

SURFACE RIGHTS BOARD

ANNUAL REPORT

April 1, 2021 to March 31, 2022



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, 2021 to March 31, 2022. The Report is submitted in accordance with section 59.2 of the *Administrative Tribunals Act*.

The mandate of the Board is 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.

I am pleased to report that despite the challenges of the past year, the Board strived successfully to meet its mandate, and I am confident that the Board will continue to meet new challenges. During this reporting period, the Board continued to deal with the COVID-19 pandemic and the Board staff and members worked largely remotely. Also during this period, there was a significant change in the Board composition. The Board welcomed new members, and some members resigned or retired. Of note, in December, 2021, Cheryl Vickers completed her appointment as the Chair of the Board, and I was appointed to replace her. Simmi Sandhu resigned as Vice Chair of the Board. Ms. Vickers has recently agreed to continue to support the Board until December 2022 as Acting Vice Chair. I sincerely thank both Ms. Vickers and Ms. Sandhu for their service to the Board since 2007.

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. The Board also confirms its commitment to striving for diversity, equity and inclusion to ensure the Board is representative of all British Columbians.

I thank our stakeholders, Board members and staff for their ongoing support. It is a privilege to work with each of them and 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.

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, 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 Oil and Gas Commission (OGC). The Board will generally require parties to resolve issues within the jurisdiction of the OGC prior to issuing an entry order.

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.

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. 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, 2021 to March 31, 2022, the Board received seven applications under the *PNGA* and five applications under 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, 2021 to March 31, 2022 compared to the previous year.

Nature of Application	# received 2021/2022	# received 2020/21
<i>PNGA</i> (right of entry/compensation for wellsite)	1	4
<i>PNGA</i> (right of entry/compensation for flowline)	1	2
<i>PNGA</i> (right of entry/compliance/related activity)	0	0
<i>PNGA</i> (damages)	0	0
<i>PNGA</i> (rent review)	0	6
<i>PNGA</i> (compliance)	5	13
<i>PNGA</i> (termination of surface lease)	0	0
<i>MRWA</i>	5	0
<i>MTA</i>	0	0
Total new applications	12	25
Cases outstanding from previous year	24	32
Total caseload in period	36	57

During the reporting period, the Board completed 13 cases as indicated by the table below:

Case Completions:	Current year	Previous year
Abandoned	0	0
Settled by mutual agreement	7	14
Completed by Arbitration	0	4
Dismissed	1	0
Summary payment orders (s. 176)	5	15
Total completed	13	33

Of the 26 applications open at March 31, 2022, 19 were at the mediation stage of the process or pending further mediation, four at the arbitration stage, two were subject to a jurisdictional review, and one was deficient with follow-up ongoing.

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	11	7
Right of entry orders	0	1
Arbitrations	1	2
Cost orders	0	4
Other Board decisions *	8	15

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

b. Decisions of Note and Judicial Reviews

There were no decisions of note during this reporting period.

The Board's decisions 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 decisions in *Encana Corporation v. Jorgensen*, Orders 2066-2 and 2066-3. The Board found that two segments of a proposed pipeline, the fuel gas line and a bi-directional water delivering water for hydraulic fracturing and removing it for re-use in hydraulic fracturing, were "flowlines" within the meaning of the *Petroleum and Natural Gas Act*. The Supreme Court upheld the Board's decision and found it had correctly determined the pipeline segments in question to be flowlines: *Jorgensen v. Surface Rights Board*, 2021 BCSC 396. An appeal of the BC Supreme Court decision has been filed to the BC Court of Appeal but has not yet been heard.

c. Other Board Activities

(i) Administration:

The Property Assessment Appeal Board (PAAB) provides administrative services to the Surface Rights Board. The Board has a Service Agreement with Service BC in Fort St. John and Dawson Creek to provide the public with a local contact point and personal assistance in reviewing applications. The volume of inquiries through Service BC is very low. Most clients communicate directly with the Board through the PAAB office in Vancouver via email or toll-free phone or fax.

(ii) Security Deposits:

The Board collected \$2,500 in security deposits in this reporting period of April 1, 2021 to March 31, 2022.

The Ministry of Finance is holding \$213,350 (as at March 31, 2022) in security deposits that the Board ordered paid prior to entering land. The Board processed four applications for the return of security deposits totaling \$10,000, 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 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 data base 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 \$108,000. As detailed in the table below, the Board was under budget by \$37,640 primarily as a result of lower volume of cases than in previous fiscal years.

Expenditure Type	Budget	Actuals	Variance
Salaries	\$20,000	\$20,382	\$(382)
Benefits	\$5,000	\$5,076	\$(76)
Board Member fees and expenses	\$46,000	\$26,648	\$19,352
Information systems	\$12,000	\$15,038	\$(3,038)
Office and business	\$5,000	\$1,455	\$3,545
Legal Support Services	\$20,000	\$1,760	\$18,240
Total Expenditures	\$108,000	\$70,360	\$37,640

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 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 at an arbitration.

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 three long-term part-time members and four new part-time members. The following Board members served during this fiscal year:

Name	Position	Start date	Expiry
Cheryl Vickers	Chair	July 22, 2007	December 31, 2021
	Member	December 31, 2021	December 31, 2022
Simmi Sandhu	Vice Chair	July 22, 2007	August 19, 2021 Resigned
Robert Fraser	Member	February 13, 2014	December 31, 2022
Jacqueline Beltgens	Vice Chair	August 4, 2021	December 31, 2021
	Chair	December 31, 2021	December 31, 2024
Stephen Bergen	Member	August 4, 2021	March 10, 2022 Resigned
Dennis Lapierre	Member	August 4, 2021	February 4, 2024
Lesley Sick	Member	August 4, 2021	February 4, 2024

Jacqueline Beltgens, Chair

Jacqueline Beltgens is a lawyer, mediator, adjudicator and workplace investigator. 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. She taught law at the Beijing Foreign Studies University in China. Ms. Beltgens was a member of the BC Human Rights Tribunal, and is 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 ADRBC (Chartered Mediator). Ms. Beltgens attended the University of British Columbia for undergraduate studies, and obtained a Juris Doctor. Ms. Beltgens also has a Diploma of Technology (Engineering) from the BC Institute of Technology. Ms. Beltgens 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 to 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.