

Mediation and Arbitration Board

ANNUAL REPORT

April 1, 2007 to March 31, 2008

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Board Profile and Mandate

The Mediation and Arbitration Board (MAB or the 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*, *Pipeline Act*, *Mining Right of Way Act*, *Mineral Tenure Act*, *Geothermal Resources Act*, and *Coal Act*.

In British Columbia, most landowners do not own subsurface rights to petroleum, natural gas, or minerals. The majority of subsurface rights are owned by the Crown. 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. The Board's role is to assist in resolving disputes when the parties cannot agree on compensation or other terms of entry to land.

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, the company or free miner may apply to the Board for mediation and arbitration of the dispute. The Board may make an order allowing a subsurface holder to enter private land if the Board is satisfied the subsurface holder needs the land to explore for, develop, or produce the resource.

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 arbitration of their dispute.

The Board provides mediation and arbitration services to resolve disputes in accordance with the provisions of the *PNGA*, the *Administrative Tribunals Act*, and its Rules. An overview of the Board's processes may be found in Appendix 1.

The Board is accountable to the Minister of Energy, Mines and Petroleum Resources but is independent of the Minister and Ministry in its decision making capacity and in the management of applications before it.

The Board has a part-time chair, and may have up to eight additional part-time members. The members serving during fiscal year 2007/08 and their appointment terms are as follows:

| Name | By Order | Position | Expiry |
|-----------------|---------------------------------|-----------------|------------------|
| Cheryl Vickers | OIC 444/07, July 22, 2007 | Chair | July 22, 2010 |
| Ib Petersen | OIC 784/07, December 2, 2007 | Vice Chair | December 2, 2008 |
| Robert Fraser | OIC 444/07, July 22, 2007 | Member | July 22, 2009 |
| Simmi Sandhu | OIC 444/07, July 22, 2007 | Member | July 22, 2009 |
| James Sodergren | OIC 355/06, May 28, 2006 | Member | May 28, 2009 |
| Darrel Woods | OIC 785/07, December 2, 2007 | Member | December 2, 2008 |

Biographical information on the Board Members serving in fiscal year 2007/08 is in Appendix 2.

Dispute Resolution Activities

The Board received 14 applications from April 1, 2007 to March 31, 2008: 13 applications under the *PNGA* or *Pipeline Act*, and one application under the *Mineral Tenure Act* and *Mining Right of Way Act*.

The table below shows the number and type of applications received by the Board during the reporting period:

| Nature of Application | # received in period |
|--|-----------------------------|
| <i>PNGA</i> (right of entry/compensation for wellsite) | 4 |
| <i>PNGA/Pipeline Act</i> (right of entry/compensation flowline) | 7 |
| <i>PNGA</i> (damages) | 1 |
| <i>PNGA</i> (rent review) | 1 |
| <i>Mineral Tenure Act</i> or <i>Mineral Right of Way Act</i> (right of entry/compensation) | 1 |
| Total applications received in period | 14 |

In addition, the Board had seven outstanding applications from previous years at the start of the reporting period.

As of March 31, 2008, there were nine applications open. The Table below shows the number of applications completed during the period and open at the end of the period.

| | # before the Board | Completed in period | Open at March 31, 2008 |
|--|---------------------------|----------------------------|-------------------------------|
| Applications received in 2007/08 | 14 | 6 | 8 |
| Active applications from previous years at April 1, 2007 | 7 | 6 | 1 |
| Total | 21 | 12 | 9 |

Of the applications open at March 31, 2008, five were at the mediation stage of the process, one at the arbitration stage, and two remained open following arbitration to deal with costs applications. The Table below depicts the applications open at March 31, 2008.

| | Mediation stage | Arbitration stage | Post Arbitration | Total |
|--|------------------------|--------------------------|-------------------------|--------------|
| <i>PNGA/Pipeline Act</i> | 5 | 1 | 2 | 8 |
| <i>Mineral Tenure Act and Mineral Right of Way Act</i> | 1 | - | - | 1 |

The following Table shows the type and volume of the Board's dispute resolution activities in the reporting period.

| Activity | Volume |
|--|---------------|
| Pre-hearing conferences | 24 |
| Mediations | 8 |
| Arbitrations | 1 |
| Right of Entry Orders Made | 7 |
| Costs decisions | 2 |
| Other decisions | 3 |
| Applications settled following Board pre-hearing conferencing or mediation | 8 |
| Applications dismissed for lack of jurisdiction | 2 |

The Board's decisions may be judicially reviewed under the *Judicial Review Procedure Act* within the time established by the *Administrative Tribunals Act*. As of March 31, 2008, three decisions were subject to judicial review.

