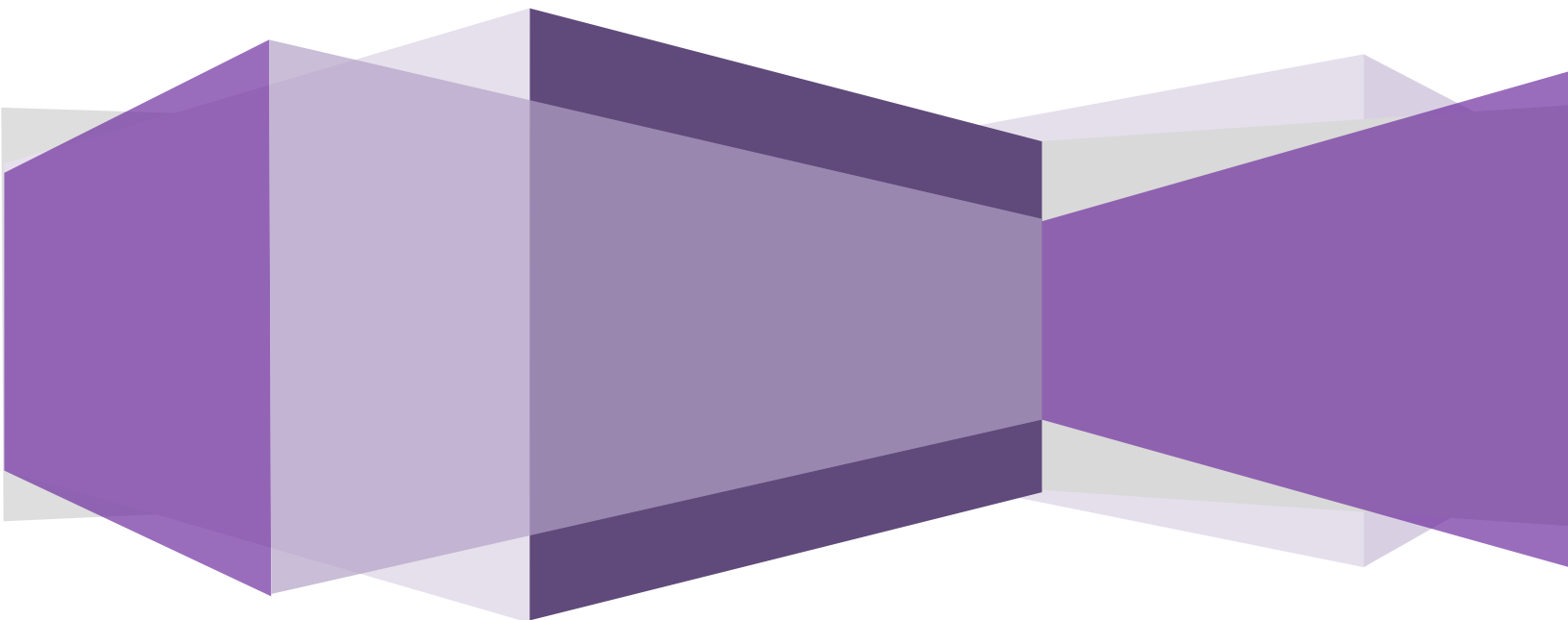




Hospital Appeal Board

2019-2020 Annual Report

*Covering the reporting period from
April 01, 2019 to March 31, 2020*





Hospital Appeal Board

January 21, 2022

The Honourable David Eby
Ministry of Attorney General
Room 232, Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Attorney General:

Re: Hospital Appeal Board 2019-2020 Annual Report

On behalf of the Hospital Appeal Board, I respectfully submit the Annual Report of the Hospital Appeal Board for the period April 1, 2019 to March 31, 2020.

Sincerely,

Stacy F. Robertson
Chair, Hospital Appeal Board

Enclosure

Message from the Chair

I am pleased to submit the Annual Report of the Hospital Appeal Board (the “Board” or “HAB”) for the fiscal year beginning April 1, 2019 and ending March 31, 2020. This report is submitted pursuant to section 59.2 of the *Administrative Tribunals Act*.

Although this reporting period was certainly unique in that it saw the emergence of a global pandemic which resulted in large-scale changes to the way public bodies, including the Board, operate, this reporting period also saw some smaller-scale changes which nevertheless had great impact on the Board.

