



ENVIRONMENTAL
APPEAL BOARD

2019/2020

Annual Report

APRIL 1, 2019 ~ MARCH 31, 2020



Environmental Appeal Board

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Dear Ministers:

Please find enclosed the Annual Report of the Environmental Appeal Board for the period April 1, 2019 through March 31, 2020.

Yours truly,

Darrell LeHouillier
Chair
Environmental Appeal Board

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Message from the Chair

I am pleased to present the 2019/2020 Annual Report of the Environmental Appeal Board.

This is my first report as the new Chair of the Board. Alan Andison, the long-standing Chair, retired in July 2019. Mr. Andison worked for the BC public service for over 30 years, and was Chair of the Board for 19 years. During that time, Mr. Andison was instrumental in establishing the first tribunal cluster in BC, combining the office of Board and the then newly-created Forest Appeals Commission. Mr. Andison's service, vision and leadership as Chair, and his dedication and contribution to the law and administrative justice, have benefitted the Province and the administrative justice system.

I wish to thank the Board's members and staff for their patience and understanding during this time of transition. I also wish to thank staff within the Ministry of the Attorney General, particularly the Tribunal Transformation & Supports Office, for their support as I acclimate to serving as Chair.

Unfortunately, the Board also lost one of its valued members, Lorne Borgal, in an airplane crash in May 2019. Lorne was well-respected on the Board and a valuable member of his community. He had been a long-time public servant through his membership on the Board. The Board wishes to thank Lorne for his public service and to offer condolences to his friends and family.

While there were no other changes in membership over the year, I anticipate recommending appointments for Cabinet consideration given the losses of two decision-making members (Mr. Borgal and myself, as I was elevated from a member position to serve as Chair). The Board is committed to ensuring it has members of the highest quality, and that it represents the diversity that exists within British Columbia.

Continuing the theme of changes, in 2019 the Board also ushered in a new electronic case management system to replace one that could no longer be supported. Although it seems no information technology update goes as smoothly as planned, the flexibility exhibited by our staff and the tireless patience of our contractor has helped maintain efficient operations as we complete the transition to the new system.

The Board is also in the process of updating its website. Needed infrastructure changes are being done first, and we are looking forward to updating our content and modernizing this important means of providing information to the public that we serve.

Additionally, the Board is assessing options for an electronic document management system, to improve operational efficiency and do our work in a more environmentally friendly format.

The Board is also engaged in a service delivery realignment project. We provided a survey to recent, historical system users. The aim was to help us to identify, from a user-focused perspective, what is working well and what could be improved in the Board's procedures. The Board is grateful for those who provided us this feedback. While the response rate was insufficient for results to be relied upon with statistical confidence, this feedback will nonetheless help shape the ongoing service delivery realignment.

Also, as part of the service delivery realignment project, we have identified potentially interested citizens' groups, including indigenous communities and indigenous resource delivery groups, and have invited them to participate as stakeholders in the project. We are and will be consulting directly with our "high volume" parties – representatives from the Attorney General's Litigation Services Branch (who often represent government decision-makers who are respondents in appeals), and various governmental decision-makers (who have institutional knowledge of the appeal system and the impacts of the Board's decisions).

The Board is striving toward an efficient, effective, responsive, and user-focused approach to handling appeals. We are actively working toward fulfilling our obligations with a view to proactive engagement with indigenous communities, as described in the Truth and Reconciliation Commission's 94 Calls to Action. We will also use technology to enable electronic hearings, allowing for faster, more efficient, more accessible appeal processes.

In 2019/2020, the Board also carried out its core legislated responsibilities: hearing and considering appeals. The Board closed 84 appeals in 2019/2020. There were 67 new appeals filed over the same period. This resulted in a reduction in the Board's appeal inventory, from 102 to 85. Most appeals that were closed were concluded with final decisions issued by the Board. A significant number of appeals were withdrawn or settled by consent, with the rest being

rejected from the outset, due to a lack of jurisdiction or standing, or because of a failure to file the appeal within an applicable statutory timeframe.

The appeal process took, on average, 555 days to complete. This was longer than the average from the three preceding reporting periods, 359 days. Decisions on the merits took, on average, 720 days in 2019/2020 (up from 325 days on average in the preceding three reporting periods). Appeals completed without decisions on the merits took, on average, 405 days in 2019/2020 (up from 374 days in the preceding three reporting periods). While these lengthy timeframes are often at the request of parties to an appeal or result from efforts at alternative dispute resolution, timeliness in decision-making will be a focus in the service delivery realignment project.

The Board's expenditures in the 2019/2020 fiscal year totalled \$1,676,032. This exceeded the average from the five preceding fiscal years by less than 2%. This was mostly driven by larger expenditures related to per diem members, both in their rates of pay and in the extent to which they handled appeals, as a result of natural variation in the appeals brought before the Board.

Since becoming Chair, I have emphasized early intervention in appeals, to address preliminary issues and encourage dispute resolution, where appropriate. This will encourage the faster, more economic resolution of appeals, resolved by the parties, where appropriate. I will continue to do so, to encourage the faster and more economical resolution of appeals and, where appropriate, on terms decided between the parties. The service delivery realignment project will strive to achieve the same aims, while also working to make the Board more accessible, accountable, and responsive to the needs of its users, private and governmental alike. Given that this transition to a new style of appeal management only started in late-2019, significant impacts have likely not yet been experienced.

