

SURFACE RIGHTS BOARD

ANNUAL REPORT

April 1, 2023, to March 31, 2024

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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, 2023, to March 31, 2024. 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.

The Board acknowledges the Indigenous peoples on whose traditional territories the various members of this Board sit and recognize the historic relationships Indigenous peoples have had and continue to have with the land. Recent Board appointments reflect the Board's commitment for diversity, equity and inclusion to ensure the Board is representative of all British Columbians.

During the past year, the Board has been continuing with efforts to change its processes to better serve all its stakeholders in a meaningful and efficient manner.

As Chair, I thank all Board members and staff for their ongoing commitment. It is a privilege to work with each of them. I specifically thank Cheryl Vickers, Vice-Chair, for her ongoing support and her significant efforts with Board process and organizational transformation.

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 (MRWA)*, *Mineral Tenure Act (MTA)*, *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 persons 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, 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). Other than for geothermal resource exploration which by regulation requires otherwise, 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, Vice Chair and Deputy Registrar and may have up to seven additional part-time members. Members and staff 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, 2023, to March 31, 2024, the Board received eighteen 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, 2023, to March 31, 2024, compared to the previous year.

Nature of Application	# received 2023/2024	# received 2022/23
<i>PNGA</i> (right of entry/compensation for wellsite)	2	3
<i>PNGA</i> (right of entry/compensation for geothermal) *	5	N/A
<i>PNGA</i> (right of entry/compensation for flowline)	2	0
<i>PNGA</i> (right of entry/compliance/related activity)	3	0
<i>PNGA</i> (damages)	1	3
<i>PNGA</i> (rent review)	3	1
<i>PNGA</i> (compliance)	0	0
<i>PNGA</i> (termination of surface lease)	0	0
<i>MRWA</i>	1	1
<i>MTA</i>	1	0
Total new applications	18	7
Cases outstanding from previous year	16	17
Total caseload in period	34	24

*Fiscal 2023/24 is the first-year geothermal applications have a category of their own

During the reporting period, the Board completed 16 cases as indicated by the table below:

Case Completions:	Current year	Previous year
Abandoned	5	2
Settled by mutual agreement	7	9
Completed by Arbitration	3	0
Withdrawn	1	0
Dismissed	0	1
Summary payment orders (s. 176)	0	2

Total completed	16	14
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Of the 18 applications open at March 31, 2024, 14 were at the mediation stage of the process or pending further mediation and two at the arbitration stage.

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	9	11
Right of entry orders	5	0
Arbitrations	3	1
Cost orders	0	0
Other Board decisions *	4	8

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

b. Decisions of Note and Judicial Reviews

During this reporting period, the Board issued three decisions of note respecting its jurisdiction, two under the *Petroleum and Natural Gas Act (PNGA)* and one under the *Mining Right of way Act (MRWA)*. The Board issued its first ever right of entry orders under the *Geothermal Resources Act*. There were no judicial reviews of Board decisions during this reporting period.

Petroleum and Natural Gas Act

In *Hambrook and Copeland v. Kelt Exploration Ltd.* (Board Order 2208/2210-1), the landowners sought compensation for what they considered Kelt Exploration’s unauthorized use of a road on their land and a right of way designated by the Ministry of Forests, Lands and Natural Resources in favour of an adjacent landowner. The Board found that Kelt’s use of the road and right of way was not for a purpose set out in section 142 of the *PNGA*, and therefore, a right of entry order or surface lease was not required and the Board’s jurisdiction was not engaged. The Board found that use of a road to access other land used for a section 142 purpose did not turn the use of the road into a section 142 purpose. The Board found that Kelt’s use of the designated right of way for an Emergency Response Plan was not a section 142 activity requiring a right of entry order or surface lease.

In *Dietz v. Bonavista Energy Corporation* (Order 2204-1), the former owners sought compensation following earlier decisions that the current landowners were “landowners” within the meaning of the *PNGA* and able to bring an application under section 158 relating to historic oil and gas activity on the lands for which there was no surface lease or right of entry order (See *Fell v. Bonavista Energy Corporation*: Board Orders 1920-1 and 1920-3; and *Bonavista Energy Corporation v. Fell*, 2020 BCCA 144). The Board found that former owners of land used for oil and gas purpose were not “landowners” within the meaning of the *PNGA* and did not have standing to bring their application. Consequently, the Board did not have jurisdiction.