Importantly, during this reporting period the long-serving Chair of the Hospital Appeal Board, David Perry, stepped down to focus more attention on his legal practice. Mr. Perry was first appointed to the Board as a member in 2012, and then went on to serve as the Board’s Chair for over seven years. The Board benefitted tremendously from his considerable legal expertise and ability to negotiate solutions to complex problems. As Vice Chair, I personally benefited from his guidance and mentorship which has assisted me in exploring this new Chair role.

This period also saw the departure from the Board of Joanna Nemrava, our nominee from the College of Midwives (as the organization was formerly known), and Dr. Maureen Piercey. Ms. Nemrava was first appointed to the Board in 2010 and brought a wealth of medical and operational knowledge to the Board. Dr. Piercey was first appointed to the Board in 2012, and over the course of her appointment shared significant medical insight and expertise with the Board.

On behalf of the staff and membership of the Board, I would like to thank Mr. Perry, Ms. Nemrava, and Dr. Piercey for their significant contributions to the Board, and for their dedicated service to the citizens of British Columbia.

Appeals during Reporting Period

Section 59.2(a) of the *Administrative Tribunals Act* requires the Board to provide a review of its operations during the preceding reporting period. During this reporting period, one new appeal was filed with the Board. Further details of this appeal are provided later in this report pursuant to section 59.2(c) of the *Administrative Tribunals Act*.

An additional three appeal matters that were carried over from the previous reporting period were also considered during this period.

Out of the four total appeals which were before the Board during this reporting period, one appeal was closed. This appeal was withdrawn and did not proceed to hearing. Three appeals remained outstanding at the close of this reporting period.

There were no applications filed in the BC Supreme Court for Judicial review of any decisions issued by the HAB in this reporting period.

Forecast of workload for the next reporting year and trends noted

Section 59.2(f) of the *Administrative Tribunals Act* requires the Board to provide a forecast of the workload for the succeeding reporting period. The HAB's workload for the 2020/2021 reporting period is expected remain consistent with trend over the past few years which has seen an increase from approximately 1-2 appeals per year to approximately 2- 4 new appeals filed per year. While the number of appeals is increasing slightly, the real increase in past and projected workload flows from the increased complexity and length of hearings.

Section 59.2(g) of the *Administrative Tribunals Act* requires the Board to report any trends or special problems it foresees. The only trend or special problem that we have identified in this reporting period, as with the previous reporting period, is the increase in the length and complexity of appeals over the past several years which we will need to continue to monitor over time.

The Board has found it difficult at times over the past several years to provide timely hearings for the number of increasingly long and complex appeals due to a lack of board members available to sit on these multiple hearings that take place over several weeks (up to 5 weeks at times). With senior counsel routinely representing both parties to an appeal lasting anywhere from 2-5 weeks and involving complex evidentiary rulings and pre-hearing, intra-hearing and post-hearing applications, it has been particularly difficult to find board members with availability and the legal expertise to chair panels.

The membership of the Board consists largely of experienced health care practitioners, administrators and lawyers who have busy practices and who often find it difficult and financially impractical to set aside large periods of time for attendance at hearings. These individuals are selected for membership on the Board on the basis of their expertise and high standing in their respective fields. In order to maintain the high calibre of the professionals who currently sit on the Board, it may be necessary to provide greater incentives for members attending lengthy hearings; for example, financial compensation for hearings which are cancelled last-minute, and/or greater overall compensation for members' attendance at hearings.

Plans for improving the Board's operations

Finally, section 59.2(h) of the *Administrative Tribunals Act* requires the Board to report its plans for improving operations in the future. During this reporting period, the Appeals Office cluster responsible for providing administrative support to the Board began an in-depth review of service delivery which has resulted in several organizational realignments within the cluster. Registry staff have been increased, providing greater case management capacity for all the tribunals within the cluster, including the Board.

Further, the cluster has completed full implementation of the new case management system which has significantly helped to modernize tribunal operations. With a modern case management system with flexible and adaptive functionality, the tribunal cluster, including the Board, has been able to better and more efficiently manage its appeals, and, going forward, will have easier and more accurate access to appeal information and statistics. This will allow the Board to be able to more effectively track and report out on key performance indicators.

Service delivery will continue to be reviewed over the next reporting period, and further technological and organizational change is expected to occur. The Board will continue to capitalize on technological improvements over the next reporting period.

