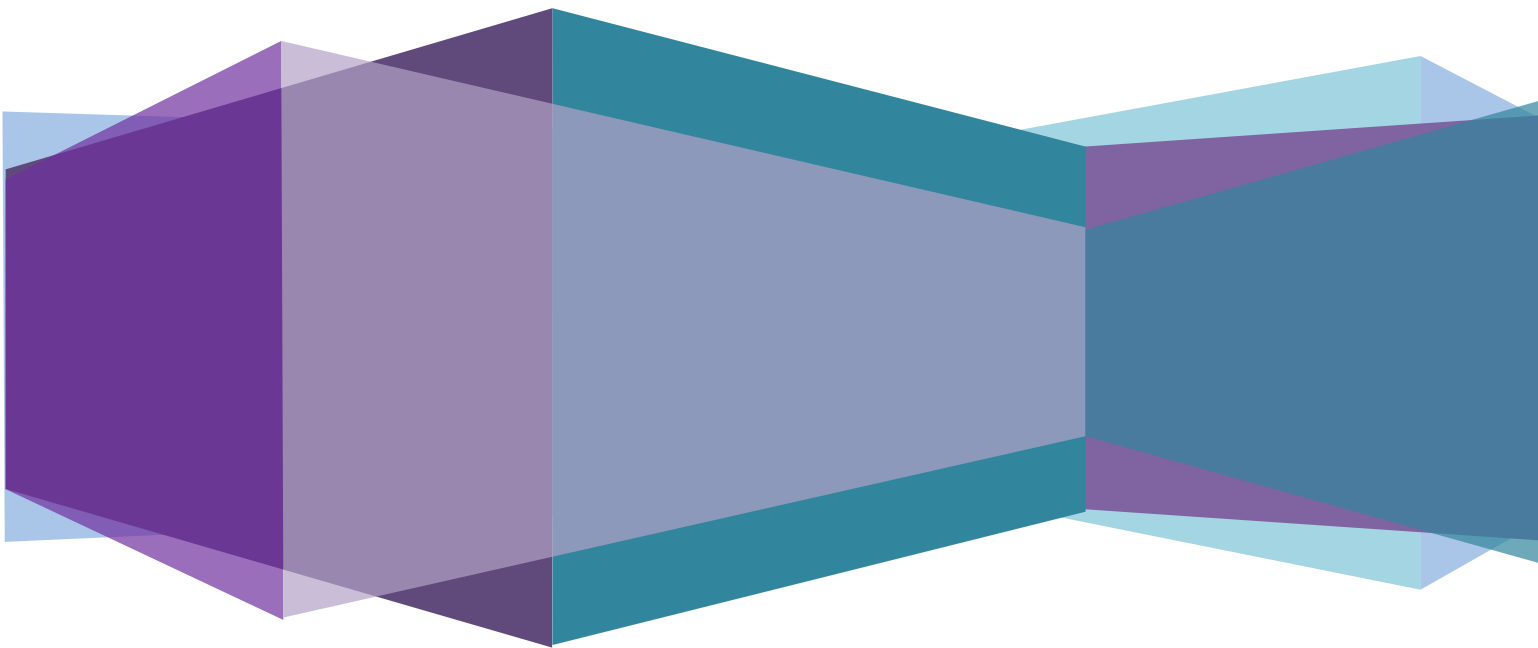




Community Care and Assisted Living Appeal Board

2020-2021 Annual Report





Community Care and Assisted Living Appeal Board

Fourth Floor, 747 Fort Street, Victoria BC V8W 3E9

Tel: (250) 387-3464

info@bcccalab.ca

Fax: (250) 356-9923

www.ccalab.gov.bc.ca

February 14, 2022

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

Dear Attorney General:

Re: Community Care and Assisted Living Appeal Board 2020-2021 Annual Report

I am pleased to submit to you the Annual Report of the Community Care and Assisted Living Appeal Board ("CCALAB") for the fiscal year beginning April 1, 2020 and ending March 31, 2021.

Sincerely,

Alison Narod
Chair, Community Care and Assisted Living Appeal Board

Enclosure

Message from the Chair

I am pleased to submit the Annual Report of the Community Care and Assisted Living Appeal Board (“CCALAB” or “the Board”) for the fiscal year beginning April 1, 2020 and ending March 31, 2021. This report is submitted pursuant to section 59.2 of the *Administrative Tribunals Act*.

COVID-19 and Pandemic Response

This reporting period saw many changes occur within the Board’s operations and within the justice sector as a whole in British Columbia. The continuation and intensification of the COVID-19 pandemic challenged us all to adapt and step up to meet the legal and practical needs of British Columbians. The unique challenges posed by the pandemic simultaneously kept people apart from each other, and brought us closer together through our shared desire to keep each other safe and work through to a “new normal”.

