appeals filed under the *Homeowner Protection Act*. These decisions were split between appeals stemming from a denial of permission to sell a new home under the Owner Builder Provisions of the *Homeowner Protection Act*, the issuance of monetary penalties and Registrar's orders requiring builders to comply with the terms of the legislation.

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 no judicial reviews of Board decisions and no formal complaints filed with any other oversight body such as the Ombudsperson or Privacy Commissioner.

Decisions of Note

The noted decision stems from a decision made under the *Safety Standards Act*. While an equal number of appeals were filed from decisions made under the *Homeowner Protection Act*, those appeals have a higher rate of settlement and are more routine in nature and do not merit expanded discussion in this report. That being said, for the second year in a row the issue of appeals coming before the Board dealing with compliance under the *Homeowner Protection Act* that involve homes in foreclosure has markedly increased. This continues to create some difficulty with processing appeals as the appellant is not always the party with the right to sell a home under orders made by the British Columbia Supreme Court in foreclosure proceedings. In addition to using its powers to order lenders to stand as third parties or interveners in such cases, the Board continues to look for ways to facilitate the hearing of these appeals, that while simple in subject matter are logistically difficult to hear when all of the various stakeholders in the outcome of an appeal are not parties to the appeal as of right.

Young v. British Columbia Safety Authority, BCSSAB 13(1) 2014

While most appeals to the Board come from appellants issued compliance orders or monetary penalties by the regulatory agencies over which the Board has jurisdiction, this is an appeal where the Appellant was not issued a compliance order or monetary penalty and instead felt that a regulated product did not comply with the safety standards legislated by government.

The Appellant had a lengthy history with the Respondent and for some time had been seeking confirmation that her high efficiency gas furnace (the "Furnace") was not installed in accordance with

the applicable safety legislation of the Province. The Respondent sent personnel to the Appellant's home to assess the installation and operation of the Furnace and on August 27, 2014 a gas safety officer issued a decision summarizing the Gas Certificate of Inspection of the same date, noting that two small deficiencies were found with the Appellant's gas furnace, but noting that the deficiencies were minor in nature and did not represent any safety hazard (the "Decision"). Upon receipt of the Decision the Appellant requested the decision be reviewed by the Provincial Safety Manager pursuant to section 49(1) of the *Safety Standards Act*, as was her right. The Provincial Safety Manager declined to review the Decision and instead referred the Decision directly to the Board as permitted by section 49(5) of the Act.

Much of the Appellant's submissions dealt with issues outside of the Board's jurisdiction, namely her frustrations with the suitability of high efficiency gas furnaces in northern climates. The Board did not address these issues nor the issues raised regarding contractual matters between homeowners and regulated installers.

Upon a review of the evidence submitted to the Board, the Board varied the Decision and held that the Furnace's installation was not installed in compliance with provincial legislation and that the installation ought to be corrected. Of primary concern was the fact that specific installation instructions for cold climates were not followed when the furnace was installed. Accordingly, the Board recommended that the Respondent perhaps issue a directive regarding such installation in cold and/or snowy climates.

Board Rules and Policies

The Board continues the process of updating both 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. Meetings with stakeholders were held this fiscal year with a view to implement new Rules of Practice and Procedure as smoothly as possible.

Last fiscal year the Board reviewed the operations of the Tribunal and found that while the Board functions well in its decision making capacity that it has been operating without several requisite policies that would help to formalize Board operations and procedures. The Board continues the process drafting and implementing written policies as needed.

In May of 2015 the Chair of the Board met with representatives of the ten municipalities that self-regulate gas and/or electrical safety standards pursuant to arrangements made with the province under the *Safety Standards Act* to discuss the application of the appeal provisions of the *Safety Standards Act* to their municipalities and decision makers. This was an important first step in ensuring that the statutory right to appeal to the Board is granted to all prospective appellants in the province and not just those dealing with the British Columbia Safety Authority.

Board Appointments and Renewal Processes

On May 31, 2015 Marc Dixon was appointed to the Board, filling a vacancy with the Board that had existed since December 31, 2014.

