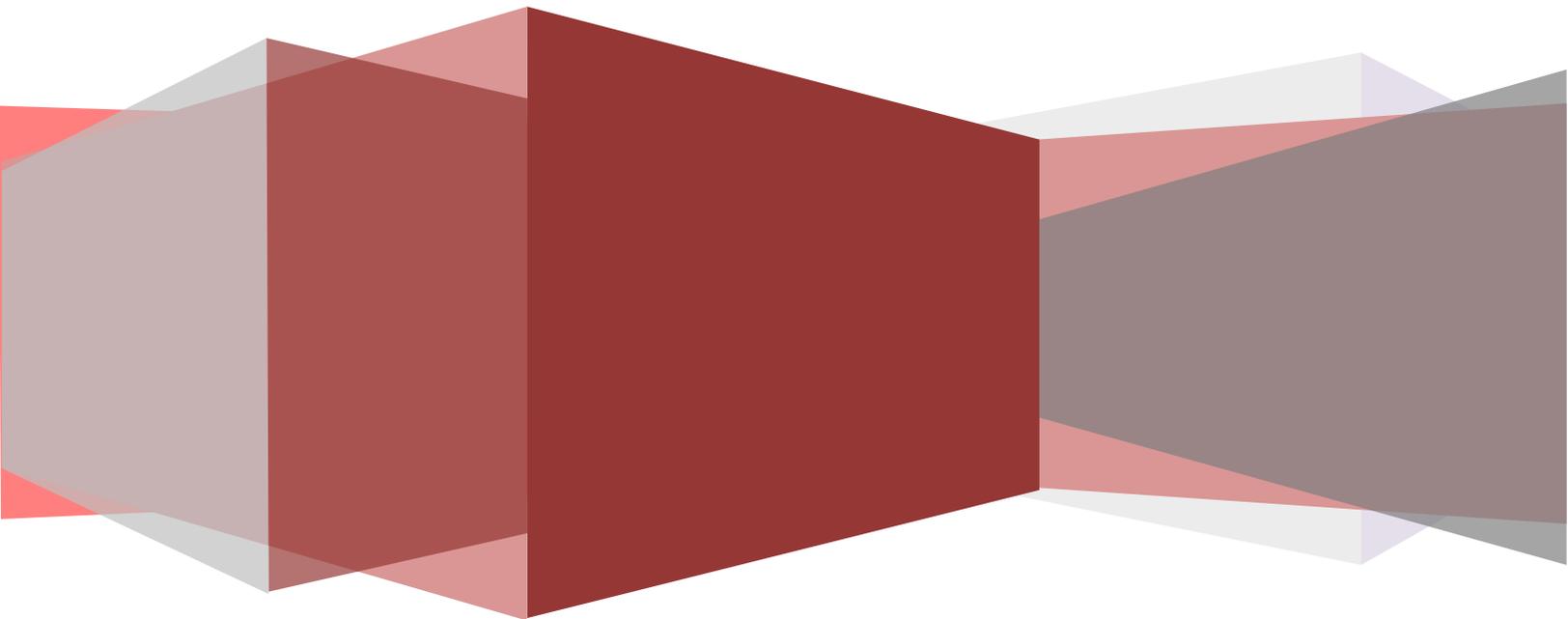




***Industry Training Appeal Board
2006-2017 Annual Report***





Industry Training Appeal Board

September 13, 2017

The Honourable David Eby
Ministry of Attorney General
Room 232, Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Attorney General:

Re: Industry Training Appeal Board 2006-2017 Annual Report

On behalf of the Industry Training Appeal Board, I respectfully submit the first Annual Report of the Industry Training Appeal Board. As this is the first ever report, it covers the period from April 1, 2006 to March 31, 2017, which encompasses the Board's operations over the past eleven years to date.