Lastly, as much as we have worked to proactively change some processes, late in the 2019/2020, others were forced upon us. The Board's operations were impacted by the COVID-19 pandemic starting in March 2020. Board staff and members were challenged with mandated restructuring of office procedures, including the ultimate closure of the office to the public, as well as the cancellation of long-scheduled oral hearings. Unfortunately, this has resulted in delays to a number of long-standing appeals and the Board continues to do what it can to address the impacts to these individuals, while exploring new ways to handle appeals in a post-COVID-19 world. In handling the crisis, staff exhibited all the values of the BC Public Service – service, passion, teamwork, accountability, and courage – in exploring new ways to do our work, supporting one another, and bearing some unavoidable increased risk of transmission, while fulfilling our statutory mandates. I wish to thank the members and staff of the Board for their excellent public service. I am fortunate to work with such a group of dedicated, expert individuals.



Darrell Le Houillier
Chair



Introduction

The Environmental Appeal Board was established in 1981, when the *Environment Management Act* came into force. The Board has been established primarily to provide an independent level of appeal from some decisions made by government officials. It currently hears appeals from certain decisions made under eight statutes and their associated regulations: the *Environment Management Act*, the *Greenhouse Gas Industrial Reporting and Control Act*, the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*, the *Integrated Pest Management Act*, the *Mines Act*, the *Water Sustainability Act*, the *Water Users' Communities Act*, and the *Wildlife Act*. The Board addresses issues related to the use and stewardship of natural resources and to the environment.

The Board, through its annual reports, also provides Cabinet, through the ministers responsible for its oversight, with information regarding appeal operations as required under the *Administrative Tribunals Act*.

In deciding appeals, the Board weighs evidence and makes findings of fact. It interprets the legislation and common law and applies those sources of law to its factual findings. The Board may compel the production of evidence and must ensure that its processes are procedurally fair to those involved in appeals.

Cabinet may, in the public interest, vary or rescind an order or decision of the Board.

Many significant decisions made by the Board, as well as its Rules, its Practice and Procedure Manual, and information to assist the public through the appeals process, can be found on its website (eab.gov.bc.ca, until replaced at a date in 2020, by bceab.ca).



Review of Board Operations

The principal work of the Board is to process appeals from certain statutorily-authorized decisions made under the *Environmental Management Act*, the *Greenhouse Gas Industrial Reporting and Control Act*, the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*, the *Integrated Pest Management Act*, the *Mines Act*, the *Water Sustainability Act*, the *Water Users' Communities Act*, and the *Wildlife Act*.

The Board, through its annual reports, also provides the ministers responsible for its oversight with information over the preceding reporting year: a review of its operations, performance indicators, its appeal inventory, the results of any surveys undertaken, a forecast of the upcoming workload for the tribunal, any foreseen trends or special problems, and plans for improving operations in the future.



Appeal Procedures

An appeal begins when a notice of appeal is filed against a particular decision made by a statutory decision-maker. The Board assesses whether the appeal seems to meet threshold requirements: that the appellant has the ability to appeal the decision, that the decision is appealable, that the appeal was filed within the statutory timeframe allowed, and whether the Board has the authority to grant the requested outcome of the appeal. Which decisions can be appealed and who can appeal those decisions depends on the statute under which the decision was made.

The Board may conduct appeals in writing or in person (an oral hearing), depending on the needs of the parties and based on principles of procedural fairness in administrative law. Written evidence and arguments are exchanged in either case. In written hearings, only written material is exchanged; in oral hearings, written summaries of the arguments to be presented precede the oral hearing itself. The Board is working toward making live, electronic (remote) hearings available in 2020.



Environmental Management Act

The *Environmental Management Act* governs the disposal and dispersion of solid, gaseous, and liquid waste into the environment of British Columbia, including through regulation of landfills and contaminated sites. Governmental decision-makers may issue permits, approvals, operational certificates, orders, and administrative penalties to accomplish the aims of the Act.

The *Environmental Management Act* is broad legislation divided into 13 parts:

- Introductory Provisions;
- Prohibitions and Authorizations, which contains general provisions for the protection of the environment and governmental authority to allow the release of contaminants into the environment;
- Municipal Waste Management;
- Contaminated Site Remediation;
- Remediation of Mineral Exploration Sites and Mines;
- Clean Air Provisions;
- Greenhouse Gas Reduction, which applies to waste management facilities;
- Powers in Relation to Managing the

Environment, including provisions dealing with pollution assessment, prevention, and abatement, as well as spill preparedness, response, and recovery;

- Appeals;
- Conservation Officer Service;
- Compliance, including authorization of government decision-makers to carry out inspections and seizures, make inquiries, and issue administrative penalties;
- General, which relates to offences, penalties, immunity of conservation officers from provincial offences, miscellaneous administrative provisions, provisions related to the ownership of waste, and powers to make regulations; and
- Transitional Provisions and Consequential Amendments.

Any person “aggrieved by a decision” of a director or district director named under the *Environmental Management Act* can appeal that decision to the Board. The definition of “decision” under the Act is broad, and includes:

- making orders;
- imposing requirements;
- exercising any power other than delegation;
- issuing, amending, renewing, suspending, refusing, cancelling, or refusing to amend a permit, approval, or certificate;
- including requirements or conditions in orders, permits, approvals, or operational certificates;
- imposing an administrative penalty; and
- determining that the terms and conditions of an agreement for the reduction or cancellation of an administrative penalty have not been met.

There is generally a 30-day time limit for the filing of appeals; however, the Chair of the Board was granted the authority to waive, suspend, or cancel that time limit during the public health crisis related to COVID-19, beginning on March 18, 2020.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board has the discretion to stay all other decisions under appeal.