Mining Right of Way Act

In *Victoria Teleport Corporation v. YMCA* (Board Order 2198-1), the Board found access sought to be used by the applicant on land owned by the respondent was not an “existing road” within the meaning of the *MRWA*. The Board found there was no existing road, in the ordinary sense, and that in any event such access which may have historically existed was not built under an enactment as required by section 10 of the *MRWA*. Consequently, the Board did not have jurisdiction.

Geothermal Resources Act

The Board had its first opportunity to consider its authority under the *Geothermal Resources Act* in *Kitselas Geothermal Inc. v. Mount Layton Hotsprings Resort Ltd.* (Board Order 2201/02-2).

c. Other Board Activities

(i) Administration:

The Property Assessment Appeal Board (**PAAB**) provides administrative services to the Surface Rights Board.

Effective June 2023, a Deputy Registrar was hired to support the business administration and operations of the Province’s smaller Boards: the Building Code Appeal Board, the Safety Standards Appeal Board, and the Surface Rights Board. Communication can be made directly with the Surface Rights Board through the Deputy Registrar via email, toll-free phone or fax.

(ii) Security Deposits:

The Board collects and maintains security deposits. The Board collected \$10,000 in security deposits in this reporting period of April 1, 2023, to March 31, 2024.

The Ministry of Finance is holding \$225,850 (as of March 31, 2024) 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 \$115,305. There are two detailed tables below outlining the expenditures of the Board. Table 1.1 identifies the actuals and variances minus the associated shared costs of the Deputy Registrar role for the fourth quarter. Table 1.2 reflects the adjusted actuals and variances of the shared costs of the Deputy Registrar role for the fourth quarter of 2024, as these costs were transferred after fiscal year end cut-off.

Table 1.1 reflects the Board was under budget by \$7,328.74. Table 1.2 reflects the Board was under budget by \$339.05. These figures are primarily a result of the following factors: adjusting to the addition of the administrative support provided by the Deputy Registrar, the onboarding of new Board members and the associated training, and an overall case volume increase. The Board's mid-year financial review resulted in additional reallocated funds (from budgets of other Boards in the Independent Board and Tribunal Sector) to cover increased costs associated with the factors as previously listed.

Table 1.1

Expenditure Type	Budget	Actuals	Variance
Salaries*	\$30,000	\$15,434.04	\$14,565.96
Benefits*	\$8,000	\$3,920.25	\$4,079.75
Board Member fees and expenses	\$35,000	\$69,690.25	\$34,690.25
Information systems	\$12,000	\$10,207.73	\$1,792.27
Office and business	\$3,000	\$6,408.55	\$3,408.55
Legal & Professional Support Services & Travel	\$11,000	\$2,315.44	\$8,684.56
TOTAL	99,000		
Reallocation & Contingency Access**	+\$16,305		
Total Expenditures	\$115,305	\$107,976.26	\$7,328.74

*Actuals and Variances that do not include the associated shared costs of the Deputy Registrar administrative role for the fourth quarter of FYE 2024.

**Mid-year finance review resulted in additional reallocated funds (from budgets of other Boards in the Independent Board and Tribunal Sector) to cover increased costs associated with the addition of the Deputy Registrar role, the onboarding of new Board members, associated training, and overall case volume increase

Table 1.2

Expenditure Type	Budget	Adjusted Actuals	Adjusted Variance
Salaries*	\$30,000	\$21,972.26	\$8,027.74
Benefits*	\$8,000	\$5,580.96	\$2,419.04
Board Member fees and expenses	\$35,000	\$69,690.25	\$34,690.25
Information systems	\$12,000	\$9,398.49	\$2,601.51
Office and business	\$3,000	\$6,008.55	\$3,008.55
Legal & Professional Support Services & Travel	\$11,000	\$2,315.44	\$6,684.56
TOTAL	99,000		
Reallocation & Contingency Access**	+\$16,305		
Total Expenditures	\$115,305	\$114,965.95	\$339.05

*Adjusted Actuals and Variances that include associated shared costs of the Deputy Registrar administrative role for the fourth quarter of FYE 2024.


