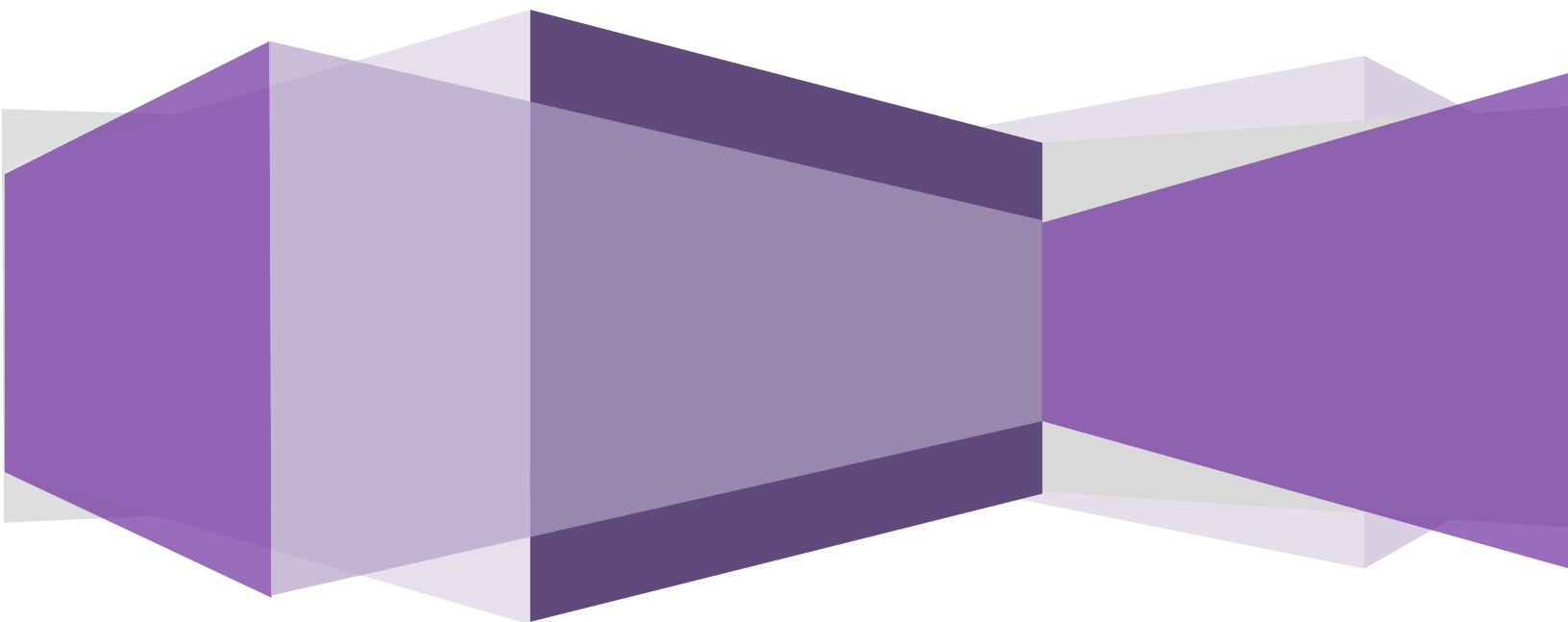




Hospital Appeal Board

2023-2024 Annual Report

Covering the reporting period from
April 1, 2023 – March 31, 2024





Hospital Appeal Board

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Message from the Chair

I am pleased to submit the Annual Report of the Hospital Appeal Board (the “Board” or the “HAB”) for the fiscal year beginning April 1, 2023 and ending March 31, 2024. This report is submitted pursuant to section 59.2 of the *Administrative Tribunals Act*.

APPEAL ACTIVITY DURING THE REPORTING PERIOD

Section 59.2(c) of the *Administrative Tribunals Act* requires the Board to provide details on the nature and number of appeals received by the tribunal during the reporting period.

There were a total of 11 appeals before the Board during the current reporting period. All of these appeals were carried over from the previous reporting period and no new appeals were filed during the current reporting period.

One of these 11 appeals was disposed of by a final decision on the merits during the current reporting period. Another one of these appeals had been disposed of by a final decision in the prior reporting period but was reopened in the current reporting period to deal with applications for orders related to implementation and costs. The nine remaining appeals have been held in abeyance throughout this reporting period on the request of the parties.

At the conclusion of the current reporting period there were 10 appeals outstanding before the Board.

During the current reporting period, one new application for judicial review was filed in the BC Supreme Court. This application resulted from the final decision on the merits given by the Board earlier in the current reporting period.

Further details of all of these appeals and judicial reviews are provided later in this report.

FORECAST OF WORKLOAD FOR THE NEXT REPORTING PERIOD & TRENDS NOTED

Section 59.2(f) of the *Administrative Tribunals Act* requires the Board to provide a forecast of the workload for the forthcoming reporting period.

The Board expects that nine of the 10 appeals currently being held in abeyance will either proceed or be withdrawn in late 2024 or early 2025. If these appeals proceed, the Board’s workload in the next reporting period will be significantly higher than usual.

Section 59.2(g) of the *Administrative Tribunals Act* requires the Board to report any trends or special problems it foresees. The main trend that the Board has identified in this reporting period, as with the previous reporting periods, is the complexity and length of appeals over the past several years.