Greenhouse Gas Industrial Reporting and Control Act

The *Greenhouse Gas Industrial Reporting and Control Act* enables the government to set performance standards for industrial facilities or sectors by listing them within a Schedule to the Act. Presently, the Schedule sets a greenhouse gas emissions benchmark for liquified natural gas facilities.

The Act is divided into seven parts:

- Interpretation, which provides definitions for the legislative scheme;
- Emission Reporting;
- Emission Control, including use of offsets and credits to be applied to emissions;
- Compliance and Enforcement;
- Appeals to the Environmental Appeal Board;
- General, which discusses procedures, responsibility for operators of facilities or sectors regulated by the Act, and regulatory powers; and
- Transitional Provision, Repeal and Consequential Amendments.

A person who is served with a determination to impose an administrative penalty for non-compliance with requirements to accurately report emissions may appeal the determination or extent of non-compliance to the Board. A person who is served with

a determination to impose an administrative penalty for non-compliance with other requirements of the Act or regulations may appeal the determination or extent of non-compliance, and/or the amount of the penalty, to the Board. The Act also allows other decisions to be designated as appealable, by regulation.

The *Greenhouse Gas Emission Administrative Penalties and Appeals Regulation* provides that certain decisions a director makes under the *Greenhouse Gas Emission Reporting Regulation* are appealable:

- approvals of changes in emissions measurement methodology, and
- decisions refusing to accept a verification statement of an emissions report.

The *Greenhouse Gas Emission Administrative Penalties and Appeals Regulation* also allows for appeals of certain decisions by a director, under the *Greenhouse Gas Emission Control Regulation* and the *Greenhouse Gas Emission and Reporting Regulation*:

- suspension or cancellation of an account in the emissions cap-and-trade registry;
- refusal of a validation or verification statement;
- refusal of an emissions offset project;
- refusal to credit offset units based on an offset project report;
- approval of a change in the methodology used to quantify emissions; and
- refusal of a verification statement relating to an emissions report on the grounds that verifications performed by the verification body do not comply with the regulation or certain standards.

There is generally a 30-day time limit for the filing of appeals; however, the Chair of the Board was granted the authority to waive, suspend, or cancel that time limit during the public health crisis related to COVID-19, beginning on March 18, 2020.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board has the discretion to stay all other decisions under appeal.



Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act

The *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act* requires suppliers of transportation fuels to supply a prescribed percentage of renewable fuels and to submit annual compliance reports to the government. The Act empowers government officials to impose administrative penalties for non-compliance.

The *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act* allows appeals to the Board of certain decisions by a director, under the Act:

- where an administrative penalty has been imposed for failure to meet fuel requirements, the underlying determination of non-compliance or the extent of non-compliance;
- where an administrative penalty has been imposed for non-compliance with other requirements, the underlying determination of non-compliance, the extent of non-compliance, or the amount of the penalty;
- refusal to accept a proposed, alternative calculation of the carbon intensity of certain fuels; and
- other decisions prescribed by regulation.

There is generally a 30-day time limit for the filing of appeals; however, the Chair of the Board was granted the authority to waive, suspend, or cancel that time limit during the public health crisis related to COVID-19, beginning on March 18, 2020.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board does not have the discretion to stay any other decisions under appeal from the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*.



Integrated Pest Management Act

The *Integrated Pest Management Act* regulates the sale, transportation, storage, preparation, mixing, application, and disposal of pesticides in British Columbia. It requires permits for certain pesticide uses and certification for individuals seeking to apply pesticides in certain circumstances. It also prohibits the use of pesticides in a way that would cause an unreasonable adverse effect and empowers government decision-makers to impose administrative penalties for non-compliance.

The *Integrated Pest Management Act* is divided into seven parts:

- Introduction, including definitions and emergency provisions;
- Prohibitions and Authorizations of Pesticide Use and Sale;
- Administration, including provisions relating to inspection and monitoring;
- Appeals to the Environmental Appeal Board;
- Compliance;
- General, including provisions relating to offences, sentencing orders, notice provisions, and authorizations to make regulations; and
- Transitional and Consequential Provisions.

The *Integrated Pesticide Management Act* allows a “person” to appeal a decision to the Board. Decisions, for the purposes of that Act, include:

- orders, other than those made by the Minister;
- specification of terms and conditions in a licence, certificate, or permit, other than those prescribed by the administrator appointed under that Act;
- amendments or refusals to issue, amend, or renew a licence, certificate, or permit;
- revocations or suspension of a licence, certificate, permit, or confirmation;
- restrictions on the ability of a holder of a licence, certificate, permit, or pest management plan to apply for another licence, certificate or permit, or to receive confirmation of receipt, by the administrator, of a pesticide use notice or amended pesticide use notice;
- determinations to impose an administrative penalty; and
- determinations that the terms and conditions of agreements between the administrator and a person subject to an administrative penalty have not been performed.

Certain decisions made in emergency situations cannot be appealed to the Board.

There is generally a 30-day time limit for the filing of appeals; however, the Chair of the Board was granted the authority to waive, suspend, or cancel that time limit during the public health crisis related to COVID-19, beginning on March 18, 2020.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board has the discretion to stay all other decisions under appeal.



Mines Act

The *Mines Act* regulates mining in British Columbia through a system of permits, regulations, and the Health, Safety and Reclamation Code. The *Mines Act* and associated Code applies to mining operations through exploration, development, construction, production, closure, reclamation, and abandonment. The *Mines Act* allows for inspections, investigations, orders, and enforcement by the Chief Inspector of Mines and inspectors appointed by him or her.