Sincerely,

Gordon Armour
Chair
Industry Training Appeal Board

Enclosure

Message from the Chair

I am pleased to submit the inaugural Annual Report of the Industry Training Appeal Board (“ITAB” or “the Board”) covering the first 11 years of the ITAB’s operations from the first full fiscal year beginning April 1, 2006, through to the end of the last full fiscal year on March 31, 2017. This report is submitted pursuant to section 59.2 of the *Administrative Tribunals Act*.

Appeals during Reporting Period

Section 59.2(a) of the *Administrative Tribunals Act* requires the Board to provide a review of its operations during the preceding reporting period. During this initial reporting period, which covers the Board’s operations since it started operations in 2006, there have been five new appeals filed in total with the Board. Further details of these appeals are provided later in this report pursuant to section 59.2(c) of the *Administrative Tribunals Act*.

Of the appeals dealt with and closed during the reporting period, two appeals (40%) were withdrawn as resolved, which meant that no hearing was required. Three appeals (60%) proceeded to a hearing on their merits. Two of these hearings were conducted orally in person and one was conducted in writing. One appeal was allowed, one allowed in part and the third one was dismissed.

One preliminary decision was also issued granting an application for a Stay of the decision under appeal pending a final determination of the matter by the ITAB.

The issues considered in these appeals included refusals to grant Red Seal endorsements; a refusal to award an industry training credential; cancellation of a Construction Electrical Certificate; and suspension of a Commercial Transport Vehicle Mechanic Certificate of Qualification.

Appeals at the End of the Reporting Period

There are currently no outstanding appeals before the Board.

Judicial Reviews during the Reporting Period

There were no applications for judicial review of ITAB decisions filed in or issued by the BC Supreme Court in this reporting period.

Forecast of workload for the next reporting year and trends noted

Section 59.2(f) of the *Administrative Tribunals Act* requires the Board to provide a forecast of the workload for the succeeding reporting period. The number of appeals filed with the Board during this reporting period was quite low with an average of 1 new appeal every two years. The Board’s workload for the 2017/2018 fiscal year reporting period is expected to remain relatively constant, with no significant increase or decrease from the average number seen in the past 10 years.

Section 59.2(g) of the *Administrative Tribunals Act* requires the Board to report any trends or special problems it foresees. I am pleased to report that we have not identified any trends or special problems that need to be reported on at this time.

Plans for improving the Board’s operations

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

During this reporting period, the Appeals Office cluster responsible for providing administrative support to the Board was involved in planning for the replacement and upgrading of the electronic appeal management system that is used by the Board and the seven other tribunals that are jointly administered through a shared office and staff. The existing appeal management system is nearly 20 years old and its software is no longer supported. A new appeal management system will allow the shared administrative office to continue to function effectively and efficiently, using modern information technology. The Board hopes the new system will be in place and available for the ITAB to use in 2017. This will help ensure that the ITAB is able to track and report out on key performance indicators with confidence in the accuracy of the information.



Gordon Armour
Chair
Industry Training Appeal Board

Mandate

INDUSTRY TRAINING PUBLIC POLICY

The Industry Training Appeal Board is established under the *Industry Training Authority Act*, S.B.C. 2003, c. 34 (“the Act”). The Act is relatively new, but its public policy purpose is one of longstanding – namely, to support the development and training of skilled trades workers to support BC industries.

A discussion paper issued by the Ministry of Advanced Education in December 2002 emphasized the importance of properly planning workforce development to address current and projected skills shortages, to encourage youth to choose industry training as a career path, to develop a new skills training model that is accessible, flexible and portable, and to ensure that industry itself plays a prominent role in the process.

The Discussion Paper suggested that the role of government should be focused on maintaining end point standards while allowing industry focused training; government would no longer determine the curriculum or develop classroom materials; on-the-job training as an apprentice would not be the only way to get trained; learners would pay tuition fees and enroll with the public or private trainer of their choice:

As government’s role in the development and delivery of industry training narrows to a focus on maintaining provincial standards and credentials, industry’s role will broaden to incorporate promotion and marketing of industry careers to youth and others who can help to solve skills shortages. Industry will also take a larger role in identifying training needs and working with institutions to develop programs that meet these needs. Finally, employers and industry groups and associations will be expected to take a leadership role in strategic planning, including K-12 links.

