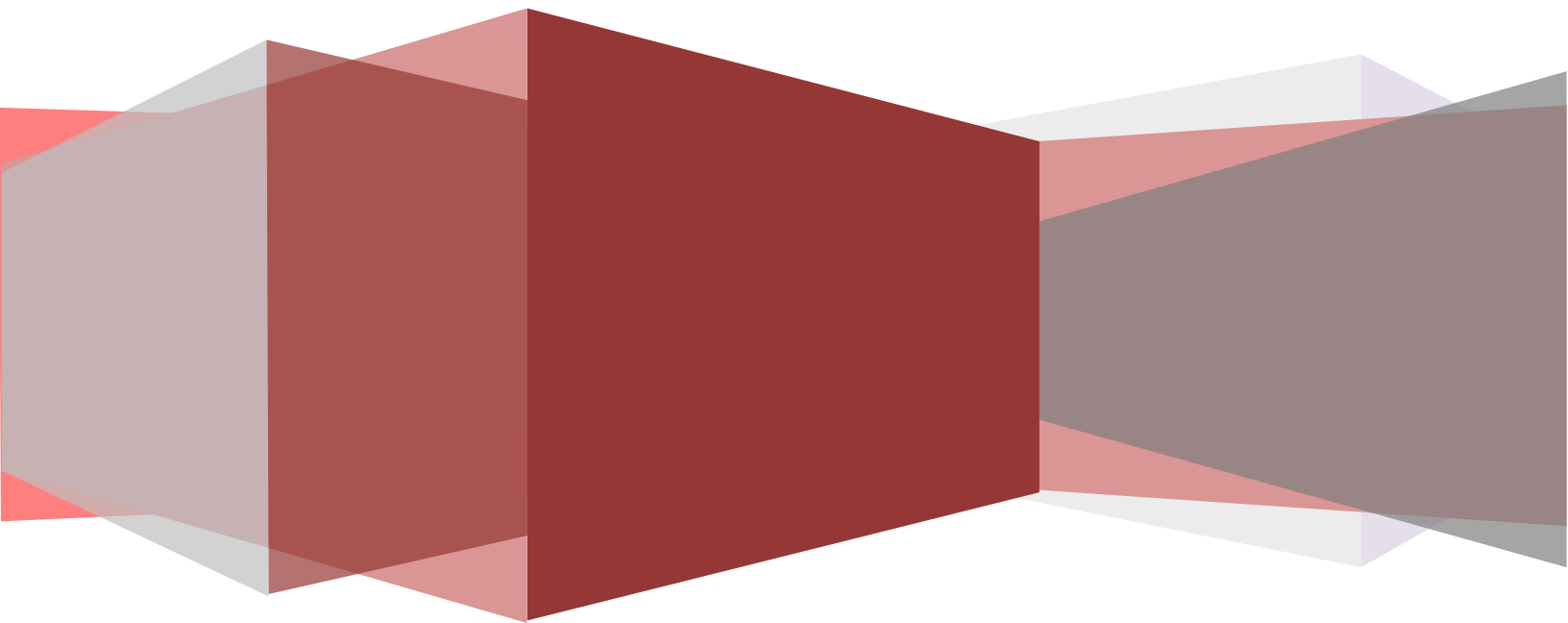




Industry Training Appeal Board

2018-2019 Annual Report

*Covering the reporting period from
April 01, 2018 – March 31, 2019*





Industry Training Appeal Board

January 10, 2020

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 2017-2018 Annual Report

On behalf of the Industry Training Appeal Board, I respectfully submit the Annual Report of the Industry Training Appeal Board.

Sincerely,

Gordon Armour
Chair
Industry Training Appeal Board

Enclosure

Message from the Chair

I am pleased to submit the Annual Report of the Industry Training Appeal Board (“ITAB” or “the Board”) for the fiscal year beginning April 1, 2018 and ending March 31, 2019. 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 reporting period, there were no new appeals filed with the Board. Further, there were no appeals outstanding before the Board at the commencement of the reporting period.