The *Mines Act* allows appeals to an “appeal tribunal” of decisions, by the Chief Inspector of Mines, for which notice must be given under section 36.3. That section applies to the imposition of an administrative penalty by the Chief Inspector of Mines and the Chief Inspector’s finding that someone has contravened or failed to comply with provisions related to:

- orders made under the *Mines Act*;
- terms or conditions imposed in permits, permit exemptions, cancellations of notices of government debt applied to abandoned mines, and orders for the recommencement or reopening of certain mining operations following closures as a result of regulatory actions;
- prescribed provisions of the Act, regulations, or Health, Safety and Reclamation Code.

The *Administrative Penalties (Mines) Regulation* provides that administrative penalties can be imposed for a wide variety of contraventions or non-compliances under the legislation, regulations, *Workplace Hazardous Materials Information System Regulation (Mines)*, and the Health, Safety and Reclamation Code. The *Administrative Penalties (Mines) Regulation* also defined the Board as the “appeal tribunal” referred to under the *Mines Act*.

There is generally a 30-day time limit for the filing of appeals; however, the Chair of the Board was granted the authority to waive, suspend, or cancel that time limit during the public health crisis related to COVID-19, beginning on March 18, 2020.

Deadlines for payment of administrative penalties are automatically postponed upon appeal to the Board, although the Board cannot stay decisions under the *Mines Act*. The administrative penalty must be paid within 40 days after the date that the Board’s decision is given to the parties unless the Board overturns the penalty.



Water Sustainability Act

The *Water Sustainability Act* regulates the use and allocation of groundwater and surface water, works in and about streams, and the construction and operation of groundwater wells. It includes provisions for the protection of fish and aquatic ecosystems, dam safety, and enforcement and compliance. It empowers government officials to issue licences, permits, approvals, orders, and administrative penalties.

The *Water Sustainability Act* is divided into eight parts:

- Interpretation and Application;
- Licensing, Diversion and Use of Water;
- Protecting Water Resources;
- Enforcement;
- General;
- Regulations;
- Transitional Provisions; and
- Consequential and Related Amendments.

The *Water Sustainability Act* allows, subject to some exceptions created in that Act, any order (defined to include a decision or direction, whether or not it is in writing, but not a request) resulting from an exercise of discretion by the comptroller, water managers, or engineers designated under the Act to be appealed by:

- the person who is the subject of the order;
- an owner whose land is likely to be physically affected by the order;
- the owner of works that are subject to an order; and
- the holder of an authorization, riparian owner, or an applicant for an authorization who considers that his or her rights are or will be prejudiced by the order.

The exceptions created by the *Water Sustainability Act* that do not allow for appeals to the Board relate to certain:

- certain decisions affecting power operators;
- directions that licences that have lasted 30 years or more must be reviewed;
- directions related to information or declarations of beneficial use of water;
- certain orders related the creation of water sustainability plans;
- orders for determining critical environmental flow thresholds for streams in certain circumstances;
- cancellation of authorizations, in whole or part, due to non-payment of fees;
- decisions as to whether to enter into, and on what terms to enter into, compliance agreements made in relation to administrative penalties;
- certain orders made consistent with consents given for drilling authorizations; and

- certain decisions related to compensation to be paid by the government, if defined by regulation.

The time limit to appeal is 30 days; however, the Chair of the Board was granted the authority to waive, suspend, or cancel that time limit during the public health crisis related to COVID-19, beginning on March 18, 2020.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board has the discretion to stay all other decisions under appeal.



Water Users' Communities Act

The *Water Users' Communities Act* allows for the creation of water users' communities, which are groups of six or more licensees under the *Water Sustainability Act*, who create and maintain a system to store and deliver water. The *Water Users' Communities Act* defines rights of and obligations on water users' communities, and empowers the comptroller to make certain decisions affecting water users' communities.

The *Water Users' Communities Act* uses the general appeal provisions from the *Water Sustainability Act*, which includes appeals of decisions by the comptroller to cancel a water users' community and dispose of its assets.

As with the *Water Sustainability Act*, the time limit to appeal is 30 days; however, the Chair of the Board was granted the authority to waive, suspend, or cancel that time limit during the public health crisis related to COVID-19, beginning on March 18, 2020.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board has the discretion to stay all other decisions under appeal.



Wildlife Act

The *Wildlife Act* regulates the use, allocation, import and export of fish and wildlife in British Columbia, including activities such as hunting, angling in non-tidal waters, guide outfitting, and trapping. The Act empowers government officials to issue licences, permits, certificates, and orders, and to impose administrative penalties for non-compliance.

The *Wildlife Act* grants rights of appeal to applicants for and holders of licences, permits, registrations for traplines, and certificates for guiding territories. Those individuals may appeal to the Board any decision by a regional manager or director that affects their licence, permit, registration for a trapline or certificate for guiding territory certificate.

The time limit to appeal is 30 days; however, the Chair of the Board was granted the authority to waive, suspend, or cancel that time limit during the public health crisis related to COVID-19, beginning on March 18, 2020.

The Board has the discretion to stay decisions under appeal.



Statutory Framework

The statutory framework governing the operation of the Board is generally found in Part 8 of the *Environmental Management Act*, sections 93 to 98. The following sections of the *Administrative Tribunals Act* apply to the Board:

- Parts 1, 2, 3, 4 (except sections 23, 24, 33, 34(1), and 34(2)), 6, 7, and 8; as well as
- Sections 57, 59.1, 59.2, and 60.