Discussion Paper: A New Model for Industry Training in British Columbia (December 2002), p. 10

Under the Act, the Industry Training Authority is the body tasked with implementing these public policy objectives. The Industry Training Authority is responsible for leading and coordinating the skilled trades training and credentialing system for the province. It provides strategic leadership, policy support and customer services to help apprentices, employers and industry. The Industry Training Authority sets program standards, maintains credential records and issues the Interprovincial Red Seal and B.C. Certificate of Qualifications (C of Q) credentials.

ROLE OF THE APPEAL BOARD

In contrast, the Industry Training Appeal Board is part of the statute’s “accountability” mechanisms, providing a means for individuals to challenge certain adverse decisions made by the Industry Training Authority affecting their credentials and apprenticeship. The Appeal Board is established under section 10(1) of the *Act*:

Appeal board established

10 (1) The Industry Training Appeal Board is established, consisting of the following members appointed after a merit based process:

- (a) a member appointed and designated as the chair by the Lieutenant Governor in Council;
- (b) other members appointed by the Lieutenant Governor in Council after consultation with the chair.

(2) The following provisions of the *Administrative Tribunals Act* apply to the appeal board:

- (a) Part 1 [*Interpretation and Application*];
- (b) Part 2 [*Appointments*];
- (c) Part 3 [*Clustering*];
- (d) Part 8 [*Immunities*];
- (e) section 59.1 [*surveys*];
- (f) section 59.2 [*reporting*].

The *Administrative Tribunals Act*, S.B.C. 2004, c. 45 is a provincial statute that describes various matters regarding administrative tribunal appointments, powers and procedures. Many of the *Administrative Tribunals Act*’s provisions are made applicable to the Board.

A person may not appeal to the Appeal Board unless they first apply to the Industry Training Authority’s chief executive officer for reconsideration. The only matters which are subject to the reconsideration process are those five matters described in s. 11(1) of the *Act*:

11 (1) An individual who is affected by any of the following decisions under this *Act* may request, within 30 days of receiving written notice of the decision, a reconsideration of the decision by the chief executive officer:

- (a) a refusal by the authority to award an industry training credential or industry training recognition credential;
- (b) the suspension or cancellation of an industry training credential or industry training recognition credential;
- (c) a refusal to register an individual as a trainee;
- (d) the cancellation of the registration of an individual as a trainee;
- (e) the revocation of, or cancellation of the registration of, an industry training agreement.

- (2) The chief executive officer may
- (a) hear the request,
 - (b) delegate the hearing of the request to a senior officer of the authority or a senior officer of another authority, or
 - (c) refer the matter directly to the appeal board.

(3) The chief executive officer or person to whom the hearing is delegated under subsection (2) (b) may confirm or vary a decision referred to in subsection (1).

Accordingly, the right of appeal to the Appeal Board is tied to the reconsideration decision, as set out in section 11(4) of the *Act*:

(4) An individual who is dissatisfied with a decision under subsection (3) may commence an appeal to the appeal board by filing a notice of appeal, in the form provided by the minister, within 30 days of receiving written notice of the decision being appealed.

The *Act* is relatively concise in setting out the Appeal Board's mandate. The relevant provisions are set out in ss. 11(5) – 11(8):

(5) The appeal board, by order, may do one or more of the following in respect of an appeal under this section:

- (a) dismiss the appeal;
- (b) allow the appeal and give directions, if any, that the appeal board considers appropriate in the circumstances;
- (c) vary the decision appealed from;
- (d) set terms and conditions to which the order is subject.