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 zero. Historically, the average number of appeals for the ITAB is one appeal every two years, so the Board’s workload for the 2019/2020 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. Although the Board has not identified any specific trends at this time, the Board considers it unusual that with the high number of tradespeople both practising their trades and attaining certification in the province of British Columbia, there aren’t a higher number of persons challenging adverse decisions made by the Industry Training Authority affecting their credentials and apprenticeship. In an effort to better understand potential causes of the low

number of appeals, the Board has undertaken research and hopes to have some information to report in relation to this issue in the next reporting period.

Plans for improving the Board's operations

Finally, section 59.2(h) of the *Administrative Tribunals Act* requires the Tribunal 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 Tribunal began implementation of a new case management system to replace the outdated appeals management system the tribunal cluster has been using for the past two decades. The new case management system will allow the tribunal cluster to function effectively and efficiently, using modern information technology. In particular, the ITAB will have quicker, easier and more accurate access to appeal information and statistics, and will be able to more effectively track and report out on key performance indicators. The new system went live in November 2019, and will be reported on more fully in the next reporting period.



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*, SBC 2003, c 34 (“the Act”). The Act is relatively new, but its public policy purpose is one of long standing, 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*, SBC 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 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, 46.2, 48 to 57, 58, 60 (a) to (c) and 61 (a) to (c) and (g) to (i) and (2) 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 only 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, available on the ITAB website, address the specifics of how to file an appeal, communications between parties and 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 ITAB membership at the commencement of the reporting period consisted 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

The ITAB membership at the close of the reporting period consisted of:

<i>TRIBUNAL MEMBER</i>	<i>ROLE</i>	<i>TERM EXPIRY</i>
Gordon Armour	Chair	2020-07-31
Martha Dow	Member	2021-07-31
Richard Grounds	Member	2020-11-26

BIOGRAPHIES

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. Mr. Armour 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. He also represented the Mining Task Force on the steering committee of the newly appointed Centre for Training Excellence in Mining. Mr. Armour is the Past 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, BC.

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 over 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 Laws from the University of British Columbia.

RICHARD GROUNDS, MEMBER

Richard Grounds worked in the forestry and construction industries before becoming a lawyer. He has worked with different trades on many different types of construction sites and mill maintenance shutdowns. Mr. Grounds started his legal career working as a federal and provincial prosecutor. Mr. Grounds is an adjudicator on unjust dismissal and residential schools claims. He was previously a panel member of the Employment and Assistance Appeal Tribunal and is a current panel member of the Employment Standards Tribunal. Mr. Grounds has also worked as an investigator on matters relating to oversight of policing, employee misconduct and student misconduct.

Operations

The administrative support functions of the ITAB are 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

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

Appeal Activity and Decisions Issued

There were no new appeals filed during this reporting period. Further, there were no appeals outstanding at the commencement of this reporting period. No judicial reviews were filed during this reporting period, and no decisions were issued by any level of court regarding ITAB decisions during this reporting period.

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. As no matters were before the Board during this reporting period, the Board has no information to report in this category.

However, generally speaking 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 may be 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.

The Board's Practice Directive #1, 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.

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 ending March 31, 2019 and annual average)

In fiscal year 2018/2019, the ITAB incurred expenses of **\$9,687** as detailed below in this six year comparative chart. As indicated in the chart below, the expenses of the Board fluctuate in years where the Board processes one or more appeals. The total direct expenses for the ITAB in the most recent fiscal year (2018-2019) were \$9,687. The average total annual expenses (as shown above for the past six years) for the ITAB were \$11,537.

<i>Direct Expenses</i>	2013/2014 \$	2014/2015 \$	2015/2016 \$	2016/2017 \$	2017/2018 \$	2018/2019 \$
Salaries and Benefits	0	0	0	0	0	0
Board Member Fees & Expenses	6,989	15,183	8,344	4,449	19,519	9,674
Professional Services	0	1,736	0	0	0	0
Office and venue Expenses	151	408	1,597	150	962	13
Other	12	12	12	12	0	0
Total ITAB Expenses	\$7,152	\$17,339	\$9,953	\$4,611	\$20,481	\$9,687