The Board has found it difficult at times over the past several years to provide timely hearings for the increasingly long and complex appeals. As discussed in earlier annual

reports, this is because it has been difficult for the Board to recruit and retain members who are available to sit on hearings that take place over several weeks. The membership of the Board consists largely of experienced health care practitioners, administrators, and lawyers who have busy practices and who often find it difficult and financially impractical to set aside large periods of time for attendance at hearings. These individuals are selected for membership on the Board on the basis of their expertise and high standing in their respective fields.

In order to maintain the high calibre of the professionals who currently sit on the Board, it may be necessary to provide greater incentives for members attending lengthy hearings; for example, greater overall member compensation, particularly for Panel chairs who are tasked with adjudicating complex legal issues; and also, financial compensation for hearings which are cancelled last-minute.

The Hospital Appeal Board is currently classified as a tier 2 tribunal for the purposes of *Treasury Board Directive 1/24*, which sets tribunal member remuneration in BC. The resulting low per diem rates creates a disincentive for Members with other employment to sit on long hearings because it removes the ability for them to earn significant portions of their regular income. For example, a lawyer who may bill \$500-800 per hour in her legal practice must give up five weeks of pay to sit on a Hospital Appeal Board panel where she will be compensated \$515 – \$545 per day as a panel member, or \$605 - \$665 per day as a panel Chair.¹ The complexity of the *de novo* hearings before this tribunal is similar to court proceedings and justify a classification as a tier 5 tribunal. This reclassification would alleviate some of the compensation issues experienced by the Board.

In addition, the Board has noted an increase in the number of post-decision applications, particularly regarding implementation of the Board's decisions. Where the health authority's decision is affirmed, there is little to deal with after the Board's decision. However, where the Board grants the appeal and reinstates the Appellant, there are more complicated steps that need to be taken, and applications related to this are becoming more complex and resulting in re-opening appeals and resulting in longer total appeal times. The Board intends to evaluate whether the current processes are working for post decision implementation and whether additional processes or statutory powers are required.

PLANS FOR IMPROVING THE BOARD'S OPERATIONS

Section 59.2(h) of the *Administrative Tribunals Act* requires the Board to report its plans for improving operations in the future.

During the current reporting period, the Board began drafting a participants' code of conduct which describes the minimum standards of behaviour expected of all parties to an appeal. The code of conduct is intended to ensure that appeals are heard fairly, efficiently, and in a safe and supportive environment that is trauma informed and

¹ Rates effective April 1, 2024.

culturally sensitive. The code of conduct will be published early in the next reporting period.

Stacy F. Robertson
Chair, Hospital Appeal Board

Mandate

The HAB is a quasi-judicial administrative tribunal continued under section 46 of the *Hospital Act*. The Board's purpose is to provide a specialized, independent, accessible and cost-effective avenue of appeal, as an alternative to the court process, for health practitioners (doctors, dentists, midwives and nurse practitioners) who disagree with a decision of a hospital's board of management regarding hospital privileges.

The Board hears appeals filed by the prescribed health practitioners from:

- a decision of a hospital's board of management that modifies, refuses, suspends, revokes or fails to renew a practitioner's permit to practice in a hospital; or
- the failure or refusal of a hospital's board of management to consider and decide on an application for a permit in a timely manner.

The Board generally holds one to two full, oral, court-like hearings per year. In most cases, a panel of three members hears the merits of each appeal. Each appeal usually also involves a number of preliminary issues and rulings made either by the Board Chair or the Panel Chair designated to hear the appeal. These preliminary issues usually involve an oral hearing and/or argument and extensive written submissions. In addition to any preliminary issues, there are often post decision issues regarding implementation of orders which can require additional oral hearings and further detailed submissions.

Appeals are conducted as a "hearing *de novo*", which requires the Board to hold a new hearing in the full sense with witnesses, expert evidence, substantial documentary evidence and oral argument. Consequently, hearings can vary widely in length depending on the complexity of the issues under appeal and the amount and kind of evidence to be adduced, with hearings typically taking between 3 and 5 weeks, sometimes spread over several months, to complete with written submissions often exceeding 50 pages per party. Parties to the proceedings are almost always represented by experienced legal counsel.

The Board has broad remedial authority, and may affirm, vary, reverse, or substitute its own decision for that of a hospital board of management on the terms and conditions it considers appropriate. After a hearing, the Board issues detailed written reasons for its decision which are made available to the public on the Board's website.

For further information please see the Board's website at www.bchab.ca.

Contact Information

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Board Membership

Under section 46(4) and (4.1) of the *Hospital Act* the minister **must** appoint 10 members of the Hospital Appeal Board as follows:

- a) one member designated as the chair;
- b) one member designated as the vice-chair;
- c) one member selected from among 3 or more individuals nominated by the College of Physicians and Surgeons;
- d) one member selected from among 3 or more individuals nominated by the College of Dental Surgeons of British Columbia²;
- e) one member selected from among 3 or more individuals nominated by the British Columbia College of Nurses and Midwives;
- f) one member selected from among 3 or more individuals nominated by the executive body of the Association of Doctors of BC³; and
- g) four other members selected after a merit based process.