In response to the ongoing pandemic, the Board operated with the guidance of the Provincial Health Officer, and within the framework of its business continuity plan (BCP). The Board’s BCP focusses on ensuring ongoing service delivery to the users of the Board, while maintaining health and safety of Board staff and members.

By April 2020, staff members supporting the board and the broader tribunal cluster were working almost exclusively from home, and this method of operation continued throughout the reporting period. Because the tribunal cluster employed a remote work program prior to the onset of the pandemic, this transition was seamless and did not result in any service disruption. Although the physical Board office limited public access on several occasions, the Board continued to conduct business and appeals were processed electronically and/or via mail.

As reported in the last fiscal period, as a result of restrictions on in-person meetings and the province-wide mandate for appropriate social distancing, the Board shifted its operations from primarily paper-based to primarily electronic. Although prior to the onset of the pandemic hearings were almost exclusively conducted in-person, through the course of this reporting period the Board was able to effectively transition to the use of video-conferencing technology. This transition resulted in some initial delay, however by the close of the reporting period the Board had developed proficiency with the new technology and any technology-occasioned delay issues were remedied.

Through the course of this reporting period, tribunal staff worked closely with appeal parties, particularly self-represented parties, to provide assistance and training on the use of the virtual hearing platform. As will be reported on more fully in the next reporting period, the transition to video-conferencing for oral hearings has proved beneficial to the Board’s operations; improving timeliness, flexibility and access to the Board’s process.

Thanks to the dedication and flexibility of staff in the tribunal cluster, and to the adaptability of Board members to a new way of working and interacting, the Board did not suffer significant service disruptions or adverse health consequences related to the pandemic during this reporting period. I would, again, like to take this opportunity to extend my sincere thanks to all the individuals in the cluster who have worked hard to keep the Board open and accessible to the public it serves. This pandemic has continued for longer than most of us expected, and your work as government employees and appointees has been consistent, professional, adaptive, and exceptional.

At the time of publication of this report the pandemic remains ongoing, and the Board continues to adapt to ever changing circumstances. As such, the Board will report on additional pandemic-related measures and outcomes in the next reporting period.

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 five new appeals filed with the Board. There were two active appeals at the commencement of this reporting period. Further details of these appeals and the decisions which the Board issued in relation to them are provided later in this report pursuant to section 59.2(c) of the *Administrative Tribunals Act*.

Four (80%) out of the five matters filed with the Board during this reporting period were closed during this reporting period, and all closed appeals were disposed of without an oral hearing being held.

There were no applications for judicial review of CCALAB 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 Board's workload for the 2021/2022 fiscal year reporting period is expected to remain relatively constant, with no significant increase or decrease from the average numbers seen in the past 10 years, averaging 5-7 appeals being dealt with by the Board each year. Having said that, upcoming changes to provincial legislation regulating Early Childhood Educators may result in higher appeal volumes in the 2022-2023 reporting period. The Board will continue to monitor changes in the legislation and will report out on anticipated workload issues in the next fiscal period.

Section 59.2(g) of the *Administrative Tribunals Act* requires the Board to report any trends or special problems it foresees.

As identified in the last reporting cycle, one trend the Board has noted over the past several years is the increase in the complexity and length of the matters which are coming before it. Whereas in the past, many Board hearings were scheduled for between one and three days and there were few, if any, preliminary applications for the Board to manage and adjudicate, the nature of the appeals coming before the Board appears to have changed. More complicated legal issues are being raised by the parties, and it is common for multiple preliminary applications to be made on appeals. Through this reporting period, these changes have contributed to an increase in the length of time between the filing of a Notice of Appeal and the scheduling of an oral hearing, and the overall length of oral hearings which are being scheduled.

In addition to the above noted trend, the Board has identified that resource issues are becoming increasingly significant to the ability of the tribunal to properly perform its mandate as a quasi-judicial body in accordance with the efficiency and productivity expectations of the legislation. Recent developments in administrative law and access to justice, the rising demand for preliminary and interim decisions, and the growing complexity of legal and administrative issues in appeals has translated into greater overall demand for the Board's expertise and services, and longer delays in issuing final decisions, all of which results in additional expense. Resource constraints over the past several years have resulted in the tribunal not having the financial means to assist its members with relevant professional development to keep their expertise up to speed. Further, such constraints impair the tribunal's ability to satisfy the demands for its services efficiently and inexpensively.

Plans for improving the Board's operations

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 Board continued its in-depth review of service delivery which has resulted in several organizational realignments within the cluster. Registry staff have been increased, providing greater case management capacity for all the tribunals within the cluster, including the CCALAB. Notably, in June 2020, the Tribunal Cluster welcomed a new Vice Chair of Service Delivery¹, who has been providing administrative support with respect to cluster wide service-delivery initiatives.