COVID-19 and Pandemic Response

Importantly, this reporting period saw the onset of the COVID-19 pandemic and resultant state of emergency in British Columbia. In response to the pandemic, the Board implemented its business continuity plan, which focussed on ensuring ongoing service delivery to the users of the tribunal, while maintaining health and safety of tribunal staff and members.

At the outset of the pandemic, questions about disease transmissibility resulted in shifting the way the Board accepted paper-based submissions and materials from parties and how the Board facilitated receipt of those materials by decision-makers. Declaration of a state of emergency and restrictions on in-person gatherings also necessitated research into and training of members in the use of video-conferencing software to ensure effective communication and timely hearing processes.

From the onset of the pandemic and into the next reporting period the Board worked closely with its host Ministry of Attorney General to communicate and consult on emergency measures within the tribunal system in BC.

As a result of the province-wide mandate for appropriate social distancing, the Board quickly shifted its operations from primarily paper-based to primarily electronic. The public was advised of the modification of Tribunal Rules to promote electronic filings, and were encouraged to flag

pressing and/or sensitive matters to tribunal staff so that the Board could prioritize such matters in case of service disruption.

Thanks to the dedication and flexibility of staff in the tribunal cluster, and to the adaptability of tribunal members to a new way of working and interacting, the Board did not suffer any service disruptions or adverse health consequences related to the pandemic during this reporting period. I would like to take this opportunity to extend my sincere thanks to all the individuals in the cluster who have worked hard to keep the tribunal open and accessible to the public it serves. Your work as government employees and appointees has been top rate during times which have been difficult for all of us.

At the time of publication of this report the pandemic remains ongoing, and the Board continues to adapt to ever changing circumstances. As such, the Board will report out more fully on additional pandemic-related measures and outcomes in the next reporting period.

A handwritten signature in black ink, appearing to read 'Stacy F. Robertson', with a long horizontal flourish extending to the right.

Stacy F. Robertson
Chair, Hospital Appeal Board

Mandate

The Hospital Appeal Board is a quasi-judicial administrative tribunal continued under Section 46 of the *Hospital Act*. The Board's purpose is to provide a specialized, independent, accessible and cost-effective avenue of appeal, as an alternative to the court process, for health practitioners (doctors, dentists, midwives and nurse practitioners) who disagree with a decision of a hospital's board of management regarding hospital privileges.

The Board hears appeals filed by the prescribed health practitioners from:

- a decision of a hospital's board of management that modifies, refuses, suspends, revokes or fails to renew a practitioner's permit to practice in a hospital; or
- the failure or refusal of a hospital's board of management to consider and decide on an application for a permit in a timely manner.

The Board generally holds 1-2 full, oral, court-like hearings per year. In most cases, a panel of three members hears the merits of each appeal. Each appeal usually also involves a number of preliminary issues and rulings made either by the Board Chair or the Panel Chair designated to hear the appeal.

Appeals are conducted as a "hearing de novo", which requires the Board to hold a new hearing in the full sense with witnesses, substantial documentary evidence and oral argument. Consequently, hearings can vary widely in length depending on the complexity of the issues under appeal and the amount and kind of evidence to be adduced, with some taking several days or in some cases many weeks to complete. Parties to the proceedings are almost always represented by experienced legal counsel.

The Board has the authority to affirm, vary, reverse or substitute its own decision for that of a hospital board of management on the terms and conditions it considers appropriate. After a hearing, the Board issues detailed written reasons for its decision which are made available to the public on the Board's website.

For further information please see the board's website at www.hab.gov.bc.ca.

Board Membership

Under section 46(4) and (4.1) of the *Hospital Act* the minister **must** appoint 10 members of the Hospital Appeal Board as follows:

- a) one member designated as the chair;
- b) one member designated as the vice-chair;
- c) one member selected from among 3 or more individuals nominated by the College of Physicians and Surgeons;
- d) one member selected from among 3 or more individuals nominated by the College of Dental Surgeons of British Columbia;
- e) one member selected from among 3 or more individuals nominated by the British Columbia College of Nurses and Midwives;
- f) one member selected from among 3 or more individuals nominated by the British Columbia Medical Association [**now known as Doctors of BC**]; and
- g) four other members selected after a merit based process.

