

SURFACE RIGHTS BOARD

ANNUAL REPORT

April 1, 2022 to March 31, 2023



BOARD CHAIR'S MESSAGE

I am pleased to present the Annual Report of the Surface Rights Board of the Province of British Columbia for the fiscal year April 1, 2022 to March 31, 2023. The Report is submitted in accordance with section 59.2 of the *Administrative Tribunals Act*.

This Annual Report captures the important work of the Board with a mandate as an independent, neutral arbiter of disputes respecting compensation and terms of access between private landowners and persons or companies requiring surface access to private land to explore for, develop or produce subsurface resources.

In accordance with its mandate, the Board is committed as follows:

- to providing dispute resolution services that are proportionate and appropriate to the issues in dispute and accord to the highest standards of adjudicative integrity
- to providing dispute resolution services that are impartial, accountable and transparent
- to enhancing full and informed participation of all parties in our process, whether or not they have legal representation
- to being responsive, flexible, and sensitive to the needs of all stakeholders
- to continually innovating and improving the Board service
- to reflecting best practices in administrative justice and exhibiting the highest standards of public service integrity and professionalism

During the past year, the Board has undertaken a number of initiatives to meet the Board's mandate and to ensure its reputation with Stakeholders as accessible, effective and relevant. I am proud of the work the Board is doing in this regard. The Board has undertaken a comprehensive review process to identify how it can better serve all its stakeholders in a meaningful and efficient manner. The Board has reached out and met with industry and stakeholder representatives to receive their input on the Board and its processes, including the BC Energy Regulatory (formerly known as the Oil and Gas Commission), the BC Gold Commissioner, and the Oil and Gas Appeals Tribunal. The Board also met with landowner stakeholders in the communities of Rose Prairie and Farmington in the Peace River Valley.

The Board has made and is undergoing a number of changes to its processes as part of our ongoing response to stakeholder feedback, including that the Board no longer requires applicants for Board services to provide a title search or an Affidavit of Service. Also, the Board is in the process of simplifying the Board's application Forms, amending the Board's Rules of Practice, and updating the Board's case management system.

The Board is planning for member succession and resilience in key Board positions. The Board recently actively recruited for members and have made a recommendation for the appointment of several new members. This was as a result of changes in the Board membership with long-term member Robert Fraser retiring in December, 2022, and certain member appointments imminently expiring. The Board confirms its commitment to striving for diversity, equity and inclusion to ensure the Board is representative of all British Columbians.

The Board acknowledges the Indigenous peoples on whose traditional territories the various members of this Board sit and recognize the historic relationships Indigenous

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peoples have had and continue to have with the land. The Board confirms its commitment to a pathway to reconciliation with Indigenous peoples and to carry out the applicable calls to action of the Truth and Reconciliation Commission Report.

As Chair, I thank all Board members and staff for their efforts and ongoing commitment to public service. It is privilege to work with each of them. I specifically thank the former Chair, now Vice Chair Cheryl Vickers, and Registrar Jason Bowman, for their efforts and support during a time of significant process and organizational transformation at the Board. Together we are proud to be of service to British Columbians.

Jacqueline Beltgens
Chair

BOARD MANDATE

The Surface Rights Board is a quasi-judicial administrative tribunal established under the *Petroleum and Natural Gas Act (PNGA)*. The Board has jurisdiction to resolve disputes under the *PNGA*, *Mining Right of Way Act*, *Mineral Tenure Act*, *Geothermal Resources Act*, and *Coal Act*. The Board has authority under the *PNGA* to resolve disputes respecting compensation and terms of access between private landowners and person or companies requiring surface access to private land to explore for, develop, or produce subsurface resources.

The Board is accountable to the Attorney General but is independent of the Minister and Ministry in its decision-making capacity and in the management of applications before it.

In British Columbia, the majority of subsurface rights are owned by the Crown. Most landowners do not own subsurface rights to petroleum, natural gas, or minerals. The government can issue rights to resource companies and free miners for the exploration and development of subsurface resources on private property. The resource company or free miner must compensate landowners for loss or damage caused by entering and using their land to access subsurface resources.