(6) Sections 11 to 20, 22, 24 to 33, 34 (3) and (4), 35 to 42, 44, 48 to 57, 58, 60 (a) to (c) and 61 of the *Administrative Tribunals Act* apply to an appeal to the appeal board.

(7) The appeal board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal under subsection (4) and to make any order permitted to be made.

(8) A decision or order of the appeal board on a matter in respect of which the appeal board has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

ROLE OF THE APPEAL BOARD (CONTINUED)

In summary then, the Appeal Board is limited to hearing appeals on the five subjects respecting which reconsideration may be requested as follows:

- a refusal by the authority to award an industry training credential or industry training recognition credential - *Authority's power: ss. 8(1)(g) and (h)*
- the suspension or cancellation of an industry training credential or industry training recognition credential - *Authority's power: s. 8(1)(n)*
- a refusal to register an individual as a trainee - *Authority's power: s. 9(1)(b)*
- the cancellation of the registration of an individual as a trainee - *Authority's power – s. 9(2)*
- the revocation of, or cancellation of the registration of, an industry training agreement - *Authority's power – s. 9(3).4*

As is evident from the list above, the subjects the Appeal Board can deal with relate to the Industry Training Authority's decisions about individuals rather than general matters relating to policy. To date the Appeal Board has received appeals in regard to the first two bullets above.

In hearing appeals regarding these types of decisions, it is apparent that the legislature intended the Board to exercise a broad appellate mandate. This is evidenced by the following:

- The express power to “inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal....” – language that invites fact-finding and the exercise of discretion,
- The application of the same types of *Administrative Tribunals Act* powers that are typically granted to first instance decision-makers, including the numerous powers relating to the hearing of witness evidence, and
- The Board's broad remedial jurisdiction to allow the appeal, vary the order appealed from, give directions, and establish terms and conditions to its order.

It is clear from these provisions, as reinforced by the chief executive officer's power to refer a matter directly to the Board that the ITAB was not intended to exercise the narrowest form of appeal, and was not intended to give any particular deference to the Industry Training Authority's decision.

Section 11 of the *Administrative Tribunals Act* empowers the ITAB to issue rules of practice and procedure governing appeals. Rules of practice and procedure are intended to be a plain language guide to assist parties that appear before the Board with the procedural mechanics of an appeal, in order to facilitate the just and timely resolution of those appeals. The rules, which are available on the ITAB website, address the specifics of how to file an appeal, communications between parties and with the Board, pre-hearing case management, resolution and withdrawal of appeals, and hearing procedures including filing and access to documents and attendance of witnesses.

Board Membership

The current ITAB membership at the end of the reporting period consists of:

<i>TRIBUNAL MEMBER</i>	<i>ROLE</i>	<i>TERM EXPIRY</i>
Gordon Armour	Chair	2019-07-31
Martha Dow	Member	2018-05-31
Robert Kueng	Member	2018-05-31

Past Board membership during this reporting period also included the following:

<i>TRIBUNAL MEMBER</i>	<i>ROLE (PAST)</i>	<i>TERM START</i>	<i>TERM EXPIRY</i>
Marcia McNeil	Chair	2005-07-31	2013-07-31
Jeevyn Dhaliwal	Member	2005-07-31	2011-07-31
Linda Love	Member	2005-12-09	2012-12-31
Paula Barnsley	Member	2012-02-23	2013-07-30
Paula Barnsley	Chair	2013-07-31	2016-07-31

BIOGRAPHIES FOR THE CURRENT BOARD MEMBERSHIP AT THE END OF THE REPORTING PERIOD ARE AS FOLLOWS:

GORDON ARMOUR, CHAIR

Gordon Armour is the past Coordinator of Transition, Training and Trades for School District #27, Cariboo Chilcotin (Williams Lake). During his tenure, he was responsible for the development of career education programs and coordination of work experience programs and apprenticeship training in partnership with post-secondary institutions and industry. He served with the School District for 43 years following a brief employment with School District 47 (Powell River) for three years where he started his career. Gordon represented the K - 12 education sector on the BC Mining HR Task Force and acted as the Chair of their Education Sub Committee during the tenure of the Task Force. Mr. Armour represented the Mining Task Force on the steering committee of the newly appointed Centre for Training Excellence in Mining. Gordon is currently the President of the Career Education Society of BC and a mentor for the Ministry of Education to work with school districts in the review, development and strategic planning of career development for school districts.

