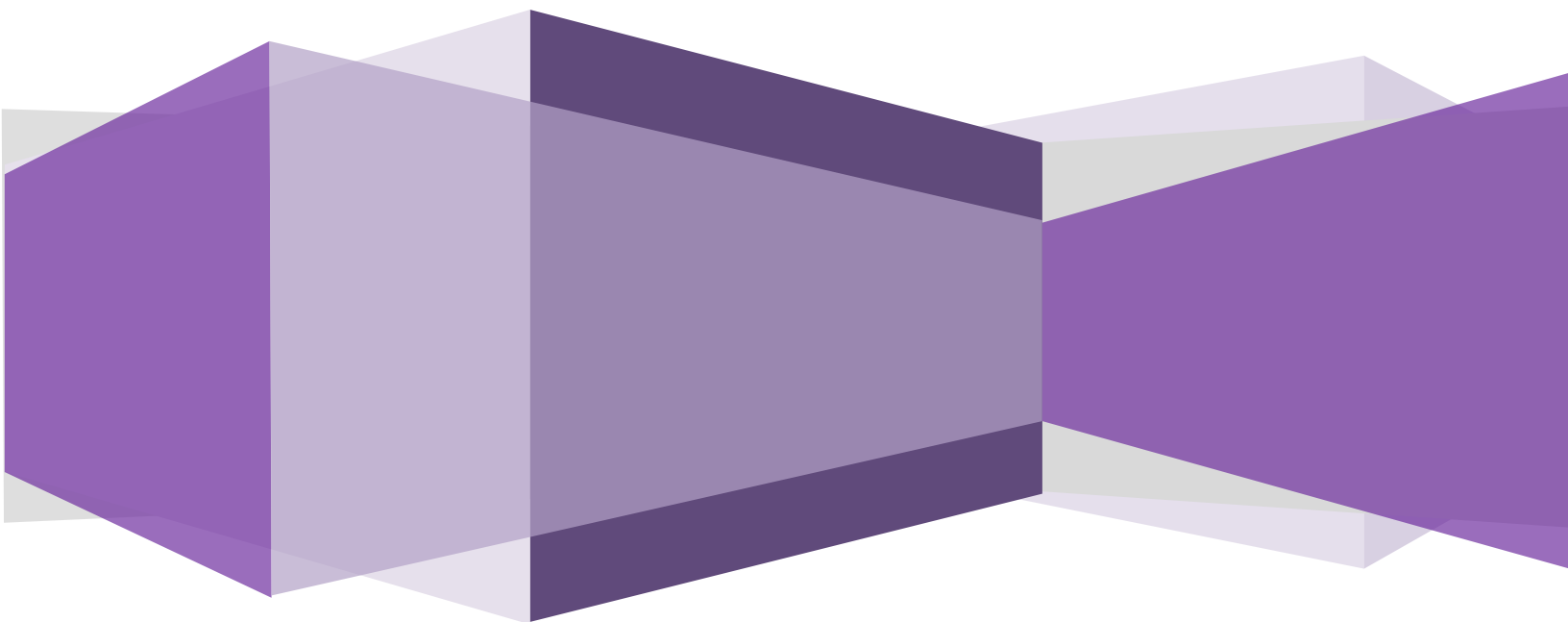




Hospital Appeal Board

2021-2022 Annual Report

Covering the reporting period from
April 1, 2021 – March 31, 2022





Hospital Appeal Board

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January 5, 2023

Honourable Nikki Sharma, K.C.
Attorney General
Victoria, British Columbia V8V 1X4

Dear Attorney General:

Re: Hospital Appeal Board 2021-2022 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, 2021 to March 31, 2022.

Sincerely,

Stacy F. Robertson
Chair, Hospital Appeal Board

Encl.

Message from the Chair

I am pleased to submit the Annual Report of the Hospital Appeal Board (the “Board” or the “HAB”) for the fiscal year beginning April 1, 2021 and ending March 31, 2022. This report is submitted pursuant to section 59.2 of the *Administrative Tribunals Act*.

During the reporting period, the COVID-19 pandemic continued to be a factor in the delivery of services. The Board operated within the guidance of the Provincial Health Officer, and within the framework of its Business Continuity Plan (BCP). Thanks to the ongoing flexibility of staff in the tribunal cluster, and the ongoing adaptability of Board members to new ways of working and interacting, the Board did not suffer significant service disruptions related to the pandemic during this reporting period. The office in Victoria remained open to the public throughout the reporting period, with steps taken to limit the risk of COVID-19 spread (i.e. limiting the number of staff in the office at any given time).