At the time of writing this report, the Board has a total of seven members, including the Chair. However, one member was appointed by the Chair from the Roster of Technical Experts on a limited six month term to assist with the adjudication of an appeal for which the regular compliment of board members lacked technical expertise. Upon expiry of this appointment, the Board will be back to its usual compliment of six members.

All of the regular Board members' appointments expire in 2017, including the Chair and Vice-Chair's appointments. Accordingly, renewal of appointments and new appointments to the Board must be carefully planned to ensure continuity of the Board's mandate and decision making processes. The Chair will work closely with the Ministry and Board Resourcing Development Office in this regard.

In addition to the regular membership of the Board, the Board continues the process of filling its Roster of Technical Experts. Technical experts are sought in the following specialties to sit on the Roster: electrical, gas, boiler, pressure vessel, refrigeration, passenger ropeways, elevating, and amusement devices. If selected to serve on the Roster, there is no guarantee of an appointment to the Board. Individuals serving on the Roster may be called upon to serve as a member of the Board when their technical expertise could assist a panel of the Board in rendering a decision in an appeal. In such an event, a member of the Roster with the appropriate technical expertise will be appointed for a limited six month term to the Board by the Board's Chair, after consultation with the Minister, as permitted by section 6 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45. There is no remuneration for sitting on the Roster. If appointed on a limited six month term to the Board, remuneration would be as set out in the *Treasury Board Directive*, 2/11. As indicated above, the Chair appointed Martin Vine from the Roster in February 2016 to assist with an appeal that required technical expertise in the area of amusement devices.

Board Finances

The Board operates with funds made available from the budget allocated to the Housing component of the Ministry of Natural Gas Development and the Minister Responsible for Housing. The Chair was advised by Ministry staff early in the reporting year that the Board's budget would total \$116,000.00.

Expenditures for the fiscal year 2015/16 totalled \$103,301.56. A detailed breakdown of this sum is set out below:

Expenses	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Budgeted	Actual
Remuneration	33,437.50	18,485.00	24,062.50	18,750.00	100,000.00	94,735.00
Travel Expenses	2801.42	1201	1814.59	643.64	6,000.00	6460.65
Office Expenses	227.4	36.01	0	22.34	500	268.41
Education/Training	0	1837.5	0		2,000.00	1837.5
Website	0	0	0	0	1,300.00	0
Telephone	0	366.36	270.57	270.57	1,200.00	907.5
Contingency					5,000.00	
TOTALS:	36,466.32	21,925.87	26,147.66	19,686.55	116,000.00	103,301.56

The Board came in under budget. It should be noted that the expenses related to the Board's Registrar are not noted in the annual budget for the Board as the current arrangement with the Ministry has the Registrar supplied to the Board by the Office of Housing and Construction Standards. Likewise, technology and facility expenses are also not included in the Board's budget as they are currently provided to the Board through the Ministry and the Office of Housing and Construction Standards.

Assuming a similar case volume, it is anticipated that the Board will be able to operate on a similar budget to that of the 2015/16 fiscal year for 2016/17. However, certain Board initiatives such as, training less experienced board members and engaging in the next steps of the Tribunal Transformation Project could cause the need for increased expenses in the 2016/17 fiscal year. Further, recent changes to the *Homeowner Protection Act*, which require ongoing continuing professional development for licensed residential builders as well as the creation of a compliance division within the British Columbia Safety Authority, could impact the case volume of the Board.

Tribunal Transformation Project

The Tribunal Transformation Project underway with the Ministry of Justice continues to affect the Board. In May of 2015, Bill 18-2015, the *Administrative Tribunals Statutes Amendment Act* (the "ATSAA") received royal assent. The ATSAA sets out a number of administrative changes that will affect the running of the Board such as new reporting requirements. It is expected that the Board will undergo more changes as the tribunal transformation project unfolds. In particular, the Board expects to report to the Ministry of Justice sometime in the current fiscal year with respect to issues of budget and appointments rather than the Ministry of Natural Gas Development and the Minister Responsible for Housing as this reconfiguration was delayed last fiscal year. Further, the Board expects to relocate its physical office space to a location outside of the Office of Housing and Construction Standards.