Past adjudication and governance experience has seen Mr. Armour as the Chair of the Hospital Appeal Board from 1996 until 2003. During that time he was also Chair of Cariboo Memorial Hospital, Cariboo Park Lodge, BC Health Association, Cariboo Chilcotin Child Development Centre and Task Force on Physician Credentialing. He was also a member of the Community Care and Assisted Living Appeal Board. Mr. Armour resides in Williams Lake.

MARTHA DOW, MEMBER

Martha Dow is a professor at the University of the Fraser Valley, where she teaches in the Department of Social, Cultural and Media Studies and previously in the School of Criminology and Criminal Justice. Additionally, Dr. Dow was the Independent Chairperson to the Correctional Service of Canada (Pacific Region), with the Solicitor General of Canada. Active in her community, she was a Member of the Abbotsford Police Department’s Chief Constable's Diversity Advisory Committee and is currently Chair of the Social, Cultural, and Media Studies program at UFV. Dr. Dow holds her Bachelor of Arts in Sociology and her Master of Sociology from the University of Western Ontario, as well as her Doctor of Philosophy (Ph. D.) in Educational Studies from the University of British Columbia (UBC).

ROBERT KUENG, MEMBER

Bob Kueng is a retired Partner of Tinker, Kueng, Churchill and Company. Mr. Kueng practiced in the areas of civil and criminal litigation for in excess of twenty five years. Active in his community he has served as Treasurer of Kelowna Bar association, Director of Kelowna General Hospital, and Vice Chairman of the BC Commercial Appeals Commission. Mr. Kueng holds a Bachelor’s of Science from NDU, as well as a Bachelor of Law from the University of British Columbia.

Operations

Shortly after the appeal, provisions were proclaimed in force and the Board was established, the administrative support functions of the ITAB were consolidated with the Environmental Appeal Board/Forest Appeals Commission Appeals Office (Appeals Office) in Victoria. In addition to the ITAB, the Appeals Office provides administrative support to five other adjudicative tribunals. This clustering of the 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. The additional tribunals include the:

- Community Care and Assisted Living Appeal Board;
- Financial Services Tribunal;
- Health Professions Review Board;
- Hospital Appeal Board;
- Oil and Gas Appeal Tribunal.

This consolidation has resulted in significant savings to government for the operation of the ITAB through a shared services cluster approach which takes advantage of synergy and assists government in achieving economic and program delivery efficiencies. This arrangement has proven to be an effective and efficient means for providing administrative support to the ITAB which in turn enables the Board to effectively and efficiently fulfill its mandate to the public.

Contact Information

MAILING ADDRESS: Industry Training Appeal Board
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9V1

LOCATION: 4th Floor, 747 Fort Street
Victoria BC V8W 3E9

TELEPHONE: 250 387-3464

FAX: 250 356-9923

EMAIL: itabinfo@gov.bc.ca

WEBSITE: <http://www.itab.gov.bc.ca/>



Appeal Activity and Decisions Issued

There were five appeals filed during this inaugural reporting period. These appeals and their dispositions are described below. None of the five matters remain outstanding at the end of this reporting period. Decisions were issued on the merits of the appeals in three cases, two matters were withdrawn by the appellants and dismissed, and there was one preliminary decision issued granting an application for a stay of the decision under appeal pending a decision by the Board.