Through this reporting period, the Board membership consisted of the following members:

<i>BOARD MEMBER</i>	<i>ROLE</i>	<i>INITIAL APPOINTMENT</i>	<i>TERM EXPIRY</i>
David G. Perry	Chair	December 7, 2012	December 31, 2020
Stacy Frank Robertson	Vice Chair	October 28, 2014	December 31, 2020
	Chair	December 31, 2020	December 31, 2023
Dr. Paul Champion (Doctors of BC Nominee ¹)	Member	October 20, 2009	September 28, 2020
Dr. R. Alan Meakes (Doctors of BC Nominee)	Member	June 30, 2019	June 30, 2021
Dr. Douglas H. Blackman (College of Physicians and Surgeons of BC Nominee)	Member	February 20, 2012	May 31, 2021
Dr. Kevin Doyle (College of Dental Surgeons of BC Nominee)	Member	October 28, 2014	December 31, 2024
Joanna Nemrava	Member	May 18, 2010	May 31, 2019

¹ Dr. Champion was the DBC Nominee until June 30, 2019, at which time Dr. Meakes was appointed as the DBC Nominee. Dr. Champion's term was then extended by the Chair pursuant to section 7 of the *Administrative Tribunals Act*.

(College of Midwives Nominee ²)			
Sandra J. Pullin (BC College of Nurses and Midwives Nominee)	Member	December 31, 2019	December 31, 2021
Dr. Maureen Piercey	Member	December 7, 2012	December 31, 2019
Darlene Kolybabi	Member	November 6, 2018	November 06, 2020
Lorraine Unruh	Member	October 28, 2014	December 31, 2024
Cheryl Vickers	Member	March 1, 2016	March 11, 2024

BIOGRAPHIES FOR THE BOARD MEMBERSHIP DURING THE REPORTING PERIOD ARE AS FOLLOWS:

DAVID PERRY (CHAIR UNTIL DECEMBER 2020) David Perry focuses his practice on insurance defense and environmental law and is an experienced litigator in commercial and motor vehicle defense cases. He also brings considerable skills as a negotiator and consensus builder to legal challenges involving parties holding conflicting viewpoints. Mr. Perry has had diverse experience in resolving land use and resource disputes as counsel, chair of administrative tribunals and as a commissioner of inquiry. With his proven ability to bring together government, industry and citizen groups, he has helped to resolve several seemingly intractable environmental disputes. Mr. Perry has acted as counsel for the provincial government, major resource companies and community groups in the course of resolving litigated and mediated resource disputes. He has acted in leading environmental law and insurance cases involving advocacy before regulators, the Environmental Appeal Board, B.C. Supreme Court, BC Court of Appeal and the Supreme Court of Canada.

STACY FRANK ROBERTSON (VICE-CHAIR UNTIL DECEMBER 2020, CHAIR AFTER DECEMBER 2020) Stacy Robertson is currently Senior Enforcement Counsel at the Investment Industry Regulatory Organization of Canada in Vancouver, B.C., which regulates professional discipline for registered securities industry individuals and firms. Previously he worked at several Vancouver based firms practicing in the areas of insurance, construction, employment, labour and administrative law. He has appeared before all courts in B.C. and before the B.C. Labour Relations Board, the Canadian Industrial Relations Board and the B.C. Securities Commission. He is currently the Chair of the Hospital Appeal Board of B.C. He has served as a panel member on the Employment Assistance Appeal Tribunal and the Eligibility Appeals Committee for B.C. School Sport. He holds a Bachelor of Law from the University of New Brunswick, a Bachelor of Commerce from McMaster University and a diploma from Moscow State University in Political History of Russia and the U.S.S.R. He is active in his community including community sports organizations.

DR. PAUL CHAMPION Dr. Paul Champion is a retired physician, registered in British Columbia, whose specialist qualification was the FRCP(C) Internal Medicine and in Respiriology. He holds the title of Prof. Emeritus Clinical Medicine at the University of British Columbia. Dr. Champion held consulting privileges at the BC Cancer Agency, the GF Strong Rehabilitation Unit and with the BC C.D.C Tb Service up until his retirement. In addition, he was the Medical Director at Vancouver General Hospital Medical Bronchoscopy

² Joanna Nemrava was the CNMBC Nominee until May 31, 2019, after which time (December 31, 2019) Sandy Pullin became the CNMBC Nominee.

Program. Dr. Champion holds his Bachelor of Medicine and Bachelor of Surgery from London and his Doctor of Philosophy from the Netherlands. Dr. Champion is currently a Trustee for the Gabriola Volunteer Fire Department and Rescue Services and also a Director of the Gabriola Community Health Centre Foundation.