² Since September 1, 2022, the College of Dental Surgeons of BC has been amalgamated with the BC College of Oral Health Professionals.

³ The Association of Doctors of BC is more commonly known as Doctors of BC and was formerly known as the British Columbia Medical Association. It is a voluntary association of physicians, residents, and medical students.

During this reporting period, the HAB membership consisted of the following individuals:

<i>BOARD MEMBER</i>	<i>ROLE</i>	<i>INITIAL APPOINTMENT</i>	<i>TERM EXPIRY/ RESIGNATION</i>
Stacy Robertson	Chair	October 28, 2014	December 31, 2028
Catherine Sullivan	Vice Chair	January 17, 2022	January 17, 2024
Sharleen Dumont	Vice Chair	January 17, 2024	January 17, 2028
	Member	January 17, 2022	January 17, 2024
Dr. Kevin Doyle (College of Dental Surgeons ⁴ nominee)	Member	October 28, 2014	December 31, 2024
Darlene (Deanie) Kolybabi	Member	November 6, 2018	May 5, 2025
Dr. Ailve McNestry (College of Physicians and Surgeons nominee)	Member	June 15, 2021	June 30, 2028
Dr. R. Alan Meakes (Doctors of BC nominee) ⁵	Member	June 30, 2019	June 30, 2026
Anita Molzahn	Member	February 1, 2021	June 4, 2028
Sandra J. Pullin (College of Nurses and Midwives nominee)	Member	December 31, 2019	December 31, 2026
Cheryl Vickers	Member	March 1, 2016	March 11, 2024

BIOGRAPHIES OF BOARD MEMBERSHIP

STACY ROBERTSON (CHAIR)

Stacy Robertson is currently the VP Compliance and Regulatory Affairs of a large independent securities brokerage firm, Wellington-Altus Private Wealth where he is responsible for registration, complaints, internal audits, regulatory audits and inquiries and anti-money laundering and terrorist financing surveillance and compliance. Prior to that he was senior enforcement counsel at the Investment Industry Regulatory Organization of Canada (now the Canadian Investment Regulatory Organization). Previously he worked as an associate and partner at several Vancouver based firms practicing in the areas of insurance, construction, employment, labour, and administrative law. Mr. Robertson has appeared before all levels of court in B.C., before the B.C. Labour Relations Board, the Canadian Industrial Relations Board, and the B.C. Securities Commission. Active in his community, he is currently the Chair of British Columbia's

⁴ See footnote 2.

⁵ See footnote 3.

Hospital Appeal Board and Financial Services Tribunal. Previously, Mr. Robertson served as a member on the Employment Assistance Appeal Tribunal and the Eligibility Appeals Committee for B.C. School Sport. He has completed the Partners, Directors and Officers course through the Canadian Securities Institute. Mr. Robertson holds a Bachelor of Law from the University of New Brunswick, a Bachelor of Commerce from McMaster University, and a diploma from Moscow State University in Political History of Russia and the U.S.S.R.

CATHERINE SULLIVAN (VICE CHAIR, TERM EXPIRED JANUARY 17, 2024)

Catherine Sullivan is a Lawyer. Prior to being self-employed, Ms. Sullivan was a Mediator with the BC Human Rights Tribunal. Active in her community, she is a member of the Property Assessment Review Panel and was previously a member with the Civil Resolution Tribunal. Ms. Sullivan is a member with the Law Society of BC, Canadian Bar Association and the Alternate Dispute Resolution Institute of BC. She has the Chartered Mediator designation from the Alternate Dispute Resolution Institute of British Columbia. Ms. Sullivan holds a Bachelor of Laws from the University of British Columbia, a Master of Social Work and a Bachelor of Arts from Dalhousie University.

DR. KEVIN DOYLE

Kevin Doyle is sole proprietor of Dr. Kevin Doyle Incorporated. He is actively involved in his community serving as an Assessment Invigilator/Evaluator for the National Dental Examining Board of Canada. Previously he served as an examiner for the National Dental Examining Board of Canada and the College of Dental Surgeons of British Columbia. Dr. Doyle is a Fellow of the American College of Dentists, the International College of Dentists and the Pierre Fauchard Academy. He holds a Graduate Certificate in Evidence Based Health Care from the University of Oxford and has held past appointments as Reviewer for the Cochrane Oral Health Group, council member on the Canadian Collaboration on Clinical Practice Guidelines (CCCPG) and Chairperson of the Guideline Advisory Committee of the CCCPG. Dr. Doyle holds a Doctor of Dental Medicine from the University of British Columbia and a Bachelor of Science (Chemistry) from the University of Victoria.

SHARLEEN DUMONT (MEMBER, AND VICE CHAIR BEGINNING JANUARY 17, 2024)

Sharleen Dumont recently retired from her role as Staff Lawyer with the Law Society of British Columbia. Previously Ms. Dumont was Senior Legal Counsel at the Vancouver Fraser Port Authority and Partner with Alexander, Holburn, Beaudin & Lang. Active in her community, she is a Vice Chair of the Complaints Investigation Committee of the Law Society of Yukon. She obtained her law degree from the University of Victoria and holds a Bachelor of Arts in Economics from the University of Calgary.