For appeals filed under the *Mines Act*, the applicable sections of the *Administrative Tribunals Act* are slightly different. The sections that apply to appeals filed under the *Mines Act* are:

- Parts 1, 2, 3, 4 (except sections 23, 24, 25, 34(1), and 34(2)), 6, 7, 8, and 9 (except section 58).



Performance Indicators

Board Processes

In the 2019/2020 report period (April 1, 2019-March 31, 2020), the appeal process took, on average, 555 days to complete. Where decisions were issued on the merits of an appeal, the average was 720 days. Where decisions were resolved without a decision on the merits (by rejection, abandonment, withdraw, consent order, or dismissal), the average was 405 days.

Over the three previous report periods, appeals were resolved, on average, in 325 days without a decision on the merits, in 374 days with a decision on the merits, and 359 days overall. The longer timeframes in 2019/2020 related principally to three group appeals started in 2016. Two were decided on their merits; one involved six separate appeals and another involved 18 appeals. Both of these decisions were delayed by a large number of parties and extensive pre-hearing applications and submissions. Another complicated appeal was resolved by consent after being held in abeyance for several years while litigation on related matters progressed through the courts. While these each represented one decision by the Board, they had a disproportionate effect on the average “per appeal” performance indicators.

Judicial Reviews

There were three judicial reviews of Board decisions active in the 2019/2020 report period.

British Columbia (Assistant Water Manager) v. Chisholm

In the 2018/2019 report period, an Assistant Water Manager filed a petition for a judicial review of the Board’s decision 2016-WAT-010(a), *Jack and Linda Chisholm v. Assistant Water Manager*. In that decision, the Board determined that the Assistant Water Manager incorrectly declined to amend the Chisholms’ water licence. The Board ordered him to issue a new licence in substitution for the Chisholms’ licence in order to fix alleged errors introduced in previous amendments to water licences, including redefining a point of diversion for a water licence.

The Assistant Water Manager asked the Court to overturn the Board’s decision because it erred in its assessment of the evidence and that it failed to consider environmental flow needs.

The judicial review was argued in 2019/2020, but the Court’s decision was not released within the reporting period.

Sumas Environmental Services Inc. v. Environmental Appeal Board, Attorney General of British Columbia

On June 19, 2019, Sumas Environmental Services Inc. filed a petition for a judicial review of 2019-EMA-002(a), *Sumas Environmental Services Inc. v. Director, Environmental Management Act*. That decision addressed an appeal of a letter from the

Director of Compliance under the *Environmental Management Act* to Sumas Environmental Services Inc. The letter warned that Sumas Environmental Services Inc. had not registered as required, in order to store, treat, recycle, or dispose of hazardous waste, and could be subject to enforcement action after the next compliance review. In the Board's decision, the former Chair ultimately determined that the letter did not contain an appealable decision and dismissed the appeal in response to a preliminary application, asking that he do so. Sumas asks the Court to overturn the Board's decision and send it back to the Board for reconsideration, among other things.

After the petition for judicial review was filed, a Ministry official recommended that an administrative penalty be levied against Sumas for failing to register.

Sumas sought a number of injunctions and orders from the Court after filing its application for judicial review of the Board's decision, including one asking the Court to prevent the Ministry of the Environment and Climate Change Strategy from imposing an administrative penalty. This was the only order on which the Board took a position; the Board argued that this would usurp the Board's intended function, to hear an appeal. The Court dismissed the petitioner's application, finding that the Board was in the best position to grapple with the issues involved in any appeal of the administrative penalty, and could deal with any concerns related to the Ministry's publication of the penalty while the appeal was pending.

Sumas' judicial review of the Board's decision that the Director's warning letter did not contain an appealable decision was not heard by the Court during the report period.

Comptroller of Water Rights v. Harrison Hydro Project Inc et al

On January 20, 2020, the Comptroller of Water Rights filed a petition for a judicial review of the Board's decisions: 2017-WAT-003(b) & 004(b), and 2017-WAT-003(c) & 004(c), *Harrison Hydro Project Inc., Fire Creek Project Limited Partnership, Lamont Creek Project Limited Partnership, Stokke Creek Project Limited Partnership, Tipella Creek Project Limited Partnership, and Upper Stave Project Limited Partnership v. Comptroller of Water Rights*. In these decisions, the Board varied a decision made by the Comptroller of Water Rights in 2017, to retroactively increase the water rental fees for the years 2011 and 2012 paid under several water licences by billing them as a single project, instead of billing them as separate projects, as was done at the time. The Board concluded that the Comptroller of Water Rights had no authority to retroactively adjust fees for water use and ordered a sum of money returned to the appellants. In supplemental reasons, the Board found that interest was payable on the amount to be returned by the Comptroller to the appellants. The Comptroller does not seek judicial review of the Board's order concerning interest.

The Court did not hear any aspect of this judicial review during the reporting period.

Cabinet Reviews

Cabinet did not vary or rescind any decisions of the Board in 2019/2020.



Applications and Appeals in the 2019/2020 Report Period

The Board is responsible for considering appeals on a broad range of subjects, as indicated by its appeal inventory. Nearly 60% of the appeal inventory brought under the *Environmental Management Act* over the reporting period relate to Part 2 of that Act (Prohibitions and Authorizations), while nearly 20% relate to Part 3 (Municipal Waste Management), nearly 12% relate to Part 9.1 (Compliance), and nearly 8% relate to Part 7 (Powers in Relation to Managing the Environment – decisions related to recovery of expenditures for spill cleanup and orders related to spill preparedness). There was a lone appeal under Part 4 (Contaminated Site Remediation).

