



Safety Standards
Appeal Board –
Annual Report April
1, 2018 to March 31,
2019

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Message from the Chair

I am pleased to submit the Annual Report for the 2018/19 fiscal year. The 2018/19 fiscal year saw a steady intake of appeals consistent with the number received on average over the past five years. The increased complexity of many of the appeals with the Board was also consistent with recent trends seen in the past few years.

During 2019 the Board said goodbye to its Chair, and long-time member, Emily Drown. The Board wishes to thank Ms. Drown for her valuable and dedicated service. I was appointed Chair in November 2018 and the Board operated for the balance of the fiscal year without a Vice Chair.

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, 2018 to March 31, 2019, 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 2018/19 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. 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 2018/19 fiscal year.

The following Board members served during the fiscal 2018/19 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
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, 2017	March 05, 2020
David Martin	Member	March 1, 2018	March 1, 2018	March 1, 2020

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

As illustrated in the above table, the Board received 26 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 the previous year. The time from filing to disposition was reduced from recent years. The reduction in time from filing to disposition 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

Early Dispute Resolution

Over 50% of all appeals resolved during the year were resolved with the use of early dispute resolution. This is a moderate increase from settlement rates in recent years. With respect to early dispute resolution, the Board utilizes a variety of different early dispute resolution mechanisms. Effective use of Appeal Management Conferences has been successful in identifying issues and allowing the parties to focus on remedies, often without the need for a formal hearing. In other cases, mediation with a Board member facilitating the discussion has also proven successful in resolving some appeals.

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 this year has been consistent with those filed in the previous five 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.

The average time from filing to disposition was 100 days, compared to 114 in 2017/18, 160 in 2016/17 and 138 in 2015/16. 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.

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: Nearly half were appeals of monetary penalties that were issued for failure to comply with the *Safety Standards Act* and

associated regulations. Five appeals concerned appeals from exam grades for qualification exams administered by TSBC. Five appeals concerned compliance orders requiring audits of business records of contractors performing regulated work or requiring the correction of work that was found non-compliant. Of note was the increase in the number of appeals concerning monetary penalties imposed by the Safety Manager and this is likely due to a noticeably increase in the quantum of these penalties as compared to previous years.

There were only two appeals under the *Homeowner Protection Act*; one dealing with the refusal to grant a builders license and the other concerning a compliance order for the placement of home warranty insurance. It is not clear why there was a significant drop in appeal volume for these types of appeals.

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 was one judicial review taken from a Board decision. The Board's reasoning was ultimately upheld by the Supreme Court of British Columbia.

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

Decisions of Note

BC Frozen Foods

This appeal concerned a monetary penalty in the amount of \$24,000 imposed on a company for delays in achieving compliance at a frozen foods warehouse for a large number of code infractions with the electrical systems. The company maintained that it was taking steps to comply with the compliance order and had rectified many of the non-compliances at the time the monetary penalty was issued.

The appeal raised a number of significant issues, including how the steps taken by the company to achieve compliance should be viewed against the Safety manager's finding that the company had deliberately chosen not to comply with the order. Perhaps most notably the appeal raised the issue of the standard of review to be utilized by the Board in reviewing decisions of the Safety Manger and whether those decisions were entitled to any deference by the Board.

The Board reduced the monetary penalty to \$19,000 and a Judicial Review was filed by TSBC. In a very helpful and reasoned decision the Supreme Court of British Columbia upheld the Board's reasoning. They found the Company had not acted deliberately in failing to achieve full compliance by the time the monetary penalty was issued. The Court clarified the standard of review to be used by the Board. The

Court held that the Board, as an expert tribunal, owes no deference to the Safety Manager's decisions and is entitled to reach its own findings on all matters of fact, law, and discretion.

Simply Green

This appeal concerned a monetary penalty in the amount \$50,000, being the largest amount that the Board has considered. The Appellant was a corporate entity that had conducted a large scale door-to-door sales campaign throughout the Province, offering the sale and installation of hot water tanks and furnaces. Many of the installations were 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 correct all non-compliances. This was followed by a monetary penalty in the amount of \$10,000. That penalty was appealed to the Board and upheld.

Approximately a year later a second monetary penalty was imposed in the amount of \$50,000 on account of the ongoing delays in reaching full compliance with the original compliance order. The Company submitted that it was taking steps to comply and by the time the \$50,000 penalty was levied, they had achieved compliance in all but two installations.

The Board reduce the penalty to \$10,000 in order to reflect some proportionality given that a previous monetary penalty had already been levied for what amounting to the same infractions. A Judicial Review of the Board's decision has been filed and was still pending at fiscal year end. The Court is expected to hear the Judicial Review in early 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.

Board Appointments and Renewal Processes

At the conclusion of fiscal year 2018/19, the Board had a total of five members, including the Chair. The Board was awaiting the appointment of a Vice Chair following a merit based application process.

In November 2018, Jeffrey Hand was appointed Chair after having served as Vice Chair for a number of years. No other appointments were made during the fiscal year.

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 2018/2019 fiscal year totalled \$156,834.00. A detailed breakdown of this sum is set out below:

Expenses	Budgeted	Actual	Annual Variance Amount	Annual Variance %
Employee Salaries	53,736.00	53736,00	(0)	
Employee Benefits	10,000.00	13,329	(3329.00)	(33.3)
Member Remuneration	101.000	62776.00		
Member Travel Expenses	0	3155.00	(3155.00)	(100)
Employee Travel Expenses	0	532.00	(532.00)	(100)
Information Systems	1,366.00	0	(1,366.00)	(100)
Office and Business Expenses (including supplies and education costs)	1944.00	12,000.00	10,056.00)
Operational contracts	0	19,996.00	(19,996.00)	
TOTAL:	163,000.00	156,834.00	6166	(.03)

Board expenditures were under budget. This was likely due to the Board operating with one less member for a portion of the year.

Assuming a similar case volume, it is likely that the Board will be able to operate on a similar budget for fiscal year 2019/20.

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 valid 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 2019/20

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 continue to 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 Chair's investigations have found that gov.bc.ca can now support search functionality and the Board plans to implant such 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.

Board Member Appointments

At fiscal year end the Board was awaiting the appointment of a Vice-Chair, following which the Board will be fully resourced.

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 600 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.

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.