DARLENE (DEANIE) LYNN KOLYBABI

Deanie Kolybabi is the President/Owner of Panache Media Consultants. She is the past Executive Director of EAGLE (Environmental-Aboriginal Guardianship through Law & Education) and the past Interim CEO of the National Aboriginal Achievement Foundation. In addition, she has held contracts with the Aboriginal Peoples Television Network, and

the Women's Television Network. Ms. Kolybabi is Co-Founder of the Strategic Alliance of Broadcasters for Aboriginal Reflection (SABAR) and within her community, she is involved with the Health Aboriginal Network. She is the former Director of the Surrey Manufactured Homeowners Association and the Past President and Spokesperson for the Seacrest Residents' Association. Ms. Kolybabi is a member of the White Rock/Surrey Chamber of Commerce.

DR. AILVE MCNESTRY

Ailve McNestry was born in Sri Lanka and spent her early childhood in Nigeria. Dr. McNestry retired from medical practice in 2018 following over 40 years in the medical profession. During her career she was the Deputy Registrar, Health Monitoring & Drug Programs for the College of Physicians & Surgeons of BC, the Manager of Medical Services for WorkSafeBC and a family physician in Vancouver. Active in her community she volunteers for her local Health Centre Foundation Board and as a COVID immuniser. Dr. McNestry holds a Medical Degree from the University College in Dublin, Ireland, and she interned at Memorial University in Newfoundland, Canada.

DR. R. ALAN MEAKES

Dr. Alan Meakes was a Physician with qualifications in general practice, military medicine, and specialist medicine involving Anesthesia, internal medicine, and critical care. Previously Dr. Meakes was Executive Medical Director for Island Health. Active in his community, he was a Member of the Working Group for Physician Compensation, Specialist Services Committee Expression of Interest Review Committee and Medical On-Call Availability Program Provincial Review Committee. Dr. Meakes holds certification in both Anesthesia and Internal Medicine and is a Fellow of the Royal College of Physicians of Canada (FRCPC). He holds a Doctorate in Medicine from the University of British Columbia.

DR. ANITA MOLZAHN

Anita Molzahn has over 45 years experience as a nurse, professor and academic administrator. Prior to her retirement she was a professor and the Dean, Faculty of Nursing at the University of Alberta; professor and the Dean, Faculty of Human and Social Development and the Director of the School of Nursing at the University of Victoria. Dr. Molzahn has been actively involved in her community as a Member of the Canadian Academy of Health Sciences, International Advisory Board Member for the VID Specialized University in Norway and a Member of the Research and Scholarly Activities Committee for the Canadian Association of Schools of Nursing. Dr. Molzahn is a Member of the Order of Canada and a Fellow of the Canadian Academy of Health Sciences. She holds a Doctorate in Sociology, Master of Nursing and a Bachelor of Science in Nursing from the University of Alberta.

SANDRA PULLIN

Sandy Pullin is a Registered Midwife and has been a practicing midwife since 1978. Previously Ms. Pullin was a Registered Nurse with Queen Charlotte General Hospital. She has also traveled as a midwife in Nunavut, Uganda and Haiti for short terms. Active in her

community, she was a Board Member with the College of Midwives of B.C. and an appointed Member of the Midwifery Regulation Advisory Committee for the Government of Alberta. Ms. Pullin served as an Inquiry Panel Member for the College of Midwives of B.C., a Founding Member and Treasurer for the Alberta Association of Midwives and was the Founding President for the Association for Safe Alternatives in Childbirth. She holds a Certificate in Advanced Practical Obstetrics from the University of Alberta and a Diploma in Nursing from Grant MacEwan Community College.

CHERYL VICKERS

Cheryl Vickers is a retired lawyer and long-time member of the administrative law community. She is Vice Chair of the Surface Rights Board and has previously served as Chair of that Board, Chair of the Property Assessment Appeal Board, and Acting Chair of the Civil Resolution Tribunal. Ms. Vickers holds a Bachelors Degree from Dalhousie University in Halifax, Nova Scotia as well as a Bachelors of Law from University of Victoria.

Operations

The administrative support functions of the Hospital Appeal Board are provided as part of the Environmental Appeal Board cluster of tribunals (the “EAB cluster”) in Victoria.

In addition to the HAB, the EAB cluster provides administrative support to six other quasi-judicial appeal tribunals. This clustering of administrative support for eight independent appellate tribunals has been done to assist government in achieving economic and program delivery efficiencies by allowing greater access to resources while, at the same time, reducing administration and operating costs. In addition to the HAB and the Environmental Appeal Board, the other clustered tribunals are:

- Community Care and Assisted Living Appeal Board;
- Energy Resource Appeal Tribunal;⁶
- Financial Services Tribunal;
- Forest Appeals Commission;
- Health Professions Review Board; and the
- Skilled Trades BC Appeal Board.

This clustering has resulted in significant savings to government through a shared services approach, particularly for tribunals with lower volumes of cases such as the HAB with part time Chairs and ad hoc panel assignments. This arrangement has proven to be an effective and efficient means for providing administrative support to the Board, which

⁶ Formerly the Oil and Gas Appeal Tribunal and renamed as of September 1, 2023.

in turn enables the Board to fulfill its appellate mandate effectively and efficiently. The shared services approach and common office has led to greater efficiencies in training new staff and having staff with a larger compliment of knowledge to address novel or complicated issues that arise for the HAB.