DR. R. ALAN MEAKES Dr. Meakes is a now-retired physician with experience in general and specialty practice, including Family Medicine, General Internal Medicine and Anesthesiology. Additionally, he has had an extensive career in administrative aspects of medicine, including military field medicine and hospital care. Born and raised in Victoria, BC with an ambition to be a physician since childhood, he has practiced medicine in Manitoba, Alberta and Europe (Germany) as a military medical officer prior to relocating to his home city, where he was hired in 1983 as Director of Intensive Care for the Royal Jubilee Hospital in addition to clinical services in Anesthesia. He has significant experience in both clinical and administrative care as it pertains to urban hospitals and has served on numerous committees, both local and provincial, in the roles of Director of Critical Care Services and Executive Medical Director for what is now Island Health. His medical career has involved regular teaching and training of nurses, respiratory therapists and medical Interns/Residents. He continues to reside in Victoria, BC.

DR. DOUGLAS BLACKMAN Dr. Douglas Blackman is the former Senior Deputy Registrar and Deputy Registrar with the College of Physicians and Surgeons of BC. Previously, he had private practices in Prince George and Victoria. Dr. Blackman is the Past President of the Federation of Medical Regulatory Authorities of Canada. He holds his Medical Doctorate from the University of British Columbia.

DR. KEVIN DOYLE Dr. Kevin Doyle received his degree of Doctor of Dental Medicine from the University of British Columbia and has been in private practice since 1980. He holds an undergraduate Bachelor of Science degree in Chemistry from the University of Victoria. He is a Fellow of the American College of Dentists, the International College of Dentists, and the Pierre Fauchard Academy. He is an Assessment Evaluator and Assessment Invigilator for the National Dental Examining Board of Canada. He has served as an examiner for the National Dental Examining Board of Canada and the College of Dental Surgeons of British Columbia. He actively participated in the transition of the *Dentists Act* to the *Health Professions Act* as Chairperson for the College of Dental Surgeons of BC Quality Assurance Committee. He holds a Graduate Certificate in Evidence Based Health Care from the University of Oxford and has held past appointments as Reviewer for the Cochrane Oral Health Group, Council member on the Canadian Collaboration on Clinical Practice Guidelines (CCCPG) and Chairperson of the Guideline Advisory Committee of the CCCPG.

JOANNA NEMRAVA Joanna Nemrava is Head of the Department of Midwifery at the Royal Inland Hospital in Kamloops. In addition, she is a Clinical Preceptor for the Midwifery Education Program at the University of British Columbia's (UBC) Division of Midwifery. Currently, Ms. Nemrava serves as Treasurer on the Board of the Midwives Association of BC and President of the Canadian Association of Midwives in 2013/14. Ms. Nemrava holds a Bachelor of Midwifery from the University of BC.

SANDRA J. PULLIN Sandra Pullin has been a practicing midwife since 1978. It has been her life's passion. She has always wanted to improve the lives of women and this was her path. Ms. Pullin spent the first twenty years of her career in Edmonton where she was part of the regulation of midwifery in that province. She

moved with her family to Nanaimo on Vancouver Island in 1998 and has been serving the families of that area since. In August of 2018, Ms. Pullin closed her practice and has been traveling and doing locums since. She has spent time working as a midwife in Nunavut, Uganda and Haiti for short terms. She plans on working with Doctors Without Borders in the coming years. Ms. Pullin has a husband and two children who have supported her through this journey and she is looking forward to the grandchildren to come.

DR. MAUREEN PIERCEY Dr. Piercey was a family physician in Victoria for a number of years. She has a certification in Addiction Medicine and consulted in that field for over a decade. She has a special interest in the health of physicians and has been involved in clinical care and formal programs in physician health. From 2000 until spring 2011 she was a Deputy Registrar at the College of Physicians and Surgeons of BC where she was responsible for matters relating to sexual misconduct by physicians, physician impairment, and monitoring of physicians who had been the subject of disciplinary actions. She worked closely with physicians who had disciplinary action, significant mental and addition problems, and who were undergoing remediation.