Other Board Activities

Administration:

Cheryl Vickers was appointed chair in July, 2007. She is also chair of the Property Assessment Appeal Board (PAAB). The two PAAB vice-chairs, Rob Fraser and Simmi Sandhu, were appointed as members of MAB in July, 2007. The Ministry of Energy, Mines and Petroleum Resources (EMPR), the Ministry of Small Business and Revenue (responsible for PAAB), and PAAB entered into a Memorandum of Understanding appointing PAAB with the responsibility to oversee the operations, day to day administrative services, and office management of MAB.

The Board moved its Fort St. John office in July 2007.

The office is staffed by a part-time auxiliary clerk and is open to the public Monday to Thursday from 10:00 a.m. to noon and 1:00 p.m. to 3:00pm.

One of the reasons for the Ministry to enter into an MOU with PAAB was to provide more administrative support for MAB's operations. A review of MAB's operations identified several areas of concern from an administrative point of view including:

- Lack of standardized management procedures for the administration of cases;
- Inconsistent electronic storage of appeal correspondence and documents;
- Lack of management and control processes for evidentiary documents;
- Incomplete statistical records and inconsistent reporting methodology;
- No financial and procurement procedures (prior to delivery of financial documents to EMPR for payment);
- Insufficient approval authority and procedures for approving staff hours and financial commitments.

Standard operating policies and procedures have been developed to address these concerns. Many of PAAB's processes are compatible and have been adapted to meet MAB's needs. Further progress is required in the next reporting period to fully implement these initiatives.

Stakeholder Consultation and Process Revisions:

During the fall of 2007, the chair conducted several meetings with stakeholder groups and individuals with an interest in MAB processes to listen to concerns and receive feedback with a view to identifying ways in which MAB could provide more effective and satisfactory dispute resolution services. It became apparent

that one of the principle sources of dissatisfaction with the MAB processes was due to a lack of clarity between MAB and the Oil and Gas Commission (OGC) on their respective jurisdictions. OGC and MAB have signed a Memorandum of Understanding to provide coordinated dispute resolution services that refers parties to the appropriate organization for resolution of issues within that organization's jurisdiction. A copy of this MOU may be found on the Board's website at:

http://www.em.gov.bc.ca/subwebs/M&ABoard/legislation_links_pubs/OGC_MAB_MOU.pdf

In early March, 2008 the Board released a package for consultation containing draft new Rules of Practice and Procedure, revised forms and tariffs of costs, Practice Directives, and Information Sheets. The chair attended the March 2008 meeting of the North East Energy and Mines Advisory Committee (NEEMAC) to introduce this package and solicit feedback. As of March 31, 2008, the Board was still receiving and reviewing feedback on its proposed new rules and process initiatives. The consultation package may be found on the Board's website at:

<http://www.em.gov.bc.ca/subwebs/M&ABoard/whatsnew/newPostMarch11/default.htm>

As of March 31, 2008, the Board had already started to take a different approach to the management and resolution of applications. It is too early to evaluate the success of these changes. The Board will continually review and evaluate its processes and consult with the community to ensure that it is providing appropriate dispute resolution services, within its legislative mandate, that meet the needs of its stakeholders.

Member Training and Recruitment:

The Board held a three day full Board meeting in the fall of 2007 to discuss Board practices and engage in continuing education. Some members have taken courses offered by the British Columbia Council of Administrative Tribunals.

In early 2008, the Board started recruiting new members. The vacancies were widely advertised through professional organizations, industry and agriculture groups, and in the Fort St. John area newspapers. The chair and a representative of the Board Resourcing and Development Office conducted interviews in March. As of March 31, 2008, the process for the appointment of new members was ongoing.