Effective April 1, 2017, host Ministry responsibilities for administration of the HAB (i.e. budget oversight and member appointments, as well as facilities and records supports, etc.) were transferred to the Ministry of Attorney General as part of the Tribunal Transformation Initiative. The Tribunal and Agency Support Division (TASD), within the Ministry of Attorney General, has provided much valuable support to the HAB when needed, and has been an effective partner in dealing with emerging issues.

Appeal Activity and Decisions Issued

There was a total of 11 appeals before the Board during the current reporting period. All of these appeals were carried over from the previous reporting period and no new appeals were filed during the current reporting period. One of these appeals was closed during the current reporting period after a final decision on the merits. Another appeal remains open pending a decision on a post-decision costs order. The remaining nine decisions are being held in abeyance by request of the parties.

A summary of each appeal and its status at the end of the reporting period is provided below.

APPEALS BEFORE THE BOARD

1. **HAB-HA-20-A003, FILED DECEMBER 8, 2020** – Appeal from a September 11, 2020, decision of the Interior Health Authority Board of Directors regarding an application for Active Medical Staff Privileges. This appeal was disposed of by a final decision on the merits in the prior reporting period but was reopened in the current reporting period to deal with applications for orders related to implementation and costs. A post-decision application is currently with the panel for adjudication.
2. **HAB-HA-22-A001, FILED FEBRUARY 22, 2022** - Appeal from a November 26, 2021, decision of the Provincial Health Services Authority Board of Directors to cancel the Appellant’s medical staff appointments and privileges. This appeal is being held abeyance by request of the parties.
3. **HAB-HA-22-A002, FILED AUGUST 23, 2022** - Appeal from the May 25, 2022, decision of the Island Health Authority Board of Directors to cancel the Appellant’s medical staff appointments and privileges. This appeal is being held in abeyance by request of the parties.

4. **HAB-HA-22-A003, FILED AUGUST 24, 2022** - Appeal from the May 26, 2022, decision of the Fraser Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges. This appeal is being held in abeyance by request of the parties.
5. **HAB-HA-22-A004, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022, decision of the Interior Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges. This appeal is being held in abeyance by request of the parties.
6. **HAB-HA-22-A005, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022, decision of the Interior Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges. This appeal is being held in abeyance by request of the parties.
7. **HAB-HA-22-A006, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022, decision of the Interior Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges. This appeal is being held in abeyance by request of the parties.
8. **HAB-HA-22-A007, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022, decision of the Interior Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges. This appeal is being held in abeyance by request of the parties.
9. **HAB-HA-22-A008, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022, decision of the Interior Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges. This appeal is being held in abeyance by request of the parties.
10. **HAB-HA-22-A009, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022, decision of the Interior Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges. This appeal was disposed of by a final decision on the merits, which is summarized below.
11. **HAB-HA-22-A010, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022, decision of the Interior Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges. This appeal is being held in abeyance by request of the parties.

BOARD DECISIONS

During the reporting period, **one** final decision on the merits was issued. The Board also published **two** decisions on applications made after a final decision which requested directions related to the implementation of previous orders and costs.

HAB-HA-22-A002(a)

Decision Date: September 13, 2023

Appellant: Dr. Malvinder Hoonjan

Respondent: Interior Health Authority (“IH”)

Decision Full Text: [Dr. Malvinder Hoonjan v Interior Health Authority, 2023 BCHAB 3](#)

Background: This is a post-decision order related to the implementation of the prior final decision on the merits in [Dr. Hoonjan v. Interior Health Authority, 2022 BCHAB 4](#).

The Appellant, a vitreo-retinal surgeon at Royal Inland Hospital (“RIH”) in Kamloops, who also possessed consulting privileges at Kelowna General Hospital (“KGH”), had his privileges at RIH cancelled pursuant to the vitreo-retinal clinic being moved from RIH to KGH. The Appellant then submitted an open application to the vitreo-retinal clinic at KGH on the recommendation of management, which was rejected. In its final decision on the merits of the appeal, the HAB Panel held that the failure of IH to transfer the Appellant’s privileges from RIH to KGH was an improper termination of the Appellant’s privileges pursuant to the Medical Staff Bylaws and Medical Staff Rules of Interior Health Authority. In addition the HAB Panel found that Interior Health Authority’s conduct in assessing and denying his application to practice at the relocated clinic at KGH was unfair and not in accordance with the duties and obligations set out in the Medical Staff Bylaws and Medical Staff Rules of Interior Health Authority. Interior Health Authority was ordered to reinstate the Appellant with full privileges at KGH.

During the appeal, IH contended that the Appellant’s skills and qualifications were out of date. The Panel held that this was a direct result of IH’s conduct. The Panel ordered that the parties had 60 days to reach a mutually agreeable “reintroduction” plan for the Appellant, and that upon reaching such an agreement, the Panel would grant the Appellant active Medical Staff privileges at KGH with equal access to OR time.