2006-ITA-001

Decision/ Disposition Date:	October 25, 2006
Appellant:	Campbell Yates
Respondent:	Brian Clewes, Industry Training Authority
Issue:	The appellant appealed the decision of the Industry Training Authority (ITA) in which his request to be granted an ITA Certificate of Qualification as a carpenter, and an inter-provincial Red Seal endorsement for carpentry was denied. The appellant asserted that, despite his not having achieved the threshold pass mark on the inter-provincial Red Seal exam in carpentry, the Board ought to consider his extensive and unquestioned work experience in the carpentry trade to exercise its authority to overturn the decision.
Disposition:	The Board concluded that in denying the appellant's request to be issued Red Seal Certification, the ITA properly relied on policy that established a passing grade of 70% on Red Seal examinations. Appeal dismissed.
Appeal Decision:	http://www.itab.gov.bc.ca/2006_BCITAB_1.pdf

2008-ITA-001

Decision/ Disposition Date:	July 8, 2008
Appellant:	Glen Mitchell
Respondent:	Kevin Evans, Industry Training Authority
Issue:	Appeal of the Industry Training Authority decision refusing to grant the appellant Heavy Duty Mechanic Certification because he had not written and passed the current certification examination through the challenge process.
Disposition:	The matter was resolved between the parties and the appellant withdrew the appeal. Appeal dismissed.

2010-ITA-001

Decision/ Disposition Date: May 31, 2011
Appellant: Jun Zhang
Respondent: Kevin Evans, Industry Training Authority
Issue: Appeal of a decision of the Industry Training Authority cancelling the appellant's Construction Electrical Certificate.
Disposition: The matter was resolved between the parties and the appellant withdrew the appeal. **Appeal dismissed.**

2012-ITA-001

Decision/ Disposition Date: May 10, 2012
Appellant: Kathryn Johnston
Respondent: Kevin Evans, Industry Training Authority
Issue: Appeal from a decision of the Industry Training Authority denying the appellant's request to be granted her Professional Cook 3 Red Seal Certification without further examination.
Disposition: The Board found that it would be premature to grant the appellant her Red Seal Certification without further examination; however the board also accepted that the appellant did not have a fair opportunity to demonstrate her skills as a professional cook during her practical assessment. Although the appellant did not have a fair opportunity to demonstrate her competence, based on the evidence presented at the hearing, the Board did not find that she had demonstrated that she should be granted her Red Seal Certification without further examination. The Board accepted the proposal made by the Industry Training Authority at the hearing that the appellant be given another opportunity, at no cost, to challenge the practical assessment. In any new assessment, the Board directed that the appellant be required to achieve only three of the following five blocks: vegetables and fruits; starches; seafood; garde-manger and eggs breakfast cookery and dairy. The Board also approved the proposal that the next assessment take place at a different facility convenient to the appellant, and with assessors who have not previously been involved, either in the initial assessment, or the reassessment. The Board agreed that the appellant should not be required to demonstrate any further training or course of study in these areas before the assessment takes place.
Appeal allowed in part.
Appeal Decision: <http://www.itab.gov.bc.ca/2012ita001a.pdf>

2014-ITA-001

Decision/ Disposition Date: September 9, 2014

Appellant: Arnold Brent Pausch

Respondent: Gary Herman, Industry Training Authority

Issue: Appeal of a decision of the Industry Training Authority (ITA) suspending the appellant's Certificate of Qualification as a Commercial Transport Vehicle Mechanic (CTVM). The issue was whether the appellant met the eligibility requirements to challenge the CTVM examination, that is, did he have a minimum of 8910 hours of CTVM trade related work experience comprising 70% of the job tasks of that trade.