As a result of the ongoing pandemic and larger continuing trends, the Board’s operations continued to be primarily electronic as opposed to paper based. In addition, the Board implemented a more secure and efficient way of sharing appeal materials with members, improving data security.

Throughout the course of this reporting period, the Board also continued to transition to the use of videoconferencing technology for oral hearings. The transition to videoconferencing for oral hearings has proved beneficial to the Board’s operations, improving flexibility and access to the Board’s process. The Board expects to continue to offer videoconference hearings in the future, as an alternative to in-person hearings.

This reporting period also brought several changes to the Board’s membership. The Board said goodbye to Dr. Douglas H. Blackman, who was the Board’s College of Physicians and Surgeons of BC Nominee from February 2012 to May 2021. The Board also said goodbye to Lorraine Unruh, who was a Member from October 2014 to April 2021. The Board welcomed Dr. Ailve McNestry as the new College of Physicians and Surgeons of BC Nominee in July 2021. In addition, the Board welcomed Catherine Sullivan as Vice Chair and Sharleen Dumont as a new Member, both in January 2022.

On behalf of the staff and membership of the Board, I would like to thank Dr. Blackman and Ms. Unruh for their significant contributions to the Board over the years, and I would like to welcome Dr. McNestry, Ms. Sullivan, and Ms. Dumont to the membership.

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, only one new appeal was filed with the Board. Further details in relation to this appeal are provided later in this report pursuant to section 59.2(c) of the *Administrative Tribunals Act*. An additional five appeal matters were carried over from the previous reporting period.

Out of the six total appeals before the Board during this reporting period, four appeals were closed. One appeal was closed as the result of a final decision, while three appeals were resolved or withdrawn without a hearing. Two appeals remained outstanding at the close of the reporting period.

During this reporting period, there were no new applications filed in the BC Supreme Court for judicial review of a decision issued by the HAB. One decision upholding the HAB's decision was issued by the BC Supreme Court during this reporting period. Further details in relation to this are provided later in this report.

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. At the close of the current reporting period, the HAB's workload for the 2022/2023 reporting period was expected to remain consistent with the past few years, which have seen from one to four appeals filed per year. However, the Board has observed a significant increase in new appeals filed over the past few months, which will be reported on in the next annual report.

Section 59.2(g) of the *Administrative Tribunals Act* requires the Board to report any trends or special problems it foresees. The main trend that we have identified in this reporting period, as with the previous reporting periods, is the increase in the complexity and length of appeals over the past several years. In response to this trend, in the previous reporting period, the Board commenced targeted recruitment of legally and medically trained individuals with extensive administrative law experience to fill the Board's vacant positions. During this reporting period, the Board welcomed a new Vice Chair and two new members, as set out earlier in this report.

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. As discussed in earlier annual reports, it has been difficult for the Board to recruit and retain members who are available to sit on hearings that take place over several weeks. 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, greater overall member compensation, particularly for Panel chairs who are tasked with adjudicating complex legal issues¹; and also, financial compensation for hearings which are cancelled last-minute.

Plans for improving the Board's operations

Section 59.2(h) of the *Administrative Tribunals Act* requires the Board to report its plans for improving operations in the future. Service delivery will continue to be reviewed over the next reporting period, and the Board will continue to capitalize on technological improvements.

Of particular note, the Board has been working on a new website that will be rolled out in the next reporting period. The Board is also working on updating its Rules of Practice and Procedure and online resources, with ongoing work being done to improve the accessibility of information that is available to the public. The HAB will report on these developments in the next reporting period.



Stacy F. Robertson
Chair, Hospital Appeal Board

¹ Low per diem compensation creates a disincentive for Members with other employment to sit on long hearings as it removes the ability for them to earn significant portions of their regular income. For example, a lawyer who may bill 300-500 dollars per hour in her legal practice must give up five weeks of pay with compensation of \$450 a day instead.