The parties were unable to agree on a reintroduction plan, and so in February 2023 the Appellant brought an application to the HAB seeking directions on the implementation of its orders. After

receiving submissions from the parties and convening and oral hearing, the Panel issued a letter ruling on March 3, 2023. In it, the Panel described and ordered a reintroduction plan, including designating a vitreo-retinal surgeon, who was familiar to the parties, to provide training and mentorship to the Appellant pursuant to his reintroduction.

The Panel specifically requested submissions from the parties relating to costs of the March 3, 2023 Order and reserved its decision relating to the costs portion of the March 3, 2023 application by the Appellant.

On July 4, 2023, the Appellant requested to appear before the HAB again due to the lack of availability and willingness of the designated surgeon to provide the necessary training and mentorship and the failure of Interior Health Authority and the Appellant to agree on the implementation of the March 3, 2023 Order.

Decision:

After receiving written submissions from the parties and convening for a short oral hearing, the Panel made an oral ruling on July 27, 2023, with a written decision to follow. The Panel found that the Appellant had completed all necessary training to update his qualifications, including simulator training on new equipment and operations. The Panel further noted that the Appellant had completed numerous surgeries under supervision in Toronto, emphasizing that the Appellant had faced fewer barriers to obtaining this assistance in another province than at KGH.

Disposition:

The Panel provided written reasons on September 13, 2023, for the oral ruling previously made on July 27, 2024. The written reasons declared that the Appellant had completed a reasonable reintroduction plan as contemplated in the original decision and granted the Appellant immediate and unsupervised OR access and full Medical Staff privileges without conditions at KGH. The Order concluded by noting that the Appellant would be subject to the same review of his surgical skills provided for in the Medical Staff Bylaws as any other member of the ophthalmology division of KGH, with some recognition of IH's obligations to work with Medical Staff members who are dealing with any currency issues.

HAB-HA-20-A003(d)

Decision Date: October 30, 2023

Appellant: Dr. Malvinder Hoonjan

Respondent: Interior Health Authority (“IH”)

Decision Full Text: [Dr. Malvinder Hoonjan v Interior Health Authority, 2023 BCHAB 4](#)

Background: This is an order for costs related to a post-decision application to implement the final decision on the merits in [Dr. Hoonjan v. Interior Health Authority, 2022 BCHAB 4](#). This order for costs dealt with the period of time following the release of the HAB’s final decision on the merits on December 7, 2022, and up to the March 3, 2023, letter ruling on implementation. This decision is the costs portion of the application of the Appellant which resulted in the panel’s orders made on March 3, 2023 regarding the implementation of the orders made in the merits Decision on December 7, 2022.

Please note the relevant case history on the pages above.

Decision: Following IH’s failure to engage with the Appellant in creating the ordered reintroduction plan within the 60-day deadline, the Appellant applied to the HAB for direction.

The Panel found that IH clearly had a duty to coordinate with the Appellant in creating a reintroduction plan. The Panel highlighted the fact that issues with the currency of the Appellant’s skills and qualifications raise by IH in the appeal were found to be a direct result of IH’s conduct, and that as such IH has a duty to assist the Appellant in updating his qualifications.

The Panel pointed out that, while the Appellant made numerous attempts to co-ordinate with IH within the 60 days allotted to reach an agreement, including proposing a draft plan and making unilateral efforts to update his qualifications, IH made no similar efforts. Instead, IH only contacted the Appellant through legal council after the 60 days had expired, requesting an extension, which the Appellant agreed to. It was only after IH again failed to provide even a preliminary plan that the Appellant sought relief before the HAB, resulting in the March 3, 2023, letter ruling.

The Panel found that it had discretion to award costs against one of the parties in special circumstances where a party’s conduct markedly falls below the standards to be expected in the underlying process, or the appeal itself, and where an award of costs would further the aims and purposes of the legislative framework that created and governs the HAB.

The Panel found that, by continuing to contact the Appellant through counsel as if he was an adversarial party and failing to engage in any meaningful way in creating a reintroduction plan, IH comprehensively failed in its duties established pursuant to the previous decision.

Disposition:

The Panel thus ordered IH to pay the actual costs of the Appellant from December 8, 2022, to March 3, 2023, up to a cap of \$10,000, that the decision be placed on the agenda of the next IH Board of Directors meeting, and that the decision be circulated to the members of the Ophthalmology Division and Senior Medical leadership at KGH.

HAB-HA-22-A009(a)

Decision Date: November 20, 2023

Appellant: Dr. Theresa Szezepaniak

Respondent: Interior Health Authority (“IH”)

Decision Full Text: [Dr. Theresa Szezepaniak v Interior Health Authority, 2023 BCHAB 5](#)

Background: This appeal arose out of the decision by the IH Board of Directors of to cancel the Appellant’s hospital privileges at Royal Inland Hospital (“RIH”) due to her inability to meet her service obligations under the Medical Staff Bylaws and Medical Staff Rules. The cancellation of the Appellant’s hospital privileges occurred on August 19, 2022, during COVID-19 pandemic.

The Appellant is registered with the College of Physicians and Surgeons of BC and in 2019 the Appellant began working at RIH in the Department of Hospitalist Medicine as a full-time non-employee member of the Medical Staff.

