

Mediation and Arbitration Board

ANNUAL REPORT

April 1, 2008 to March 31, 2009

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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 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 arbitration of their dispute.

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 following Board members served during fiscal year 2008/09:

Name	Position	Start date	Expiry
Cheryl Vickers	Chair	July 22, 2007	July 22, 2010
Ib Petersen	Vice Chair	Dec. 2, 2004	Dec. 2, 2008 (Resigned Sept., 2008)
Robert Fraser	Vice Chair (as of Dec. 8/08)	July 22, 2007	July 22, 2009
Simmi Sandhu	Member	July 22, 2007	July 22, 2009
James Sodergren	Member	May 28, 2004	May 28, 2009
Darrel Woods	Member	Dec. 2, 2004	Dec. 2, 2008
William Oppen	Member	Dec. 8, 2008	Dec. 31, 2010
Howard Emslie	Member	March 5, 2009	July 31, 2011
Viggo Pedersen	Member	March 5, 2009	July 31, 2011
Tracey Wolsey	Member	March 5, 2009	July 31, 2011

Biographical information on the Board Members is at Appendix 2.

Dispute Resolution Activities

The Board received 15 applications from April 1, 2008 to March 31, 2009, all under the *PNGA* or *Pipeline Act*. The Board did not receive any applications under the *Mineral Tenure Act* or *Mining Right of Way Act*.

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 for flowline)	6
<i>PNGA</i> (rent review)	5
Total new applications	15
Cases outstanding from previous year	8
Total caseload in period	23

This level of activity was similar to the previous year when the Board received 14 new applications with the exception that all of the applications were received in the first three quarters of the fiscal year, with no new applications being received in the last quarter.

The Table below shows the number of applications completed during the period and open at the end of the period.

Case completions	# before the Board	Completed in period	Open at March 31, 2009
Applications received in 2008/09	15	11	4
Active applications from previous years at April 1, 2008	8	7	1
Total	23	18	5

Of the applications open at March 31, 2009, four were at the mediation stage of the process and one at the arbitration stage:

Outstanding cases at year-end	Mediation stage	Arbitration stage	Total
<i>PNGA/Pipeline Act</i>	4	1	5

The following Table shows the type and volume of dispute resolution activities in the reporting period compared to the previous year.

Activity	2008/09	2007/08
Pre-hearing conferences	16	24
Mediations	9	8
Arbitrations	3	1
Applications settled following Board pre-hearing conferencing or mediation	7	8
Applications withdrawn or settled outside the Board	7	not available
Applications dismissed for lack of jurisdiction	1	2

The following Table shows the type and number of formal orders issued by the Board in the reporting period.

Type of Order	Number
Right of Entry Orders	10
Compensation decisions	3
Rent Review decisions	0
Costs decisions	2
Reconsideration decisions	2
Other decisions	1

Of the ten right of entry orders made, five were for the limited purpose of surveying and conducting archaeological and soil studies in preparation for an application to the Oil and Gas Commission (OGC); four were for the purpose of installation and operation of a flow line; one was for the purpose of construction and operation of a wellsite. Three of the entry orders were made with the consent of the landowner, and one order amended a previous entry order.

The three compensation decisions all related to compensation for entry for the purpose of constructing and operating a flowline. One of these decisions was a consent order incorporating the agreement of the parties.

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, 2009, one judicial review application and one application for leave to commence a judicial review outside of the time set out in the *Administrative Tribunals Act* were outstanding.

Other Board Activities

Stakeholder Consultation and Process Revisions:

In early March, 2008 the Board released a package for consultation containing draft new Rules of Practice and Procedure, revised forms, tariffs of costs, Practice Directives, and Information Sheets. The Board implemented new Rules effective August 5, 2008 and published a number of Information Sheets. As a result of feedback from stakeholders, the Board did not proceed with its proposed Tariff of Costs opting to engage in further consultation on this issue.

The Board Chair participated in the meetings of the Northeast Energy and Mines Advisory Committee (NEEMAC) and participated in the NEEMAC sub-committee respecting the development of a new standard surface lease agreement.

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.

Administration:

The Chair of the Mediation and Arbitration Board, Cheryl Vickers, is also the Chair of the Property Assessment Appeal Board (PAAB). The Ministry of Energy, Mines and Petroleum Resources (EMPR), the Ministry of Small Business and Revenue (previously responsible for PAAB), and PAAB entered into a Memorandum of Understanding in 2007 appointing PAAB with the responsibility to oversee the operations and provide day to day administrative services for MAB.

In June of 2008, the Board closed its Fort St. John office and entered a Service Agreement with Service BC in Fort St. John and Dawson Creek. This arrangement provides the public with a local contact point and personal assistance in reviewing applications. The volume of inquiries through Service BC has been very low. Most clients have opted to communicate directly with the Board through its office in Richmond via email or toll free phone or fax.

MAB completed implementation of standard operating procedures to tighten up the case administration and address office management issues reported in last year's annual report.

The Ministry of Finance is holding approximately \$190,000 in security deposits (some dating back to 1976) ordered to be paid by the Board prior to entering land. There has been a lack of clarity with respect to when deposits should be returned and the process for requesting return of a deposit. The Board developed policy respecting the return of security deposits, published a Practice Directive and application form, and issued letters to the providers of security deposits with this information.

Member Recruitment and Training:

One Member resigned in the fall of 2008, prior to the expiration of his appointment, and another member's appointment expired in December 2008. One new member was appointed in December 2008 for a two year term and three other new members were appointed in March 2009 for terms expiring at the end of July 2011. The Board will hold a full Board meeting in the spring of 2009 to orient the new members, discuss Board practices and engage in continuing education. The new members will also attend training offered by the British Columbia Council of Administrative Tribunals.