There was less variability in the appeal inventory brought under the *Water Sustainability Act*. Most (55%) of those appeals related to Part 2 (Licensing, Diversion and Use of Water). Roughly 43% related to Part 4 (Enforcement), while one appeal related to Part 3 (Protecting Water Resources).

Additionally, there were seven appeals remaining under the *Water Act*, which was replaced by the *Water Sustainability Act* since those appeals were started, and one new appeal filed under the *Mines Act*. All 22 appeals under the *Wildlife Act* related to Part 1 (General), which covers nearly the whole of that statute.

The table below summarizes the number of appeals in the Board's inventory at the start of the 2019/2020 report period, filed in the 2019/2020 report period, and completed in this report period. These figures are broken down by the legislation under which each appeal was filed. The number of appeals appears as the first number in each field, while the second number (in parentheses) provides the number of government decision letters that were the subject of appeals (as one decision letter may generate one or more appeals).

Inventory (Start of Period)	New Appeals in Period	MATTERS RESOLVED VIA...				Inventory (End of Period)
		Rejection	Abandonment or Withdraw	Consent Orders	Final Decisions	
<i>Environmental Management Act</i>						
81 (20)	21 (21)	2 (2)	7 (6)	13 (5)	30 (6)	50 (23)
<i>Greenhouse Gas Industrial Reporting and Control Act</i>						
0	0	0	0	0	0	0
<i>Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act</i>						
0	0	0	0	0	0	0
<i>Integrated Pest Management Act</i>						
0	0	0	0	0	0	0
<i>Mines Act</i>						
0	1 (1)	0	0	0	0	1 (1)
<i>Water Act</i>						
7 (7)	0	0	1 (1)	0	1 (1)	5 (5)
<i>Water Sustainability Act</i>						
10 (10)	24 (24)	3 (3)	11 (11)	0	3 (3)	17 (17)
<i>Water Users' Communities Act</i>						
0	0	0	0	0	0	0
<i>Wildlife Act</i>						
4 (4)	21 (21)	4 (4)	2 (2)	0	7 (7)	12 (12)
TOTAL	102 (41)	67 (67)	9 (9)	21 (20)	13 (5)	41 (17)
					85 (58)	

The Board convened oral hearings and/or pre-hearing conferences on the merits of 11 appeals in 2019/2020 and took 93 workdays to do so. The Board also conducted mediations with respect to three appeals, taking six workdays to do so. All three mediations resulted in the respective appeals being settled or withdrawn.



Forecast of Workload

From 2016/2017 to 2018/2019, the Board received between 42 and 92 appeals each year, for an average of 66 per year. In 2019/2020, 67 appeals were filed. This represents standard operating conditions for the Board. Given the slowdown in the economy due to the impacts of COVID-19, the Board expects a relatively slow period in 2020/2021, and projects 45 to 55 appeals to be filed over that period.



Forecast of Trends and Special Problems

The Board has not observed any trends of note. The Board is unaware of any systemic problems related to its areas of authority.



Surveys

Survey Design

In March 2020, the Business Research and Diagnostics Group of the Ministries of the Attorney General and Public Safety & Solicitor General presented findings related to the *Appeal Processes and Procedures Survey*, conducted jointly by the Environmental Appeal Board, Forest Appeals Commission, and Oil and Gas Appeal Tribunal.

The survey was by invitation only. Invitations were extended to those who had been parties or representatives of parties to an appeal that was open, closed by way of a final decision, or closed following settlement of the issues under appeal, since January 1, 2016. All responses were anonymous.

The invitations were time-limited to ensure that information gathered still reflected work processes and staffing that was ongoing. Notably, the Board's practices and procedures were amended in 2016 and the survey was aimed at gauging the fairness, efficiency, and responsiveness of current practices and procedures.

Appellants whose appeals had been rejected or dismissed in a preliminary decision were not considered appropriate because of their truncated experience within the system. Invitations were extended to parties only because those with other statuses – participants and interveners – have variable degrees of exposure to Board processes, depending on the circumstances of any given appeal. Those with open files were invited because the three appeal bodies

have ongoing appeals dating back as far as 2006, with appellants who have had prolonged experience with associated appeal procedures.

Survey Responses

Invitations were sent to 243 historical system-users. Eleven responses were provided, for a completion rate of 4.53%. This provided an accuracy rate of $\pm 28.93\%$, 19 times out of 20. As a result, the results cannot be considered reflective of the experience of all system-users; however, the Board intends to use the results as qualitative information, to be used in the service delivery realignment.

Of the 11 responses, seven came from historical system-users of the Board, with three appeals considered under the *Environmental Management Act*, two under the *Water Sustainability Act*, and two under the *Wildlife Act*. The other four responses came from users of the Forest Appeals Commission. Because the Board, Forest Appeals Commission, and Oil and Gas Appeal Tribunal all operate using the same staff, the same members, and generally similar procedures, all responses have been summarized.