Mandate

The HAB 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 one to two 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 broad remedial authority, and may 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.bchab.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 Columbia²;
- 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/RESIGNATION</i>
Stacy Frank Robertson	Chair	October 28, 2014	December 31, 2023
Catherine Ann Sullivan	Vice Chair	January 17, 2022	January 17, 2024
Sharleen Lyssa Dumont	Member	January 17, 2022	January 17, 2024
Dr. R. Alan Meakes (Doctors of BC Nominee)	Member	June 30, 2019	June 30, 2026
Dr. Douglas H. Blackman (College of Physicians and Surgeons of BC Nominee) ³	Member	February 20, 2012	May 31, 2021
Dr. Ailve McNestry (College of Physicians and Surgeons of BC Nominee)	Member	June 15, 2021	June 30, 2023
Dr. Kevin Doyle (College of Dental Surgeons of BC ⁴ Nominee)	Member	October 28, 2014	December 31, 2024

² Since September 1, 2022, the College of Dental Surgeons of BC is the BC College of Oral Health Professionals.

³ Dr. Blackman was the College of Physicians and Surgeons of BC Nominee until May 31, 2021, and Dr. McNestry was appointed on June 15, 2021 after his term expired.

⁴ See footnote 2.

Sandra J. Pullin (BC College of Nurses and Midwives Nominee)	Member	December 31, 2019	December 31, 2026
Darlene Kolybabi	Member	November 6, 2018	May 5, 2023
Lorraine Unruh	Member	October 28, 2014	April 30, 2021
Cheryl Vickers	Member	March 1, 2016	March 11, 2024
Anita E. Molzahn	Member	February 1, 2021	February 1, 2023

BIOGRAPHIES FOR THE BOARD MEMBERSHIP DURING THE REPORTING PERIOD:

STACY FRANK ROBERTSON (CHAIR) 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. and the Financial Services Tribunal 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.

CATHERINE ANN SULLIVAN (VICE CHAIR) Catherine Sullivan is a lawyer with experience in human rights and employment law. She has worked as a mediator with the BC Human Rights Tribunal and as a member of the Civil Resolution Tribunal adjudicating strata and small claims disputes. She is currently a member of the Property Assessment Appeal Panel that adjudicates property assessment appeals. She also conducts independent investigations, drafts workplace policies, and provide training to build inclusive and safe workplaces.

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.

SHARLEEN LYSSA DUMONT Ms. Dumont obtained her law degree from the University of Victoria and was called to the bar in British Columbia in 1990. She spent the first 15 years of practice with the Vancouver firm of Alexander, Holburn, Beaudin & Lang, joining as an articulated student, staying as an associate, and finally becoming a partner. Her practice with the firm primarily involved the defence of construction design professionals from allegations of professional negligence. In 2006 she relocated to Whitehorse, where she joined the local office of Davis LLP as a litigator. After two years of adventures, her family decided to return to Vancouver, but she has maintained her connection to the Yukon as a member of the Law Society of Yukon Discipline Committee. This volunteer role led to her current position as staff lawyer with the Law Society of British Columbia. Ms. Dumont is the mother of two grown sons and lives in Vancouver with her husband.

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.

DR. AILVE MCNESTRY Dr. Ailve McNestry was born in Sri Lanka and spent her early childhood in Nigeria. She later returned to Ireland for her education and qualified as a physician in Dublin in 1977. Dr. McNestry then emigrated to St. Johns, Newfoundland to work for one year as an intern at Memorial University. This extended to nine years as she worked as a rural District Medical Officer, a family physician in St. Johns, and subsequently as a Resident in Anatomic Pathology. In 1986 Dr. McNestry moved to Prince George, BC and took a position with the Prince George Regional Hospital as Medical Director. There she worked with the Board and Senior Management team with a focus on developing a medical recruitment program. Between 1994 and 2001 Dr. McNestry worked as a family physician in Vancouver, and in 2001 she accepted a position as Manager of Medical Services with Worksafe BC. Dr. McNestry stayed with that organization for 10 years, working both as a Medical Advisor (and obtaining certification in Occupation Medicine) and also as a Medical Manager. In 2011 Dr. McNestry joined the College of Physicians & Surgeons of BC as a Deputy Registrar, primarily involved in Physician Health and Drug Programs. She retired from the College in December 2017.