On October 14, 2021, the British Columbia Provincial Health Officer (“PHO”) issued an order (the “Order”) that all staff who had not received a COVID-19 vaccination or medical exemption by October 25, 2021, would be prohibited from working in care facilities, including hospitals. On October 25, 2021, the Appellant applied for an exemption from the PHO on the grounds that the Order violated her *Charter* rights, but this was rejected on the grounds that only medical exemptions were being considered. The Appellant was not vaccinated against COVID-19 and did not obtain a medical exemption. She consequently was not able to work at RIH effective October 26, 2021.

On November 16, 2021, IH advised the Appellant that her inability to work and discharge her obligations as a member of the Medical Staff

was grounds for cancellation of her hospital privileges, and that a recommendation to that effect would be made to the IH Board of Directors. The IH Board of Directors canceled the Appellant's IH Medical Staff appointment and hospital privileges, effective August 19, 2022.

Decision:

The issue before the Panel is whether the IH Board of Directors was correct in cancelling the Appellant's medical staff appointment and hospital privileges. The Appellant contended that she has not "refused or neglected" to meet her service obligations in contravention of the IH Medical Staff Bylaws but rather was exercising her right not to be vaccinated and has thus been prevented from working by the Order. The Appellant also alleged procedural fairness issues in the IH process, and that IH was required to respect her decision to not receive the COVID-19 vaccine.

Addressing the appellant's first argument, the Panel found that, while the Appellant had not refused or neglected her duties in a culpable manner, her being prevented from working by the Order was still a direct result of her decision not to be vaccinated without valid grounds for a medical exemption. The Appellant's inability to work was the natural and foreseeable consequence of her decision not to be vaccinated, given the context of the Order and the existing IH policies and Medical Staff bylaws. The Panel noted that while the Appellant could not be compelled to be vaccinated against her will and that her decision had to be respected, this did not shield her from responsibility for the consequences of that decision; namely, loss of hospital privileges due to being unable to fulfill her duties.

Turning to the Appellant's procedural fairness concerns, the Panel held that the IH Board of Directors had not failed to represent her interests, having made reasonable efforts to inform the Appellant of her options, upholding her right to be heard prior to making its decision, and soliciting her active participation in the process. Her specific complaint related to being denied a hearing before the Health Authority Medical Advisory Committee prior to its recommendations being sent to the Board of Directors was rejected, because the IH Medical Staff Bylaws provision mandating such a hearing did not apply in the circumstances. Regarding an error in the initial recommendations to the IH Board of Directors, which stated that the Appellant's privileges should be revoked because she was breaching the Order, rather than for failing to fulfill her service obligations, the Panel held that the error had been addressed promptly by the Board of Directors once identified by the Appellant's

counsel, and the postponement of the hearing had given the Appellant ample time to adjust her position accordingly.

Addressing the applicability of the *Charter*, the Panel rejected the Appellant's arguments, holding that the decisions and policies of the IH Board of Directors were matters of routine administration, rather than the implementation of specific governmental policies or programs, and that as such the *Charter* did not apply. Acknowledging that the Order clearly was a piece of government policy, the Panel highlighted that there were no provisions in the Order mandating how particular health authorities were to implement the Order, leaving such considerations to the discretion of individual health authorities. As such, the approach to implementing the Order that was adopted by IH was not considered to be a direct extension of government policy, but a routine administrative decision on how to implement said government policy.

Turning finally to the issue of the appropriateness of the IH Board of Director's decision to cancel the Appellant's privileges outright, the Panel found that the decision was not appropriate. IH had failed to demonstrate that the lesser penalty of mere suspension pending the Appellant's compliance with the Order would have prevented the RIH Department of Hospitalist Medicine from fulfilling its operational requirements vis-à-vis physician staffing levels. The Panel noted that, while IH argued that it could not fill the Appellant's position while she remained on unpaid leave with her privileges suspended, other hospitalist physician positions at RIH remained unfilled throughout the timeframe of the issue at hand.

Disposition:

The Panel held that the appropriate decision would have been to suspend the Appellant's privileges, pending her eligibility to return to work, or when an administrative or operational need to recruit for her actual position arose. If the Appellant remained ineligible to return to work at the time of the annual review of all hospital privileges, those privileges would not be renewed. The Panel substituted its decision for the IH Board of Directors' accordingly.

Judicial Review of HAB Decisions

During the current reporting period, one new application for judicial review was filed in the BC Supreme Court. This application resulted from a final decision on the merits given by the Board in the current reporting period: [*Dr. Theresa Szezepaniak v Interior Health Authority, 2023 BCHAB 5*](#). This matter has not been set down for a hearing.

There were also no HAB judicial review decisions carried over from a prior reporting period and no HAB judicial review decisions issued by the Supreme Court.

Performance Indicators and Timelines

Section 59.2(b) and (d) of the *Administrative Tribunals Act* requires the Board to report on performance indicators and provide details of the elapsed time from filing to the date of final decision.

The HAB appeal process, although very similar to a court process, has been designed to be faster and more efficient and cost-effective than if these important and complex matters were heard by the court. Appeals are full “hearings *de novo*”⁷ and are primarily conducted in person with a three-person panel. During an appeal the Board often deals with several complex preliminary issues, including legal challenges to the Board’s jurisdiction as well as document disclosure and evidentiary issues.