DARLENE (DEANIE) LYNN KOLYBABI Deanie has experience working in the broadcast industry. She also has experience working in the not-for-profit sector. Kolybabi acted as Executive Director of the National Aboriginal Achievement Foundation, EAGLE (Environmental-Aboriginal Guardianship through Law & Education), and Kla-how-eya Aboriginal Cultural Centre. Further, she is a charter Board Director with Healthy Aboriginal Network, and a founding member of SABAR (Strategic Alliance of Broadcasters for Aboriginal Reflection). More recently, Ms. Kolybabi served on the Board of Directors of the Fraser Health Authority (FHA), during which time she also served as Chair of the Governance & Human Resources Committee as well as serving on the Finance Committee, the Access & Flow Committee and the Quality & Performance Committee.

LORRAINE UNRUH Lorraine Unruh has an extensive background in hospital administration and retired in 2012 as the Acute Area Director for the South Okanagan Hospitals (Penticton, Summerland, Oliver, Princeton, and Keremeos). She is currently a Board Member of the Health Professions Review Board. Active in her community, she is a Board Member of the South Okanagan Medical Foundation. Lorraine Unruh holds a Diploma of Nursing, a Bachelor of Science in Nursing and a Master of Arts degree in Organizational Leadership.

CHERYL VICKERS Cheryl is a lawyer whose practice focusses on dispute resolution, including mediation and arbitration, administrative law, and real property assessment law. Cheryl chaired BC's Property Assessment Appeal Board from 2003 to 2015, and served as Vice-Chair from 1995-2003. Since 2007, Cheryl has chaired BC's Surface Rights Board, a tribunal exercising jurisdiction under the *Petroleum and Natural Gas Act* and other statutes to resolve surface lease and right of way disputes between landowners and the holders of subsurface rights. From March 2013 to April 2014, Cheryl served as Acting Chair of BC's new Civil Resolution Tribunal, assisting with the development of Canada's first on-line tribunal to help citizens resolve strata and small claims disputes. Cheryl was active in the development of the British Columbia Council of Administrative Tribunals (BCCAT), and served for many years as a member of that organization's Board of Directors, including as its President from 2004-2006. She assisted with curriculum development for BCCAT courses to offer training to appointees of quasi-judicial boards and tribunals and is an instructor of the

Foundations of Administrative Justice for Administrative Decision Makers and Foundations of Administrative Justice for Staff courses, as well as the Decision Writing and Hearing Skills Workshops. Cheryl has presented at conferences of the British Columbia Council of Administrative Tribunals, the Council of Canadian Administrative Tribunals, the Continuing Legal Education Society, the Canadian Property Tax Association and the Appraisal Institute of Canada on a variety of subjects. She serves on the editorial boards of two CLE Practice Manuals – *Real Property Assessment* and *Administrative Law*. In October 2009, Cheryl received BCCAT’s Recognition Award for outstanding contribution to administrative justice.

Operations

Effective December 1, 2004, the administrative support functions of the HAB were consolidated with the Environmental Appeal Board/Forest Appeals Commission Appeals Office (Appeals Office) in Victoria.

In addition to the HAB, the Appeals Office provides administrative support to five other adjudicative tribunals. This clustering of the administrative support for eight independent appellate tribunals has been done to assist government in achieving economic and program delivery efficiencies by allowing greater access to resources while, at the same time, reducing administration and operating costs. The additional tribunals include the:

- Community Care and Assisted Living Appeal Board;
- Health Professions Review Board;
- Financial Services Tribunal;
- Industry Training Appeal Board; and,
- Oil and Gas Appeal Tribunal.

This move has resulted in significant savings to government for the operation of the HAB through a shared services cluster approach which takes advantage of synergy and assists government in achieving economic and program delivery efficiencies. This arrangement has been in operation for 15 years now and has proven to be a very effective and efficient means for providing administrative support to the HAB, which in turn enables the HAB to effectively and efficiently fulfill its appellate mandate to the public.

Effective April 1, 2017, host Ministry responsibilities for administration of the Hospital Appeal Board (including budget oversight and member appointments, human resources, facilities, and records supports, etc.) were transferred to the Attorney General as part of the Tribunal Transformation Initiative.

Contact Information

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WEBSITE: <http://www.HAB.gov.bc.ca/>

Appeal Activity and Decisions Issued

APPEALS FILED

During this reporting period, one new appeal was filed. Additionally, there were three appeals which were carried over from the previous reporting period. The new appeal is described below. Three of the four matters before the board during this reporting period remained outstanding at the close of this reporting period.