¹ The Vice Chair Service Delivery is cross-appointed, by OIC, to the Environmental Appeal Board, Forest Appeals Commission, and Oil and Gas Appeal Tribunal, and is not a member of the CCALAB. However, this position assists with oversight of registry functioning for the tribunal cluster overall.

Service delivery will continue to be reviewed over the next reporting period, and further technological and organizational change is expected to occur. The Board will continue to capitalize on technological improvements over the next reporting period.

A handwritten signature in cursive script that reads "Alison H. Narod". The signature is enclosed in a thin black rectangular border.

Alison Narod
Chair, Community Care and Assisted Living Appeal Board

Mandate

Section 29 of the *Community Care and Assisted Living Act*, SBC 2002, c 75 (the “Act”) provides that a Chair and other members are to be appointed to the Community Care and Assisted Living Appeal Board by the Lieutenant Governor in Council after a merit-based process.

The CCALAB is an independent administrative appeal board that is vested with important statutory powers, exercises quasi-judicial adjudicative functions, and must exercise those functions in accordance with the law. The Board’s purpose or mandate is to provide a specialized, independent, accessible, and cost-effective forum for the hearing of appeals as described in sections 29(2) and 29(3) of the *Act* which, in summary, provide for appeals that fall into these five categories:

1. Appeals from Medical Health Officer licensing decisions under section 17(3)(b) of the *Act* regarding community care facilities.
2. Appeals from decisions under section 8 of the *Act* concerning the early childhood educator certificates of persons who wish to work in a community care facility.
3. Appeals from a Minister’s decision under section 23 of the *Act* to appoint an administrator to operate a community care facility.
4. Appeals by a person in care, or a person on their behalf, challenging a Medical Health Officer’s decision under section 16 to grant a licensee an exemption from the *Act* or regulations.
5. Appeals from the Assisted Living Registrar’s registration decisions under section 28(3)(b) of the *Act* in relation to assisted living residences.

The Ministry of Health’s *Guide to Community Care Facility Licensing In British Columbia* (the *Guide*) describes the *Act* and its purpose as follows²:

The CCALA governs both licensed community care facilities and registered assisted living residences. In BC, assisted living and facility care are parts of a continuum of care provided to persons who need ongoing support and assistance for a variety of health and disability-related reasons. CCALA also applies to children in licensed child day care facilities and children and youth in group homes.

² *A Guide to Community Care Facility Licensing in British Columbia* (Updated, Spring, 2016), p. 19.

The *Act* contemplates a variety of decision-makers and their delegates within government and throughout the health regions making what are collectively many thousands of licensing, registration and certificate decisions each year. The resources and time available to these decision-makers, and the processes they use to conduct investigations and make decisions, are far from uniform. Moreover, even the best “first instance” processes sometimes give rise to a perception by appellants that the process was not fair because the same government office was both “investigator” and “decision maker”. The Board’s independent process is therefore crucial to ensuring an objective and arm’s length review of licensing, registration and certificate decision-making, whether those decisions have been right or wrong.

Licensing, registration and certificate decisions can have very serious impacts on the individuals affected. That is why the legislature has given a “licencee, an applicant for a licence, a holder of a certificate under section 8, a registrant or an applicant for registration” the rights of appeal set out in section 29(2) of the *Act*. The need for licensing decision-makers to consider multiple interests, subject to the paramount interests of persons in care, was recognized by the Supreme Court in *Wilkins v. British Columbia (Attorney General)*, [1985] B.C.J. No. 1312 (S.C.), a case dealing with child care facilities:

Suspension or cancellation of a licence ... can have serious consequences....

[Decision-makers] have a heavy responsibility, under the *Community Care Facility Act* and regulations, to safeguard the welfare of children in, or attending, facilities covered by the regulations. It has powers appropriate to the discharge of those responsibilities. No doubt, from time to time, circumstances arise where precipitous action is mandatory in the interests of a child or children, without regard to the niceties of administrative procedure. But, although the interests of the children must always be paramount, it must be a rare occasion when there are not other interests, such as those of *Wilkins*, to be taken into account. In my opinion, when there are other interests which will be affected by the exercise of ... power, it is incumbent upon it to consider what avenues may be open to it to minimize adverse impacts without compromising the welfare of the children.

The Board’s existence is predicated on the view that an appeal board is necessary to act as an independent safeguard to ensure that licensing, certificate and registration decisions are sound and accord with the law. An erroneous decision to refuse or revoke a licence may have serious adverse impact on access to a good quality placement for children or seniors in the region. An erroneous decision may severely disrupt the lives of parents of children in daycare, or adult children of aged parents in adult community care. And for the licensee, registrant or certificate holder, an erroneous, adverse decision may have a profound impact on that person’s livelihood and reputation.