The Board generally tries to have an individual with legal training act as panel chair, who may, when delegated by the Chair, determine any interim or preliminary issues in the appeal. The Board then assigns two additional panelists for the hearing who have medical and/or hospital administrative experience to ensure there is appropriate expertise on the panel to deal with the issues arising on the merits of the appeal.

HAB Practice Directive No. 1, which is available on the Board’s website, sets the timeframes the Board will target for 1) completion of hearings, and 2) issuing a final decision. With regards to timelines for the completion of hearings, the Practice Directive states that appeals will be processed as quickly as practicable, and within the following timelines:

- For matters where the total number of hearing days is 2 or less, the hearing will generally be completed within 4 months from the date that a Notice of Appeal is received by the Board.

⁷ A *de novo* hearing is one in which the decision-making authority deals completely afresh with a matter that has already been heard once before either by that or another authority.

- For matters where the total number of hearing days is 3, 4 or 5 days, the hearing will generally be completed within 6 months from the date that a Notice of Appeal is received by the Board.
- For matters where the total number of hearing days is 6 or more, the hearing will generally be completed within 9 months from the date that a Notice of Appeal is received by the board.

With regards to timelines for the issuance of final decisions with reasons, the Practice Directive states that the Panel will endeavour to provide the parties with its final decision and written reasons as soon as practicable after the completion of the hearing, and within the following timelines:

- For matters where the total number of hearing days is 2 or less, the final decision will generally be released within 3 months of the close of the hearing and receipt of all closing submissions.
- For matters where the total number of hearing days is 3, 4 or 5 days, the final decision will generally be released within 6 months of the close of the hearing and receipt of all closing submissions.
- For matters where the total number of hearing days is 6 days or more, the final decision will generally be released within 9 months of the close of the hearing and receipt of all closing submissions.

During the current reporting period, there was one appeal closed after a final decision on the merits: *Dr. Theresa Szezepaniak v. Interior Health Authority*, 2023 BCHAB 5. In this appeal, the total length of the appeal was 398 days. This duration included 301 days from the filing of the Notice of Appeal until the beginning of the oral hearing, a 5-day oral hearing heard over the course of a month, and 69 days from the end of the oral hearing until the final decision. The 301 days (or 9 months, 28 days) elapsed between the notice of appeal and the beginning of the oral hearing did not meet the target timeline for an oral hearing lasting 3-5 days. The delay was due to the appeal being held in abeyance for 4 months at the request of the parties and then further challenges in coordinating the availability of witnesses and legal counsel for the hearing. In contrast however, the panel's decision and written reasons were given in just 69 days (or 2 months, 8 days), which was well under the target timeline of 6 months.

Surveys

Section 59.2(e) of the *Administrative Tribunals Act* requires the Board to report the results of any surveys carried out by the Board during the reporting period. The Board did not conduct any surveys during this reporting period.

Public Interest Disclosure Act Reporting

The *Public Interest Disclosure Act (PIDA)* provides employees of some public bodies with protection from reprisal if they bring forward concerns about specific kinds of serious wrongdoing (i.e. whistleblower protection). The Board is one of the government bodies subject to *PIDA*.

Section 38 of *PIDA* requires the Board to report the number of disclosures of wrongdoing we receive and the results of any investigations we undertake each year. During this reporting period the Board did not receive any *PIDA* disclosures. The Board is unaware of any reports in which it, its staff, or its members (past or present) is alleged to have committed any wrongdoing.

Statement of Financial Performance

(For the fiscal year ended
March 31, 2023)

In fiscal year 2023/2024, the Board incurred expenses of **\$86,358** as detailed below in this six-year chart, made up primarily of member fees and expenses.

SIX YEAR COMPARATIVE CHART

<i>Direct Expenses</i>	<i>2018/2019</i>	<i>2019/2020</i>	<i>2020/2021</i>	<i>2021/2022</i>	<i>2022/2023</i>	<i>2023/2024</i>
	\$	\$	\$	\$	\$	\$
Salaries and Benefits	0	0	0	0	0	0
Board Member Fees & Expenses	39,255	86,000	72,217	79,129	67,408	61,024
Professional Services	7,550	18,900	67,620	14,370	9,046	11,878
Office and Venue Expenses	8,478	26,259	11,072	14,092	12,496	13,456
Other	0	0	0	0	0	0
Total HAB Expenses	\$55,283	\$131,159	\$150,908	\$107,591	\$88,950	\$86,358

TERMINOLOGY NOTES

Salary and Benefits encompass the full-time staff who support the Board. This number is zero because the Board's staff are shared with a cluster of other tribunals who bear that cost instead.

Board Member Fees and Expenses reflects the remuneration and expenses for the Chair and appointed members of the Board. The Chair and members are appointed on an as-and-when needed basis and only paid for the time they work in accordance with the BC Ministry of Attorney General's Tribunal Performance Framework and Remuneration Plan.

Professional Services are the cost of retaining outside legal counsel to support professional development and to provide legal advice and representation in court. It also encompasses outside professional services such as court recorders for hearings.

Office and Venue Expenses reflects both the direct costs incurred by the Board when it meets in-person (i.e. meeting space and refreshments), routine office expenses for its staff, and the IT infrastructure which support's the Board's website and case management system.