**Mid-year finance review resulted in additional reallocated funds (from budgets of other Boards in the Independent Board and Tribunal Sector) to cover increased costs associated with the addition of the Deputy Registrar role, the onboarding of new Board members, associated training, and overall case volume increase.

STATUTORY REPORTING AND COMPLIANCE

The operation and financial management of the Board meets the standards of the *Financial Administration Act*, RSBC 1996, c. 148.

The Board is in full compliance with Treasury Board Directive 1/20 and its successor 1/24.

The Board received no complaints about its operations or the conduct of its members or staff.



The Chair will continue to monitor all performance indicators and will monitor any and all service complaints and will report immediately to the Minister if there are any signs that the Board's services are being negatively affected.

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 opportunity any deficiencies to be corrected. 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 hearings electronically, 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 seven additional part-time members at one time, with one of these seven members appointed as a Vice Chair. The Board also has a Deputy Registrar who is the singular staff person responsible for the day-to-day administration of the Surface Rights Board as well as the Building Code Appeal Board and Safety Standards Appeal Board. The Tribunal sector implemented the Deputy Registrar role to work across this tri-board cluster, due to the part time as and when needed nature of each of these Boards. The Deputy Registrar provides dedicated centralized support to each of these Boards in an administrative and operational capacity.

For the period of review, the Board was in transition with three 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	May 4, 2023	May 4, 2027
Dale Pope, KC	Member	April 28, 2023	April 28, 2027
Bruce Turner	Member	May 18, 2023	May 18, 2027
Peter Judd	Member	May 18, 2023	May 18, 2027
Kent Ashby	s.6 Member	February 6, 2024	August 6, 2024
Dennis Lapierre	Member	August 4, 2021	February 4, 2024
Lesley Sick	Member	August 4, 2021	February 4, 2024
Christine Arnold	Member	April 28, 2023	September 14, 2023 (resignation)

Jacqueline Beltgens, Chair

Jacqueline Beltgens is a lawyer, specializing in mediation, arbitration 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), and the Alternate Dispute Resolution Institute of BC (Chartered Mediator and Chartered Arbitrator). 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, Vice Chair

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.

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.

Bruce Turner

Bruce's professional experience spans executive management and policy consulting, reflecting diverse management and technical advisory roles. His technical advisory and consulting assignments range from working with an international team in the Kingdom of Cambodia to assisting various organizations in developing business strategy, conducting risk assessments, and clarifying roles to achieve results. Prior to consulting, Bruce enjoyed a career with BC Assessment Authority (BCA) that included management, project management and technical roles. Volunteer interests include education and land-based economic development.

Peter Judd

Peter Judd is a retired Civil Engineer. Peter worked in a variety of positions at the City of Vancouver from 1982 to 2015. Prior to his retirement, Peter was the General Manager of Engineering Services responsible for 1800 employees and a budget of 400 million dollars. Peter was responsible for all aspects of the department's work from high-level consultation with Regional, Provincial and Federal authorities, to labour relations and collective agreement negotiation. Among other projects, Peter led the City of Vancouver's role in the 2010 Winter Olympics.

Kent Ashby

Kent Ashby (LLM, LLB, BA) is a lawyer, adjudicator, and parliamentary law advisor with extensive experience. He has served as legal counsel for The University of British Columbia, UK litigation, and for regional and national public infrastructure projects. As an adjudicator he has heard matters involving medical regulator discipline and municipal bylaws, and for various tribunals such as the Health Professions Review Board, Employment and Assistance Appeal Tribunal, and Health Care Special Committee for Audit Hearings. He has lectured at various law schools and at continuing legal education seminars. He has also served as Chair of a health regulator, Acting Speaker of a First Nation's legislature, Past-Chair of the Alberta Association of Procedural Parliamentarians, and assisted counsel in contentious meetings.

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.