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. ANITA MOLZAHN Dr. Anita Molzahn is a retired nurse, professor, and academic administrator. She served as Dean, Faculty of Nursing at the University of Alberta (2008-2017) and as Dean, Faculty of Human and Social Development (1996-2003) and Director of the School of Nursing (1992-1996) at the University of Victoria. Her education includes a diploma in nursing from the Royal Alexandra Hospital in Edmonton and a BScN, MN and PhD (Sociology) from the University of Alberta. She is a Fellow of the Canadian Academy of Health Sciences and a Member of the Order of Canada. Dr. Molzahn's research focuses on quality of life, particularly in relation to chronic illness. She was the Canadian principal investigator in the WHOQOL Group, a WHO international research group that developed and tested a series of measures of quality of life, including the WHOQOL-100, WHOQOLBREF, and WHOQOL-OLD. Dr. Molzahn has served on academic and community boards and committees for various organizations including the Canadian Academy of Health Sciences, VID Specialized University in Norway, Canadian Association of Schools of Nursing, Michael Smith Foundation for Health Research, and the Kidney Foundation of Canada.

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.

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 Board⁵; 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 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.

⁵ This was the name of the tribunal during the current reporting period. It has since been renamed the Skilled Trades BC Appeal Board, as of December 1, 2022.

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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Appeal Activity and Decisions Issued

APPEALS FILED

During this reporting period, one new appeal was filed:

HAB-HA-22-A001 BY A MIDWIFE, FILED FEBRUARY 22, 2022 - Appeal by a Midwife from the November 26, 2021 decision of the Board of Directors of the Provincial Health Services Authority to approve the cancellation of the Appellant's medical staff appointments and privileges.

Additionally, there were five appeals which were carried over from the previous reporting period.

BOARD DECISIONS

There was one decision on the merits issued during this reporting period, and the Board also issued one significant⁶ preliminary decision.

FINAL DECISION ON THE MERITS

HAB-HA-20-A001(c)

Decision Date: March 16, 2022

Appellant: Katherine Puchala

Respondent: Northern Health Authority (“NHA”)

Summary: The Appellant, a Registered Midwife with the British Columbia College of Nurses and Midwives, appealed the decision of the NHA Board of Directors denying her application for appointment to the Northern Health Medical Staff. The Appellant had applied for privileges at Mills Memorial Hospital (“MMH”) in Terrace, Kitimat Hospital and Health Centre (“KHHC”) in Kitimat, and Wrinch Memorial Hospital in Hazelton, all operated by NHA. The NHA Board of Directors denied the Appellant’s application in June 2019 and, in a decision dated October 23, 2019, affirmed its June 2019 decision denying the Appellant privileges. The NHA Board of Directors’ stated reasons for upholding its original decision to deny privileges included (a) neutral or negative verbal references, (b) fit with the existing group providing obstetrical care in Terrace, and (c) professionalism concerns. The Board did not deny the Appellant’s application for privileges on the basis that there was no need for midwifery services.

The Panel found that the issue of need for midwifery services in the community should not be limited to the need for intrapartum care but should include the need for the full scope of midwifery services which requires that midwives have privileges at some location. The Panel identified the issues as follows: 1) Is there a need in the communities served by MMH, KHHC and WMH for a midwife capable of providing full scope midwifery care? ; 2) If there is a need, in one or all of those communities, is Ms. Puchala the appropriate person to fill that need? ; and 3) If Ms. Puchala is the appropriate candidate to fill the need, what is the appropriate remedy? The Panel concluded that the preponderance of evidence supported the need for a midwife in Terrace and Kitimat and that, subject to the Appellant being able to successfully reinstate her license to provide intrapartum services, was an appropriate candidate. There were no concerns about her competence as a midwife or her clinical skills and NHA’s concerns about fit were not reliably established by the evidence and there were deficiencies found in the reference process. The Panel found that the appropriate remedy, subject to the Appellant being able to successfully complete any requirements to be able to receive an unrestricted license to practice midwifery in British Columbia, was that she should be given the opportunity to provide services in Terrace and Kitimat to meet the need for midwifery services in those communities and should be granted privileges to practice midwifery at MMH and KHHC. The appeal was allowed.

⁶ The Board issues numerous preliminary decisions on simple issues such as extensions of time. The Board only publishes and reports on preliminary decisions which are significant and of precedential value.