HAB-HA-20-A001 BY A MIDWIFE FILED FEBRUARY 14, 2020 – Appeal by a Midwife from the November 18, 2019 decision of the Board of Directors of Northern Health Authority (“NHA”) to deny her application for appointment to the Northern Health Medical Staff.

BOARD DECISIONS

The Board issued seven decisions during this reporting period consisting of: one dismissal order under section 17(1) of the *Administrative Tribunals Act* regarding an appeal filed during the previous reporting period and six preliminary decisions regarding appeals filed during the previous reporting period. Each of the preliminary decisions is summarized below.

2018-HA-001 (LETTER) (April 17, 2019) – The Appellant, a physician, appealed the decision of the Board of Directors of Northern Health Authority to revoke his privileges as a member of the provisional category of the Hospital Medical Staff. On application by the Appellant, the HAB Chair ordered that the appeal be held in abeyance for six months in order to allow the Appellant time to consult with his professional regulatory body.

2018-HA-002 (Letter) (April 29, 2019) – The Appellant, a physician, appealed the decision of the Provincial Health Services Association (“PHSA”) to terminate his contract for services, which he said resulted in a modification of his privileges. The Respondent applied to the Board for a preliminary determination that certain proposed documents and witnesses should be inadmissible at the hearing. The Board determined that the application was premature and that the Board required more fulsome submissions before making the determination. The Board held that objections to documents and witnesses could be made and would be dealt with by the Panel in the course of the hearing.

2018-HA-002 (Letter) (May 16, 2019) – The Appellant, a physician, appealed the decision of the Provincial Health Services Association (“PHSA”) to terminate his contract for services, which he said resulted in a modification of his privileges. During the course of the hearing, the Respondent brought an application for an order that one of the members of the three-person Panel hearing the appeal be recused from the appeal on the basis of reasonable apprehension of bias. The Panel considered the application and dismissed the application with brief reasons and more fulsome reasons to follow. The Panel held that each member of the Panel is subject to a common law and

statutory duty of impartiality, and that the burden of proving a claim that a decision-maker has by conduct created a reasonable apprehension of bias is on the party alleging bias. The threshold for meeting that burden is high, and the analysis is contextual and fact-specific. The Panel considered the impugned comments of the Panel member and held that they did not meet the high threshold required to establish a reasonable apprehension of bias.

2018-HA-002(c) (May 28, 2019) – The Appellant, a physician, appealed the decision of the Provincial Health Services Association (“PHSA”) to terminate his contract for services, which he said resulted in a modification of his privileges. During the course of the oral hearing of the matter, the Appellant applied to the Board for an order requiring PHSA to disclose documents relating to a third party physician, as well as documents relating to a physician recruitment process and other PHSA internal events. The Respondent opposed the application, arguing the requested documents were irrelevant and some of them were privileged or otherwise inadmissible. The Board undertook analysis of each category of requested documents and ultimately ordered the disclosure of most categories of documents on the basis that they might be relevant and were not privileged. The Board further discussed the timing of the disclosure application and noted that although it came during the hearing and might prolong the appeal, the relevance of the documents in question arose during the course of the hearing, so it was appropriate in the circumstances to order disclosure.

2018-HA-002(d) (July 11, 2019) – The Appellant, a physician, appealed the decision of the Provincial Health Services Association (“PHSA”) to terminate his contract for services, which he said resulted in a modification of his privileges. In response to a possible adjournment of the hearing of the matter, the Appellant applied for an order from the Board preventing the Respondent from appointing another physician until the appeal was decided. The Board held the application raised two issues: 1) whether it had the jurisdiction to order interim injunctive relief that would prevent the Respondent from adding another physician with active privileges until the appeal was decided; and 2) whether, if the Board did have the jurisdiction, it should grant the relief requested. The Board held that it did not have to decide the jurisdictional issue because the Board was of the view that even if it had the jurisdiction, the requested relief should not be granted in the circumstances. The Board held that an application of this kind should have been brought earlier in the proceeding as the recruitment of a third physician was not new information. The Board also held that the public interest weighed against granting the relief as the public would rightly expect that the Board’s appeal process would not interfere with the delivery of medical services while the appeal remained outstanding.