Ten of the 11 responses came from appellants or appellants' representatives; one was designated as an interested Third Party to an appeal. Of the 11 responses, eight were from those who had participated in an oral hearing; the remaining three had participated in a hearing by written submissions. Those who responded

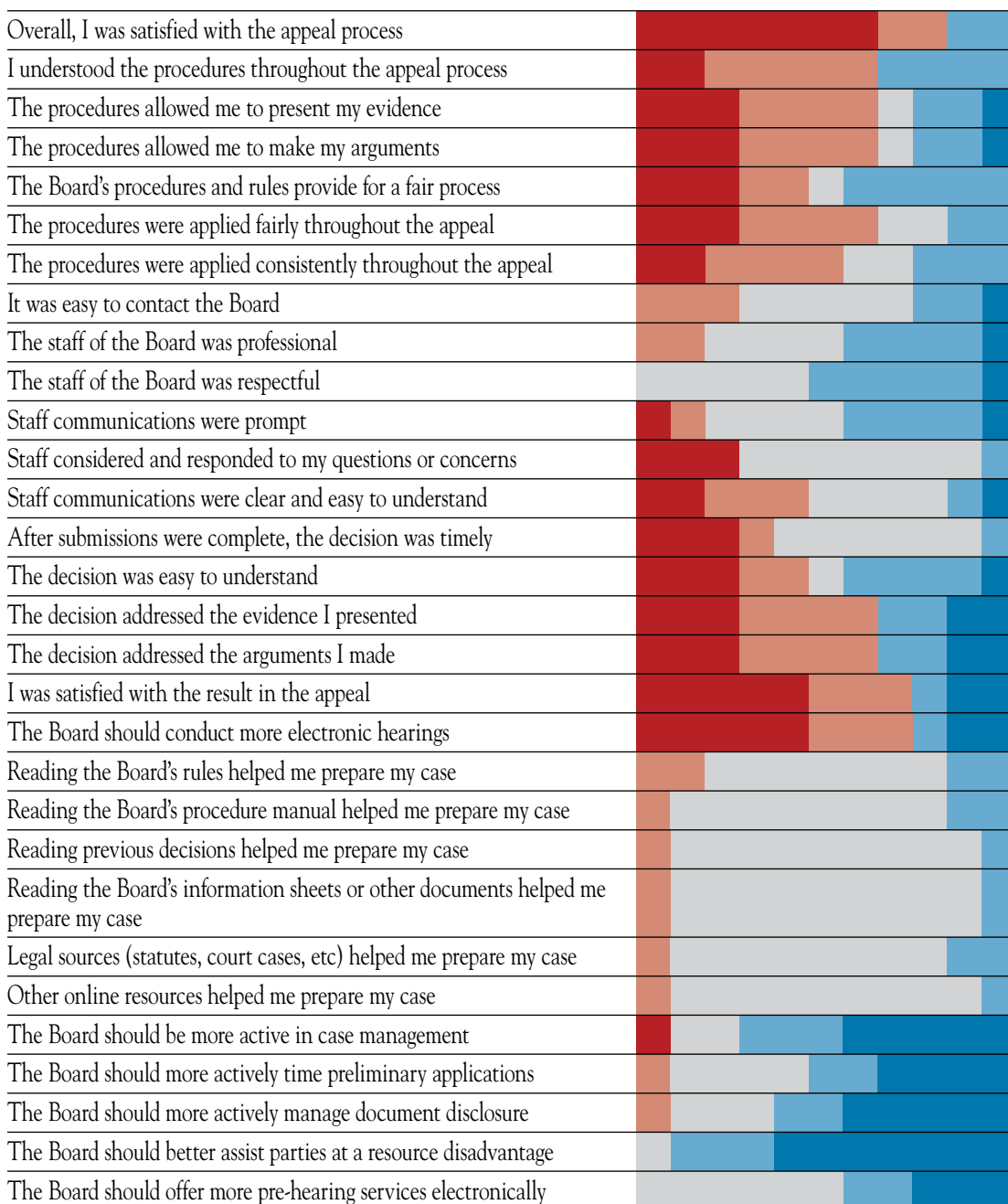
came from a variety of community sizes spread throughout much of the province.

The survey results are separated into general impressions, those specific to oral hearings, and those specific to written hearings.

SURVEY LEGEND

- strongly agree
- agree
- disagree
- strongly disagree
- no opinion or the question did not apply

General Impressions (11 system-users)



Some questions do not lend themselves to being summarized in the table. System-users were asked about the length of the pre-hearing process. Three of 11 said it was “Far too long”, two said it was “Too long”, three said it was “The right amount of time”, one said it was “Too short”, and one said it was “Far too short”. One declined to offer an opinion on this question.

System-users were also asked about the primary method they used to contact the Board and the primary way they would want to contact (and be contacted by) the Board. The results were generally consistent, with seven indicating email and two

indicating telephone in response to both questions. One system-user indicated that contact had primarily been in person, while two had wished for contact primarily in person. One system-users indicated that contact had primarily been via post, although no one preferred this option.

System-users were also asked about the number of participants allowed to be part of the appeal process. Five of the ten who responded to this question said there were too many participants. Four said the number of participants was correct. One said too few participants were allowed to be part of the process.

Written Hearing Impressions (3 system-users)

I knew what to expect in the written hearing process	
The written hearing process was an efficient use of time	
The written hearing process was an efficient use of resources	
I was able to understand the rules and expectations in the process	

One question on impressions of the written submission process did not lend itself to the table format above. It asked about the pace of deadlines

in the context of a written hearing. One system-user indicated the pace was unmanageably fast, one that it was a little too fast, and one that it was a little too slow.

Oral Hearing Impressions (8 system-users)

I knew what to expect in the oral hearing process	
The oral hearing was an efficient use of time	
The oral hearing was an efficient use of resources	
I understood the rules and expectations in the oral hearing	
Those who heard the appeal were professional	
Those who heard the appeal were respectful	
The other party/parties were professional	
The other party/parties were respectful	

System-users were invited to provide longer-form feedback as well. Comments about the Board generally included concerns about the Board’s governmental ties and perceived bias against appeals; the power inequity between citizen-appellants and

governmental respondents; the inaccessibility of Board processes for laypeople; the length of time before the hearing; the need for greater screening of appeals and/or education of parties on evidentiary matters; and the Board’s tolerance of “court room theatrics”.