Statutory Reporting and Compliance

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

One Freedom of Information request was received during the reporting period. The material requested was not permitted to be disclosed; however a courtesy copy of published legislation was provided to assist the individual making the request.

The Board is in full compliance with Treasury Board Directive 2/11.

There were no valid complaints about the Board's operations or the conduct of the members or staff. However, 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 2016/17

Case Management System

The Board continues to make due with an outdated case management system, made up of a whiteboard and excel spreadsheet that are regularly cross-referenced with one another. Budgetary constraints prevent investing in something more suitable for the task at hand. However, the Chair was advised last fiscal year that with the prospect of clustering under the Tribunal Transformation Project that a case management system may be made available to the Board. While still not available, the Chair is advised that progress is being made with the potential case management system being offered as part of the Tribunal Transformation initiative. 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. The Board will continue to canvass its options with respect to updating its case management system.

Website

This fiscal year the Board launched its own website. The new website is housed on the gov.bc.ca web platform at www.gov.bc.ca/safetystandardsappealboard. The Board's website is now separate from the website for the Office of Housing and Construction Standards, which assists with increasing the perception of independence of the Board noted in last year's annual report. However, stakeholders have noted that the decisions of the Board posted on the website are not currently searchable. The Board is looking into the lack of search functionality and hopes to have its database of decisions of the Board searchable on the website by the end of the 2016/17 fiscal year.

Policy

The Board has been operating without formal written policies since its inception. As the Board becomes busier and moves forward with the Tribunal Transformation Project and the potential clustering of tribunals, it is important that many of the Board's unwritten operational policies be formalized in

writing. Written policies are needed with respect to matters such as member code of conduct (ie. ethics, confidentiality, conflict of interest and social media use), privacy and publication of information, and complaint protocol. Written policy will help ensure consistency in Board operations and will assist in training new members. The Board has reviewed its procedures to see what policy needs to be formalized into writing and will be taking further steps to move forward with the creation of such policy.

Tribunal Transformation

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

APPENDIX 1

Emily C. Drown - Chair

Emily C. Drown obtained her Bachelor of Arts from Malaspina University-College (now Vancouver Island University) in 2000 and her Bachelor of Laws from the University of Victoria in 2004. Emily was appointed Chair of the Safety Standards Appeal Board on January 1, 2014 after serving as Vice-Chair of the Safety Standards Appeal Board from May 2008 until her appointment as Chair. In addition to her duties with the Safety Standards Appeal Board, Emily has maintained a professional law practice in Victoria, BC since being called to the Bar of British Columbia in 2005. Emily has served numerous times as a guest judge for the Law Society of British Columbia's Professional Legal Training Course and has taught Contract Law and Dispute Resolution for Construction Specifications Canada. Emily is active in the administrative law sector of the justice system and serves as secretary of the British Columbia Council of Administrative Tribunals and director of the Canadian Council of Administrative Tribunals and is also a director of the Victoria Bar Association.

Jeff Hand – Vice-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 300 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, including the Safety Standards Appeal Board, the Property Assessment 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 both construction law and mediation advocacy.

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.

Marc Dixon – Member

Marc Dixon is currently the CEO of Alternative Path Community Care and President of RBM Construction. He obtained a Bachelor of Arts from Concordia University and his Juris Doctorate from Western State University, College of Law. He is an active member of his community in which he gives a lot of his spare time to volunteer work.

Tim Haaf - Member

Mr. Haaf is Plant Manager of Prince Rupert Generating Station, as well as Thermal Plant Projects 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.

Martin Vine – Member

Mr. Vine is a power engineer and electrician with over 40 years of experience in the amusement industry. He is a member of the Institute of Power Engineers and the American Society of Testing and Materials where he has served as a committee member regarding amusement ride safety from 1984 to the present.