When a landowner and a resource company or free miner are unable to reach an agreement on right of entry to the land and the compensation that should be paid to the landowner for that right of entry, either party may apply to the Board for mediation and arbitration of the dispute. The Board may make an order allowing a person or company to enter private land if the Board is satisfied they need the land to explore for, develop, or produce a sub-surface resource. The Board does not have jurisdiction to determine whether a proposed subsurface installation is appropriate or complies with the legislation and regulations.

If damage to land is caused by an entry for the purpose of exploring for, developing, or producing a subsurface resource, the landowner may apply to the Board for mediation and arbitration of damages payable by the subsurface holder.

If the parties to a surface lease cannot agree to terms for rent renegotiation after a certain period of time, either party may apply to the Board for mediation and arbitration of their dispute. The Board also has jurisdiction to resolve disputes about whether the terms of a surface lease have been complied with.

The Board does not have jurisdiction to determine if a requested oil and gas activity meets regulatory requirements or to deal with landowner's concerns respecting placement of an installation, environmental impact, or safety – these are matters within the jurisdiction of the BC Energy Regulator (BCER). The Board will generally require parties to resolve issues within the jurisdiction of the BCER prior to issuing an entry order.

An overview of the Board process is attached to this Annual Report as Appendix A.

BOARD OPERATIONS

The Board has a part-time Chair and may have up to eight additional part-time members who strive to carry out the Board's mandate of resolving disputes respecting compensation and terms of access between private landowners and persons or companies requiring surface access to private land to explore for, develop, or produce subsurface resources. The biography and term of appointment for each of the Board members is attached to this Annual Report as Appendix B.

In addition to dispute resolution activities, the Board collects and maintains security deposits, and maintains a record of surface leases.

a. Dispute Resolution Activities

From April 1, 2022 to March 31, 2023, the Board received seven applications under either the *PNGA*, the *Mineral Tenure Act (MTA)*, the *Mining Right of Way Act (MRWA)*, *Coal Act* or *Geothermal Resources Act*. The following table shows the number of applications by type received from April 1, 2022 to March 31, 2023 compared to the previous year.

Nature of Application	# received 2022/2023	# received 2021/22
<i>PNGA</i> (right of entry/compensation for wellsite)	3	1
<i>PNGA</i> (right of entry/compensation for flowline)	0	1
<i>PNGA</i> (right of entry/compliance/related activity)	0	0
<i>PNGA</i> (damages)	3	0
<i>PNGA</i> (rent review)	1	0
<i>PNGA</i> (compliance)	0	5
<i>PNGA</i> (termination of surface lease)	0	0
<i>MRWA</i>	1	5
<i>MTA</i>	0	0
Total new applications	7	12
Cases outstanding from previous year	17	24
Total caseload in period	24	36

During the reporting period, the Board completed 14 cases as indicated by the table below:

Case Completions:	Current year	Previous year
Abandoned	2	0
Settled by mutual agreement	9	7
Completed by Arbitration	0	0
Dismissed	1	1
Summary payment orders (s. 176)	2	5
Total completed	14	13

Of the 18 applications open at March 31, 2023, 12 were at the mediation stage of the process or pending further mediation, four at the arbitration stage, and two were subject to a jurisdictional review.

The following table shows the level of dispute resolution and other activities in the reporting period compared to the previous year.

Dispute Resolution & other activities:	Current year	Previous year
Mediations	3	11
Right of entry orders	0	0
Arbitrations	3	1
Cost orders	0	0
Other Board decisions *	3	8

* Includes decisions on jurisdiction and whether to re-open cases upon reconsideration.

b. Decisions of Note and Judicial Reviews

During this reporting period, there was one decision of note.

Decisions of the Board may be judicially reviewed under the *Judicial Review Procedure Act* within the time established by the *Administrative Tribunals Act*. A judicial review was filed from the Board's May 4, 2022 decision in *Schaepi, et al v. Bralorne Gold Mines Ltd.*, Order 2191-1 [*Schaepi*]. The application for the judicial review of this decision has not yet been heard.