Finances

The Board's budget for 2008/09 was \$170,000. As detailed in the table below, the Board was under budget by \$67,599.

Expenditure Type	Budget	Actuals	Variance¹	Notes
Salaries ²	72,000	53,073	18,927	Elimination of part time support position in Ft. St. John
Benefits	17,158	12,608	4,550	
Board Member fees and expenses	50,000	2,989	47,011	Drop in caseload & some Board work covered under salaries
Travel	17,842	21,363	(3,521)	Increased travel for consultation with local community
Office overhead ³		8,794	(8,794)	Covered by budget under Information Systems and Office & Business
Information Systems	3,000	0	3,000	Systems provided by Property Assessment Appeal Board
Office and business	10,000	3,574	6,426	Most expenditures covered by Property Assessment Appeal Board
Total Expenditures	170,000	102,401	67,599	

Notes:

1. In the variance column (brackets) denote that actual expenditures were over budget.
2. The majority of salaries and benefits were for the Chair, Vice Chair and one Board member who are cross-appointed to the Property Assessment Appeal Board.
3. Overhead charges were billed at 15% of salary and benefits costs as per an MOU between the Property Assessment Appeal Board and EMPR.

Challenges for 2009/10

In the coming year, the Chair will continue to consult with stakeholders, evaluate the effectiveness of the Board's new Rules and practices and consider whether further changes are necessary.

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

The Board is working with EMPR on proposals for legislative amendments to the powers of the Mediation and Arbitration Board to improve dispute resolution processes. The Board will develop and adjust its practices, Rules and public information to implement and reflect any legislative amendments.

The Board will enhance its public information about the Board's current processes, including enhancing its website. The Board will work cooperatively with the Ministry and the OGC to provide information of assistance to landowners and subsurface holders.

The Board will evaluate 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 new Board members and conduct a full Board meeting to discuss changes to the Board's 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. 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 within a certain time. The Board may dismiss the application if the deficiencies are not corrected, or if an application is not within the Board's jurisdiction.

Pre-hearing Conferences

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, make orders for the production of relevant information 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

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 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 and order the payment of a security deposit and partial payment for compensation. If the mediator makes an order refusing further mediation, either party may ask the Board to arbitrate the dispute..

Arbitrations

Board must arbitrate when the parties cannot reach an agreement. An arbitration is a dispute resolution 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 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.

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.

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 recover 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. 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. She has delivered these courses and workshops on case management and alternate dispute resolution for tribunals.

Ib Petersen, Vice Chair (to September 2008)

Ib Skov Petersen was called to the Bar of the Province of British Columbia in 1988. He 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. 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, Vice Chair (commencing December 2008)

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. Rob was appointed as a Vice Chair to the Property Assessment Appeal Board in 1998. He was appointed to the Mediation and Arbitration Board in 2007.

Howard Emslie

Howard Emslie is retired as the District Manager with the BC Ministry of Transportation, Commercial Vehicle Safety and Enforcement. Previously, he was a Regional Manager with the BC Ministry of Solicitor General, Commercial Vehicle Safety and Enforcement; Insurance Corporation of BC, Compliance Operations; and the Motor Vehicle Branch, Commercial Transport Department. Active in the community, Mr. Emslie was a Host at the Northern BC Winter Games in 1988 and 2008. He holds his Leadership Certification from Simon Fraser University. He was appointed to the Mediation and Arbitration Board in 2009.

William Oppen

Bill Oppen is retired and lives in Dawson Creek. Prior to his retirement, Mr. Oppen was the Deputy Minister of Renewable Resources for the Yukon government. He also served as Deputy Minister of Economic Development and has held senior positions with the government of Alberta and the Federal government. He has served on numerous committees including one looking at new work heritage sites for Canada. Bill is a published author and currently is a member of the Board of Directors of the Provincial Capital Commission. He was appointed to the Mediation and Arbitration Board in 2008.

Viggo Pedersen

Viggo Pedersen was a dairy farmer for 30 years, during which time he represented the dairy farmers to the British Columbia Milk Producers Association and served as the Dairy Director of British Columbia Investment Agriculture. Active in the community, Mr. Pedersen has been a member of the Chamber of Commerce, and the Rotary Club. He is also a former member of the Peace River Regional District Board of Variance. Currently, Mr. Pedersen is a Director of the Northern Lights College Foundation. He was appointed to the Mediation and Arbitration Board in 2009.

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 working on drilling rigs. In 1964 he joined 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 (to December 2008)

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.

Tracey Wolsey

Tracey Wolsey lives with her family near Charlie Lake, BC and is a stakeholder relations project manager with Suncor Energy. She has been involved in oil and gas and wind power projects for over ten years. Tracey spends most of her time in Alberta and BC, but has been involved in projects in Saskatchewan, the US and Australia. She has worked as an economic development advisor with the Prophet River Indian Band, and as the coordinator of the Peace River-Liard Community Futures Committee. In 1993 Tracey was elected to a three year term on the Charlie Lake Commission and served as its chair for two years. Over the years she has also served on a wide range of committees involving industry, education and stakeholder issues, most recently sitting as co-chair of the Northeast Energy Mines Advisory Committee. Tracey earned a Bachelor of Arts degree at the University of Calgary and a Masters degree at the University of Northern BC. She was appointed to the Mediation and Arbitration Board in 2009.