Appeal Decision: <https://www.bchab.ca/decision/>

PRELIMINARY DECISION

HAB-HA-20-A003(a) (February 15, 2022) – The Appellant, a Physician, appealed the September 11, 2020 decision of the Interior Health Authority (“IHA”) Board of Directors denying his application for active medical staff privileges. On October 4, 2021, the Appellant brought an application seeking an order from the HAB requiring the Respondent to produce certain categories of documents pursuant to Rules 4(1) and 4(5) of the HAB Rules of Practice and Procedure, and to delay the deadline for delivering expert reports. The Panel Chair made rulings on each of the categories of documents at an urgent pre-hearing teleconference on October 8, 2021, in advance of the hearing on the merits scheduled to commence on November 8, 2021 and provided reasons supporting those rulings on February 15, 2022. The application for document production was granted and the Panel Chair gave guidance on the interpretation of the HAB’s document production rules. The Panel Chair also granted the Appellant leave to provide supplemental expert evidence by October 29, 2021.

Preliminary Decision: <https://www.bchab.ca/decision/>

Matters Outstanding at end of Period

Of the six matters before the Board during this reporting period, four appeals were closed. Two appeals remained outstanding at the close of the 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.

For the four appeals closed during the reporting period, the average length of time from filing of the Notice of Appeal until close of the file was 592 days. The respective total lengths for the four appeals were (from longest to shortest): 1112 days, 761 days, 427 days, and 68 days. Three of these appeals were adjourned at the request of the parties; reasons for this included the early days of the COVID-19 pandemic and late disclosure issues necessitating the rescheduling of oral hearings, and the parties requesting time for settlement discussions to take place. Ultimately, three of the four appeals were resolved by the parties and withdrawn without a hearing.

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 Practice 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 Practice 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 from 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.

With respect to the two matters which proceeded to a hearing on the merits during this reporting period, the average time between filing of the Notice of Appeal and completion of the hearing was 543 days. These hearings took place over 14 days and 15 non-consecutive days respectively, with closing submissions also provided in writing. Delays in scheduling were largely driven by the availability of the parties. In addition, on one of the appeals, there was an adjournment application that was filed and granted in the previous reporting period and which resulted in a delay of several months.

With respect to the final decision on the merits which was issued during this reporting period, the number of days between the close of submissions and issuance of the final decision was 89 days, which was well under the period of time set out in the Practice Directive for a two-week hearing.

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 Board did not conduct any surveys during this reporting period.

Judicial Review of HAB Decisions

During the reporting period, there were no new applications filed in the BC Supreme Court for judicial review of a decision issued by the HAB.

One decision by the Supreme Court of British Columbia upholding the HAB's decision on judicial review was issued during the reporting period, as summarized below.

JUDICIAL REVIEW DECISION

Decision Date:	April 30, 2021
Court:	B.C.S.C., Kent, J.
Cite:	2021 BCSC 823
Summary:	The Provincial Health Services Authority sought judicial review of the decision of the HAB dated August 20, 2020 in respect of the finding that Dr. Andrew Campbell's privileges had been constructively revoked by the failure of the British Columbia Children's Hospital ("BCCH") to allocate him cases and the order that BCCH "restore meaningful access" to Dr. Campbell's privileges by providing "fair and equitable case allocation". The Court held that the applicable standard of review was one of patent unreasonableness and found that there was nothing patently unreasonable about the HAB's interpretation of Dr. Campbell's privileges or its finding that the HAB had jurisdiction to grant a remedy regarding case allocation and stated that the HAB's decision on these issues was correct. The Court further found that there was nothing patently unreasonable about the way the HAB exercised its remedial discretion. The Court dismissed the petition with costs.
Court Decision:	https://www.bccourts.ca/jdb-txt/sc/21/08/2021BCSC0823cor2.htm

Statement of Financial Performance

(For the fiscal year ended March 31, 2022)

In fiscal year 2021/2022, the HAB incurred expenses of **\$107,591** as detailed below in this six-year chart, made up primarily of member fees and expenses.

<i>Direct Expenses</i>	2016/2017 \$	2017/2018 \$	2018/2019 \$	2019/2020 \$	2020/2021 \$	2021/2022 \$
Salaries and Benefits	0	0	0	0	0	0
Board Member Fees & Expenses	168,560	20,735	39,255	86,000	72,217	79,129
Professional Services	29,163	11,942	7,550	18,900	67,620	14,370
Office and venue Expenses	41,115	5,905	8,478	26,259	11,072	14,092
Other	30	0	0	0	0	0
<i>Total HAB Expenses</i>	\$238,868	\$38,582	\$55,283	\$131,159	\$150,908	\$107,591