In *Schaepi*, the owner of mineral rights granted by the Crown, Bralorne Gold Mines Ltd, had a permit under the *Mines Act* to conduct mining on lands owned by the applicant landowner, Schaepi. Upon receipt of the landowner's notification under section 14 of the *Mineral Tenure Act [MTA]*, Schaepi applied to the Chief Gold Commissioner [CGC] to settle the issues in dispute respecting the mineral rights owner use of lands for mining purposes. Failing resolution of the matters in dispute by the CGC, Schaepi applied to the Board for dispute resolution services. The Board found that it did not have jurisdiction under the *MTA* to resolve disputes between the surface owners of land and the owners of Crown granted mineral below the surface of land arising from the mineral owner's use and occupation of the surface for mining activities.

The Board found that Bralorne's rights to the surface of the lands comes from the Crown Grant, not section 14 of the *MTA*. The Board found that Bralorne was not exercising its rights as a free miner or a record holder under the *MTA* in exploring for or developing the minerals it owns under the land, but rather was exercising the surface rights conveyed with the grant of minerals. The Board found that the landowner Schaepi's right to compensation for all loss or damage caused by Bralorne would have to be found in the common law, not the *MTA*. The Board found that the *MTA* dispute resolution provisions did not apply to resolve disputes respecting the exercise of rights that were not acquired under the *MTA*.

c. Other Board Activities

(i) Administration:

The Property Assessment Appeal Board (PAAB) provides administrative services to the Surface Rights Board. Clients communicate directly with the Board through the PAAB office in Vancouver via email, toll-free phone or fax.

(ii) Security Deposits:

The Board collects and maintains security deposits. The Board collected \$2,500 in security deposits in this reporting period of April 1, 2022 to March 31, 2023.

The Ministry of Finance is holding \$215,850 (as at March 31, 2023) in security deposits that the Board ordered paid prior to entering land. The Board did not process any applications for the return of security deposits during the review period.

(iii) Surface Leases:

Section 178 of the *PNGA* requires the holders of surface rights to provide the Board with copies of surface leases and right of way agreements. While the Board does receive copies of surface leases in accordance with this requirement, it is not confident that all companies are complying with the legislation.

The Board maintains a record of surface leases, and is required to make copies of surface leases and right of way agreements available for public inspection at its office. Pursuant to the Surface Lease Information Regulation, B.C. Reg. 139/2016, the Board is able to publish prescribed information contained in surface leases and right of way agreements. The Board has established an electronic searchable database where the public can access copies of surface leases and right of way agreements filed with the Board pursuant to section 178 of the *Petroleum and Natural Gas Act*. The leases have been redacted to exclude any information that is not prescribed by regulation.

FINANCIAL DISCLOSURE

The Board's budget for this fiscal period was \$98,000. As detailed in the table below, the Board was under budget by \$10,425 primarily as a result of lower volume of cases than in previous fiscal years.

Expenditure Type	Budget	Actuals	Variance
Salaries	\$22,000	\$21,793	\$207
Benefits	\$6,000	\$5,502	\$498
Board Member fees and expenses	\$35,000	\$31,740	\$3,260
Information systems	\$20,000	\$17,621	\$2,379
Office and business	\$5,000	\$1,323	\$3,677
Legal Support Services & Travel	\$10,000	\$9,596	\$404
Total Expenditures	\$98,000	\$87,575	\$10,425

Appendix A

Overview of the Board Process

Application

An application must be made on the form prescribed by the Board in its Rules. The Board reviews applications to ensure that they are within its jurisdiction and that they are complete and comply with the Board's Rules and relevant legislation. If an application is deficient, the Board will write to the applicant to provide an opportunity to correct any deficiencies. The Board may dismiss the application if the deficiencies are not corrected, or if an application is not within the Board's jurisdiction.

Mediation

A mediation is a dispute resolution process that attempts to facilitate resolution of the issues by agreement. Mediations may be conducted in-person or by telephone conference. A mediation is confidential and without prejudice to the positions the parties may take later in any arbitration proceedings.

If the parties have not resolved the issues at the end of the mediation session, the Board Member may schedule another mediation or refuse further mediation. If the mediator determines that access to private land is needed to explore for, develop, or produce a subsurface resource, the mediator may issue a right of entry order for the payment of a security deposit and partial payment for compensation. If the mediator makes an order refusing further mediation, the Board must arbitrate the dispute.