Finances

The Board's budget for 2007/08 was \$125,000. The Board exceeded its budget by \$69,481. Both the Board and the Ministry anticipated the Board would be overbudget as a result of expenditures for the transition of management to PAAB, stakeholder consultation, and member recruitment. The Table below provides details of budget expenditures.

| Expenditure Type | Budget | Actuals | Variance | Notes |
|--------------------------------|----------------|----------------|-----------------|---------------------------------------|
| Salaries | 30,000 | 66,556 | (36,556) | Includes costs incurred by PAAB |
| Benefits | 8,000 | 15,695 | (7,695) | Includes costs incurred by PAAB |
| Board Member fees and expenses | 81,000 | 43,907 | 37,093 | |
| Travel | 5,000 | 18,075 | (13,075) | Includes costs incurred by PAAB |
| Central gov't services | | 7,839 | (7,839) | Incurred by PAAB |
| Information Systems | 1,000 | 4,160 | (3,160) | |
| Office and business | | 7,217 | (7,217) | |
| Rent | | 27,612 | - | Covered through the Ministry's budget |
| Advertising | | 3,420 | (3,420) | Ads for Board Member competition |
| Total Expenditures | 125,000 | 194,481 | (69,481) | |

Notes:

1. \$78,871 of the total expenditures were incurred by PAAB and charged to the Ministry
2. In the variance column (brackets) denote over budget
3. The rent figure excludes one time move costs to new premises of \$92,251

Challenges for 2008/09

In the coming year, the Board will continue to consult with stakeholders and review feedback prior to issuing new Rules of Practice and Procedure. The chair will meet with stakeholders after new rules have been in effect for a period of time to evaluate their effectiveness and consider whether further changes are necessary.

The chair will meet with the Commissioner of the OGC to ensure the MOU on coordinated dispute resolution is working effectively and consider whether changes are required.

The Board will develop and publish information about the Board's processes. The Board will work cooperatively with the Ministry and the OGC to provide information of assistance to landowners and subsurface holders.

The Board will review the effectiveness of the current delivery model for public assistance and service, and will review recently adopted operating policies and procedures.

The Board will conduct training and orientation sessions for the benefit of any new members and conduct a full Board meeting to discuss changes to Board processes and provide continuing education to members.

Appendix 1

Overview of the Board's Process

Application

An application must be made on the form prescribed by the Board in its Rules. When an application is received, the Board will review it to ensure that it is within the jurisdiction of the Board, and that it is complete and complies 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 within a certain time. If the deficiencies are not corrected, or if an application is not within the Board's jurisdiction, the Board may dismiss the application.

Pre-hearing Conferences

When the Board determines that an application can proceed, it will require the parties to attend a pre-hearing conference, usually conducted by telephone.

The purpose of the pre-hearing conference is to discuss the issues, ensure the issues are within the Board's jurisdiction, discuss the potential evidence, and explore the likelihood of resolution. The Board Member will determine, in consultation with the parties, how the application will proceed. The Board Member may facilitate resolution of the dispute during the pre-hearing conference, make orders for the production of information relevant to the dispute, or make other orders to assist with the fair and efficient conduct of the application. If the application involves issues within the jurisdiction of the Oil and Gas Commission, the Board Member may adjourn the application and refer the parties to that organization for assistance.

If an application is ready to proceed, it will be scheduled for mediation, with the exception of applications under section 12 of the *PNGA* (rent review) which will be scheduled for arbitration.

Mediation

A mediation is a dispute resolution process that attempts to facilitate resolution of the issues by agreement. A mediation is usually conducted in person, however, it may also be conducted by telephone conference. A mediation is confidential and without prejudice to the positions the parties may take later in an arbitration if the dispute is not resolved.

If the parties have not resolved the issues at the end of the mediation session, the Board Member presiding may:

- schedule another mediation;
- refuse further mediation;
- dismiss an application;
- direct the parties to provide submissions as to any orders the mediator should make; and/or
- when a subsurface holder needs access to land for the purpose of exploration, development, or production of a subsurface resource, issue an order for right of entry onto the property, with a security deposit and partial payment for compensation.

Arbitrations

If the parties cannot reach an agreement after the Board refuses further mediation, or in an application under section 12 of the *PNGA*, the Board must arbitrate unresolved issues.

An arbitration is a hearing process where each party presents evidence and arguments 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 conducting the pre-hearing conference will, in consultation with the parties, determine how the application will proceed including determining the issues, and setting dates for hearing and for the 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.