Preliminary Decision: <http://www.hab.gov.bc.ca/preliminary.asp>

2018-HA-002 (Letter) (September 13, 2019) – The Appellant, a physician, appealed the decision of the Provincial Health Services Association (“PHSA”) to terminate his contract for services, which he

said resulted in a modification of his privileges. After the evidentiary portion of the hearing completed on July 05, 2019, the Appellant brought an application to re-open the evidentiary portion of the hearing to admit affidavit evidence relating to a third party physician. The Board applied the two stage test for re-opening a matter set out by the BC Court of Appeal in *Hansra v. Hansra*, 2017 BCCA 199, and held that the evidentiary portion of the hearing would be re-opened for the limited purpose of admitting the affidavit evidence and any responsive affidavit evidence which the Respondent might want to tender.

Matters Outstanding at end of Period

There were three matters outstanding at the end of this reporting period.

Performance Indicators and Timelines

Section 59.2(b) and (d) of the *Administrative Tribunals Act* requires the Board to report on performance indicators, and provide details of the time from filing to decision of matters disposed of by the Board in the reporting period.

The appeal process, although very similar to a court process, has been designed to be faster and more efficient and cost-effective than if these important and complex matters were heard by the court. Appeals are full “hearings de novo” and are primarily conducted in person with a three person panel. During the course of an appeal the Board often deals with a number of complex preliminary issues, including legal challenges to the Board’s jurisdiction as well as document disclosure and evidentiary issues.

The Board generally tries to have an individual with legal training act as panel chair, who may, when delegated by the Chair, determine any interim or preliminary issues in the appeal. The Board then assigns two additional panelists for the hearing who have medical and/or hospital administrative experience to ensure the appropriate expertise on the panel to deal with the issues arising on the merits of the appeal.

The Board’s Practice Directive #1, which is available on the Board’s website, sets the timeframes the Board will target for 1) completion of hearings, and 2) issuing a final decision with reasons.

With respect to completion of hearings, the Directive provides that the Board is committed to providing a fair, timely and effective appeal for practitioners, and that appeals will be processed as quickly as practicable. The Directive sets different timeframes for hearings of 2 days or less, 3-5 days, and 6 days or more. For matters where the total number of hearing days required to complete the matter is 6 or more, the Board will attempt to complete the hearing within 9 months for the date the Notice of Appeal is received by the Board.

With respect to issuance of final decisions, the Directive says that the Board will endeavour to issue a copy of the final decision or order, including written reasons, to each party within a range of three to nine months from the close of the hearing, depending on the length of the hearing. For matters where the hearing requires six or more days to complete, the decision will generally be issued within nine months of the conclusion of the hearing.

For the appeal which was closed within this reporting period, the time from the date of filing the appeal to its final disposition was 623 days. This matter was adjourned on request of the parties, and was ultimately withdrawn.

With respect to the six preliminary decisions issued by the Board during this reporting period, the average time between the close of submissions³ and the issuance of a decision was 9 days. The longest time between the close of submissions and the issuance of the preliminary decision was 34 days, and the shortest time was 1 day.

Finally, section 59.2(e) of the *Administrative Tribunals Act* requires the Board to report the results of any surveys carried out by the Board during the reporting period. The Hospital Appeal Board did not conduct any surveys during this reporting period.

Judicial Review of HAB Decisions

There were no decisions rendered by the Supreme Court of British Columbia on judicial review of any HAB decisions issued in this reporting period. It is extremely rare that a decision of the HAB is the subject of an application for judicial review, with the last one being 27 years ago.

³ These preliminary decisions were determined on the basis of both written and oral submissions.

Statement of Financial Performance

(For the fiscal year ended March 31, 2020)

In fiscal year 2019/2020, the HAB incurred expenses of \$131,159 as detailed below in this six-year chart. The expenses incurred in this reporting period were primarily comprised of board member fees and expenses.

<i>Direct Expenses</i>	<i>2014/2015</i> \$	<i>2015/2016</i> \$	<i>2016/2017</i> \$	<i>2017/2018</i> \$	<i>2018/2019</i> \$	<i>2019/2020</i> \$
Salaries and Benefits	0	0	0	0	0	0
Board Member Fees & Expenses	9,000	20,163	168,560	20,735	39,255	86,000
Professional Services	0	753	29,163	11,942	7,550	18,900
Office and venue Expenses	191	688	41,115	5,905	8,478	26,259
Other	30	30	30	0	0	0
Total HAB Expenses	\$9,221	\$21,634	\$238,868	\$38,582	\$55,283	\$131,159