Arbitration

The Board must arbitrate when the parties cannot reach an agreement. An arbitration is a dispute resolution process where each party presents evidence and argument, and the Board makes a decision based on those submissions.

Before an arbitration hearing, the Board will require the parties to attend a pre-hearing conference, usually conducted by telephone. The Board Member will, in consultation with the parties, determine how the application will proceed including determining the issues to be decided, and setting dates for hearing and for the pre-production of evidence and witness lists.

The Board may conduct an arbitration hearing by telephone conference, by written submission, or in-person depending on the nature and complexity of the issues.

The Board may accept any evidence that it considers relevant, necessary and appropriate with the exception of evidence that is inadmissible in court because of a privilege under the law of evidence. The Board will normally set timelines in advance of the hearing for the parties to submit documents or expert reports they intend to rely on at an arbitration.

In-person hearings are open to the public and may be presided over by a panel of one or more members of the Board. Persons giving evidence at a hearing must swear an oath or affirm that their evidence will be the truth. The panel has control over the conduct of the hearing, including how the evidence is presented, what evidence is admitted, and the issuance of summons for witnesses.

Following the conclusion of the arbitration hearing, the panel will issue a written decision with reasons.

Withdrawals or Consent Orders

A party may withdraw all or part of an application at any time, by completing a Withdrawal Form and delivering it to the Board and the other parties. If the parties settle the application, they must advise the Board and either withdraw the application or request that the Board incorporate the terms of the settlement into a Consent Order.

Costs

The Board may order a party to pay all or part of the costs of another party and, in exceptional circumstances, may order a party to pay the costs of the Board. Ordinarily, unless otherwise ordered by the Board, landowners may expect to recover their costs of the mediation process relating to applications for right of entry and associated compensation. The Board may order costs on its own initiative or on the application of a party.

Appealing the Board's Decision

Decisions of the Board may be judicially reviewed by the Supreme Court of British Columbia.

Appendix B

Our Team

The Board has a part-time Chair and may have up to eight additional part-time members. For the period of review, the Board was in transition with two long-term part-time members and six more recent part-time members. The following Board members served during this fiscal year:

Name	Position	Appointment	Expiry
Jacqueline Beltgens	Chair	August 4, 2021	December 31, 2024
Cheryl Vickers	Vice Chair	July 22, 2007	May 4, 2023
Robert Fraser	Member	February 13, 2014	December 31, 2022
Dennis Lapierre	Member	August 4, 2021	February 4, 2024
Lesley Sick	Member	August 4, 2021	February 4, 2024
Erin Frew	Member	May 19, 2022	May 18, 2023
Zahra Jimale	Member	May 19, 2022	May 18, 2023
Dale Pope, KC	Member	October 28, 2022	April 28, 2023

Jacqueline Beltgens, Chair

Jacqueline Beltgens is a lawyer, specializing in mediation, adjudication and workplace investigation. She has a broad background in civil and administrative law, both as an in-house legal counsel and as a lawyer in private practice in Vancouver and Victoria. Ms. Beltgens was a member of the BC Human Rights Tribunal, and a member and Acting Chair of the BC Mental Health Review Board. She is presently a member of the Law Society of BC, the Canadian Bar Association, Mediate BC (Civil Roster), ADRBC (Chartered Mediator), and the BC Council of Administrative Tribunals. Ms. Beltgens has a Diploma of Technology (Engineering) from the BC Institute of Technology, attended the University of British Columbia for undergraduate studies, and obtained a Juris Doctor. She completed her mediation training at Harvard Law School's Program on Negotiation.

Cheryl Vickers

Cheryl Vickers is a lawyer and formerly practiced in a variety of fields, including administrative law. Cheryl was appointed as Chair of the Surface Rights Board from 2007 to 2021. She served as Chair of the Property Assessment Appeal Board from 2003 to 2015 and as Acting Chair of the Civil Resolution Tribunal from 2013-2014. She currently also sits as member of the Hospital Appeal Board. Cheryl was active in the development of the British Columbia Council of Administrative Tribunals (BCCAT), and served as a member of that organization's Board of Directors including as Secretary from 1996 to 1998 and as President from 2004 to 2006. Cheryl

has assisted in curriculum development for BCCAT courses offering training to appointees of quasi-judicial boards and tribunals. She has delivered these courses and workshops on case management and alternate dispute resolution for tribunals.