In-person hearings are open to the public. They 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.

At the conclusion of the arbitration hearing, the panel will recess to make a determination and will issue a written decision with reasons.

Evidence

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 in the hearing.

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 part of the costs of another party and, in exceptional circumstances, may order a party to pay the costs of the Board. Unless otherwise ordered by the Board, ordinarily landowners may expect to receive part of their costs of the mediation process. 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 2

Board Members' Biographical Information

Cheryl Vickers, Chair

Cheryl Vickers is a lawyer and formerly practiced in a variety of fields, including administrative law. Cheryl was appointed as Chair of the Mediation and Arbitration Board in July 2007. She also serves as Chair of the Property Assessment Appeal Board, a position to which she was appointed in January 2003. She previously served as a full time Vice Chair (appointed 1998), part-time Vice Chair (appointed 1995) and initially as a part-time member (appointed 1993) of the Property Assessment Appeal Board. Cheryl was active in the development of the British Columbia Council of Administrative Tribunals (BCCAT), and has served as a member of that organization's Board of Directors since its inception 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, Staff Foundations, and Advanced Decision Writing courses. She has delivered workshops on Case Management and Alternate Dispute Resolution for Tribunals at Annual Conferences of BCCAT and the Council of Canadian Administrative Tribunals.

Ib Petersen, Vice Chair

Ib Skov Petersen was called to the Bar of the Province of British Columbia in 1988. Since his call to the bar, Mr Petersen has restricted his practice to labour and employment law. Between 1991 and 1993, he was a staff lawyer with the Labour Relations Board. In 1993, he established his own practice. Mr Petersen has appeared regularly before the provincial and federal Labour Relations Boards, mostly representing employers and employees who have complaints against their unions. He has been spokesperson at the bargaining table for employers. In his wrongful dismissal practice, he acts for both employers and employees. He has represented employers and employees in arbitrations, and clients in human rights complaints. Mr Petersen is the editor of B.C. Labour and Employment Law Statutes, and has since 1991 been involved as an editor of the Canadian Encyclopedic Digest (Western) (labour and employment law in the federal jurisdiction and the four western provinces).

Robert Fraser

Active in the real estate industry for many years, Rob Fraser has been a sales person, 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. A member of the Property Assessment Appeal Board since

1992, Rob was appointed as a Vice Chair in 1998. He was appointed to the Mediation and Arbitration Board in 2007.

Simmi K. Sandhu

Simmi Sandhu is a lawyer, called to the BC Bar in 1990. Simmi was appointed to the Mediation and Arbitration Board in 2007 and is also a Vice Chair of the Property Assessment Appeal Board, a position she has held since 2001. As a lawyer, Simmi's areas of practice included administrative law, civil litigation, corporate/commercial law and real estate transactions. She has extensive experience in quasi-judicial proceedings, having acted as a Chair of the Board of Referees and has training and experience in conflict resolution and mediation. Simmi is on the Board of Directors of the British Columbia Council of Administrative Tribunals.

James Sodergren

James Sodergren owns and operates JaMar Trucking and Farms Limited with his wife Marion. Jim went into the water trucking business in 1970 and farming in 1975. He was active with the North West Rodeo Association and held the position of President for several years. He was a member of the BC Trucker's Association, life time member of Fort St. John Petroleum Club and member of the Horse and Mule Harness Club. Jim started in the Oil Industry at the age of 16 years working on the Drilling Rigs. In 1964 he went to work for Western Rock Bit as a salesman and became Area Supervisor. He worked for the company for 25 years before retiring to put all his time and effort into his own business. Jim was appointed to the Mediation and Arbitration Board in 2003.

Darrel Woods

Darrel Woods is a lawyer, called to the B.C. Bar in 1976. He was in private practice for over 20 years during which time he focussed increasingly on mediation and other forms of alternative dispute resolution. He was a founding executive member of the Alternate Dispute Resolution Section of the B.C. Branch of the Canadian Bar Association and the Victoria Collaborative Family Law Group. Presently he works at the Office of the Information and Privacy Commissioner for B.C. He is a member of the British Columbia Mediator Roster Society. Darrel was appointed to the Mediation and Arbitration Board in 2004.