Conclusions

As noted previously, the response rate for the survey was too low for the data to be considered representative of user experiences overall; however, the feedback provided remains valuable. The Board is grateful to the system-users who took the time to highlight their concerns. Those concerns will be addressed throughout the service delivery realignment, through internal Board training, and will be focal points of discussions with stakeholders during those processes.

The systemic areas of concern are:

- ensuring Board processes (including how to present admissible evidence and effective argument) are better-understood by parties;
- improving the efficiency, in both time and resources, involved in all hearings;
- ensuring the Board's rules and procedures are fair, including by better assisting under-resourced parties;
- improving clarity and responsiveness in communications from Board staff;
- ensuring that parties are not unduly forced into electronic hearings;
- improving the ease with which the Board's rules, procedure manual, previous decisions, and other publications can help parties prepare their cases; and
- increasing the Board's activity in case management, the timing of preliminary applications, and document disclosure.

Areas of potential training are:

- encouraging fairness and consistency in applying the Board's rules and procedures;
- fostering clarity and responsiveness in decision-writing; and
- improving professionalism and respectfulness of panels conducting oral hearings.



Plans for Improving Board Operations

The Board's operations will improve with the continuing transition to the new case management system implemented in the fourth quarter of 2019. As staff becomes more familiar with the system and as we continue to address issues with its functionality, we will achieve greater efficiency in our operations and service delivery.

The Board will be updating its website in 2020. This will improve communication and transparency with the public. In 2020 and beyond, the Board will work to make its processes more accessible by taking advantage of more electronic and web-based solutions for appeal processes, while ensuring that parties to appeals do not feel unduly forced to use electronic solutions or that the system is made inaccessible for those who do not have sufficient access to computers, to participate in electronic hearing processes.

The Board is engaged in a comprehensive service delivery realignment project. The Board is actively working to improve its accessibility, efficiency, efficacy, responsiveness, and timeliness. The Board is modifying its operational philosophy towards a user-focused approach. We will be consulting with our historical system users and with other significant stakeholders to develop processes and procedures to more quickly and efficiently adjudicate the appeals that come before us. As noted previously, the completed survey provides useful feedback on user experience, to assist us in the consultation and with ultimate realignment.



Board Membership

Members of the Board are appointed by the Lieutenant Governor in Council under Part 2 of the *Administrative Tribunals Act*. The Board has diverse, highly qualified members, including biologists, engineers, and agronomists. The Board also has lawyers with expertise in natural resource and administrative law. Members are appointed from across British Columbia and the Board is committed to soliciting applications to ensure its membership reflects the diversity of British Columbians, while ensuring members have the requisite expertise and experience to carry out their responsibilities to the highest standards.

The following tables summarize the membership of the Board as of March 31, 2020, as well as changes in membership during the 2019/2020 reporting period.

Members of the Environmental Appeal Board with Special Duties as of March 31, 2020

Name	End of Term
Darrell Le Houillier (Chair)	July 29, 2022
Gabriella Lang (Vice Chair)	December 31, 2021
Robert Wickett, Q.C. (Vice Chair)	December 31, 2021

Members of the Environmental Appeal Board as of March 31, 2020

Name	End of Term
Maureen Baird, Q.C.	December 31, 2020
Monica Danon-Schaffer	December 31, 2020
Brenda L. Edwards	December 31, 2022
Les Gyug	December 31, 2020
Jeffrey Hand	December 31, 2022
Lana Lowe	December 31, 2020
James Mattison	December 31, 2020
Linda Michaluk	December 31, 2020
Susan Ross	December 11, 2022
Teresa Salamone	December 31, 2020
Howard M. Saunders	December 31, 2022
Daphne Stancil	December 31, 2021
Douglas Vandine	December 31, 2020
Reid White	December 31, 2020
Norman Yates	December 31, 2020

New and Former Members of the Environmental Appeal Board

New Members	Start of Term
None	
Former Members	End of Term
Lorne Borgal	May 4, 2019
Alan Andison (Chair)	July 26, 2019



The Board Office and Use of Resources

The Board provides administrative support for seven other appeal bodies: the Community Care and Assisted Living Appeal Board, the Financial Services Tribunal, the Forest Appeals Commission, the Health Professions Review Board, the Hospital Appeal Board, the Industry Training Appeal Board, and the Oil and Gas Appeal Tribunal. Administrative support includes registry services, legal advice, research support, systems support, financial and administrative services, professional development, and communications support.

Some expenses associated with the Board's operations are shared with the other appeal bodies. Such shared expenses include professional services for

information technology, information systems, office expenses, and small-scale miscellaneous expenses.

With that limitation in mind, I have provided a summary of the Board's direct expenses in 2019/2020 and historically. The figures below account for administrative support offered to the other appeal bodies, but do not account for shared expenses proportionately distributed among those appeal bodies.

The following table summarizes the Board's expenditures, rounded to the nearest dollar, for 2019/2020, and averaged over the six preceding reporting periods (2013/2014 to 2018/2019, inclusive).

Area of Expenditure	Fiscal Years 2013-2019, Averaged	2019/2020 Fiscal Year
Staff Salary and Benefits	\$1,098,398	\$1,073,304
Member Fees and Expenses	\$138,428	\$311,760
Staff Travel	\$14,956	\$9,379
Professional Services	\$59,858	\$49,545
Office Expenses	\$344,218	\$233,494
Other Expenses	\$1,743	\$0
TOTAL	\$1,647,601	\$1,677,482