Robert Fraser

Active in the real estate industry for many years, Rob Fraser has been a salesperson, agent/manager, owner, local board president, provincial association president, and chair of a real estate related insurance company. In addition to his extensive experience and training in real property valuation, Rob also has expertise and training in conflict resolution, mediation, arbitration, and negotiation. He has a BA, an MA and did doctoral studies specializing in micro-demographic models. Rob was appointed as a Vice Chair to the Property Assessment Appeal Board in 1998, and currently serves as a member of that board. He was appointed to the Surface Rights Board as a member in 2007 and served as Vice Chair from December 2008 until July 2012.

Dennis Lapierre

Upon retiring in 1992 following a 26-year career with the Calgary Police Service, managing a range of specialized departments within the Police Service, Dennis took up sheep farming in the Falkland, BC area. Dennis was an elected representative in local government. Dennis was on the British Columbia Agriculture Council, and the British Columbia Investment Agriculture Foundation. In addition to his current appointment to the Surface Rights Board, Dennis is on the Farm Industry Review Board. Dennis has an MA in Applied Communication.

Lesley Sick

Lesley Sick is Secretary, Treasurer and Registrar for the Association of British Columbia Land Surveyors. She is a member of their Board of Management, Board of Examiners, Complaint Inquiry Committee, and Bylaw & Policy Committee. She is also active on various professional committees. A Professional Engineer and commissioned Land Surveyor by profession, Ms. Sick has extensive experience working with industry and government. Previously, she was Founder and President of an award-winning utility engineering and land surveying company, Valard Geomatics Ltd., and brings over 17 years of management experience. Ms. Sick holds a Bachelor of Science in Engineering degree from the University of Calgary.

Erin Frew

Erin Frew was appointed Chair to the PAAB in 2023 and was previously appointed as Vice Chair since 2016. She holds her Juris Doctor and her Bachelor of Science (Ecology) from the University of British Columbia. Previously she held positions as an arbitrator for the Residential Tenancy Branch, an associate lawyer in a national tax law firm, an intern assisting judges and legal officers at the United Nations International Criminal Tribunal for Rwanda, and a review officer for WorkSafeBC. Erin has served as a director with the BC Council of Administrative Tribunals and currently sits on the Education Committee and Conference Committee. Erin received an award in 2020 from BCCAT in recognition of her service.

Zahra Jimale

Zahra H. Jimale is a Vice Chair at the Property Assessment Appeal Board. Previously Ms. Jimale was a Quality Manager and a Senior Policy and Legal Advisor for WorkSafeBC, Director

of Law Reform for West Coast LEAF, and an Associate Faculty in the School of Humanitarian Studies at Royal Roads University. Active in her community, Ms. Jimale is the President of the Canadian Association of Black Lawyers - BC Chapter, Member and the former Chair of the Access to Justice Committee CBABC and a Board Director for the International Institute for Child Rights and Development. Ms. Jimale holds a Master of Laws from Osgoode Hall Law School, Bachelor of Laws from the University of Victoria, and a Restorative Justice Certificate from Simon Fraser University.

Dale Pope, KC

Dale Pope, KC is an experienced Counsel having practised before Courts and Administrative Tribunals for over 45 years. His expertise involves regulatory and administrative board proceedings, civil litigation and public affairs advice. Dale has been appointed Standing Agent of the Attorney General of Canada and has been the Presiding Officer to many Competition Act administrative proceedings. Active in the community, he served as Chair for the Vancouver Public Library Trust, as a member of the Molson Indy Vancouver Advisory Group, as a board member of the Touchstone Theatre Society, and as a member of the Board of Odd Squad Productions an organization educating youth about the dangers of drug use. He is currently a member of the Cedar's Society Board. Dale holds a Bachelor of Arts and Bachelor of Laws from the University of Windsor. He was appointed to the Property Assessment Appeal Board in June 2010.