Disposition: The appellant said that he had achieved well in excess of the required CTMV work hours at the required job tasks in the course of his 31 years of employment. ITA's position was that it has a duty to ensure that persons certified for a trade have met the certification standards and that it followed the proper procedure in suspending the appellant's CTVM certification based on the information available to ITA at the time of the decision. The appellant's first employer (24 years) indicated to ITA that they did not have enough information to complete an Employer Declaration regarding the appellant's work assignments and work hours due to staff turnover and lack of employment records. ITA submitted that the appellant had the burden of providing verifiable evidence of having completed the required number of hours of work and he had failed to meet that burden at the time that ITA suspended his CTVM certificate. The Board was satisfied, based on the totality of the evidence, that the appellant had completed a minimum of 8910 hours of mechanical work on buses and other "commercial vehicles" as defined in the federal Commercial Vehicle Drivers Hours of Service Regulations during his more than three decades of employment as a mechanic. The Board further found that the appellant had met the scope of work requirement for eligibility to challenge the CTVM exam. The Board concluded that the appellant had met the burden of proving, on a balance of probabilities, that he had the requisite hours of work and scope of work in the CTVM trade when he wrote the CTVM Interprovincial Red Seal Examination and since he had achieved a pass mark on the exam, he qualified for certification as a CTVM. The Board ordered that ITA issue the appellant a CTVM Certificate of Qualification without conditions.

Appeal allowed.

Appeal Decision: <http://www.itab.gov.bc.ca/2014ita001b.pdf>

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 time from filing to decision of matters disposed of by the Board in the reporting period.

The ITAB's appeal process has been designed to be a timely, efficient and cost effective means to hear these important matters. Hearings are primarily conducted in person with a three person panel, however, where circumstances are appropriate, hearings have also been heard in writing.

Where appropriate, the Board explores with the parties the possibility of mediation or some other form of collaborative resolution of the issues on appeal. In this reporting period in two of the appeals the parties were able to resolve the matter between themselves and the appellant withdrew the appeal without the need for a hearing and adjudication by the Appeal Board.

For those appeals closed within this reporting period (5 appeals), the overall average time from the date of filing an appeal to its disposition was 194 days. The shortest time from open to close was 46 days and the longest was 439 days. Both of these were matters that did not proceed to a hearing and the average time from open to close was 242 days. For those appeals requiring a hearing on the merits and adjudication, the average time from filing to decision was 162 days.

The Board's Practice Directive #1, which is available on the Board's website, provides that the Board will endeavour to issue a copy of the final decision or order, including written reasons, to each party within 90 days from receiving the last submissions of the parties in an appeal that proceeds to a hearing on the merits. In the three appeals that proceeded to a hearing and adjudication during this reporting period, the Board was able to exceed that standard in 100 % of the appeals, with an average time to issue a decision of 55 days.

There are no matters outstanding at the end of this reporting period and there were no applications for judicial review of ITAB decisions filed in or issued by the BC Supreme Court in this reporting period.

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

Statement of Financial Performance

(For the fiscal year ended March 31, 2017 and annual average)

In fiscal year 2016/2017, the ITAB incurred expenses of \$4,611 as detailed below in this six year comparative chart. The expenses for the current fiscal year reflect the fact that no new appeals were received. As indicated in the chart below, the expenses of the Board fluctuate in years where the Board processes one or more appeals.

<i>Direct Expenses</i>	2011/2012 \$	2012/2013 \$	2013/2014 \$	2014/2015 \$	2015/2016 \$	2016/2017 \$
Salaries and Benefits	0	0	0	0	0	0
Board Member Fees & Expenses	4,313	16,605	6,989	15,183	8,344	4,449
Professional Services	0	300	0	1,736	0	0
Office and venue Expenses	423	1,965	151	408	1,597	150
Other	9	12	12	12	12	12
<i>Total ITAB Expenses</i>	\$4,745	\$18,882	\$7,152	\$17,339	\$9,953	\$4,611

The total direct expenses for the ITAB in the most recent fiscal year (2016-2017) were **\$4,611**.

The average total annual expenses (as shown above for the past 6 years) for the ITAB were **\$10,447**.