Within this context, one key public interest purpose of the Board is to ensure that persons aggrieved by “first instance decisions” under the *Act* have access to a specialized forum, as an alternative to the courts, in which to hold those decisions to account in a fashion that is fair, efficient, specialized, transparent and independent.

A second public interest purpose of the Board is to ensure that the Board’s process is available to members of the public who take issue with any “exemption” granted to the basic child care or adult care standards in the legislation.

The Board’s existence is not predicated on any notion that “first instance” decision-makers systematically abuse their power. Rather, it is predicated on the reality that within any system that deals with such important interests in great volume and in a variety of regional settings, error is inevitable. Such errors might include a decision-maker not following proper procedure or adhering to the principles of natural justice. Alternatively, they might include factual errors or errors in the consideration of evidence.

In this context, a significant degree of legitimacy and accountability is added by creating a low-cost Board that is capable of holding such decisions accountable in a non-partisan and specialized fashion. Such a specialized forum serves licensees and the public where the decision-maker has erred.

It is also important to emphasize that Board review assists the legitimacy of the first instance decision-maker where the Board upholds its decision. For many appeals which have a high emotional component, a Board decision upholding the decision-maker serves a significant purpose in adding credibility to the first instance process. Further, in each case, the Board gives reasons which are of assistance both in the immediate dispute and to other first instance decision-makers across the Province dealing with similar sets of facts. This purpose applies irrespective of any particular regionalization structure within the Ministry’s licensing process.

Tribunal Membership

Throughout the course of this reporting period the CCALAB membership consisted of:

<i>TRIBUNAL MEMBER</i>	<i>ROLE</i>	<i>TERM EXPIRY</i>
Alison Narod	Chair	2023-07-31
Lynn McBride	Vice-Chair	2022-06-30
Tung Chan	Member	2022-07-31
Shelene (Shelly) Christie	Member	2024-06-30
Harry Gray	Member	2024-06-30
Patrick Lewis	Member	2024-06-30
Richard Margetts, Q.C.	Member	2022-07-31
Donald W. Storch	Member	2024-06-30
Susan Beach	Member	2022-06-30

The Board wishes to thank all of its members for their exceptional service over the reporting period. The Board's ability to fairly and efficiently adjudicate sensitive and complex appeals is a direct result of the expertise, passion and commitment of the members that serve on it.

BIOGRAPHIES FOR THE TRIBUNAL MEMBERSHIP DURING THE REPORTING PERIOD ARE AS FOLLOWS:

Alison Narod, Chair

Alison Narod is a graduate of Osgoode Hall Law School (LL.B., 1982) and McGill University (B.A., Hons., 1975), and a Member of the Law Society of British Columbia. Alison currently practises in the areas of labour and employment law, human rights, workers compensation, administrative and family law. Alison is currently a Disciplinary Panel Chair for the Investment Industry Regulatory Organization of Canada, the Chair of the Community Care and Assisted Living Appeal Board, the President of ACT Autism Community Training Society, and a Member of the Canadian Bar Association (BC Branch).

Lynn McBride, Vice Chair

Lynn McBride (B.A. (Linguistics), LL.B., E.C.E.) is the Community Engagement Coordinator with Legal Services Society (LSS); in that role, she provides training and support to community agencies in BC who partner with LSS to increase awareness of and access to legal services and resources. Another primary aspect of her work is to connect and engage with rural, remote and Aboriginal communities throughout the province to find innovative ways to make public legal education and

information more accessible to them. Lynn's prior work history includes working as an educator and as a lawyer. She practiced law for 12 years, where she gained extensive litigation, research and writing experience. She is also a qualified Early Childhood Educator with experience working in daycare (3 to 5 years old), preschool, and out of school care.

Tung Chan

Tung Chan is an Honorary Captain of the Canadian Navy and the former Chief Executive Officer of S.U.C.C.E.S.S., a group of registered charities dedicated to the creation of a world of multicultural harmony by building bridges, harvesting diversity and fostering social integration. His responsibilities in that capacity included the operations of a senior care home. Tung is a director of the Canadian Foundation of Economic Education, a member of the Community Care and Assisted Living Appeal Board, and the past Chair of the Board of the Canadian Museum of Immigration at Pier 21. Tung's early career included stints as a stock broker in Hong Kong and a waiter in Holland; since coming to Canada in 1974 at the age of 22, Tung has been a waiter, a bartender, a radio program producer, a Councillor and Deputy Mayor with the City of Vancouver, a branch manager of the Royal Bank and a vice-president of the TD Bank Financial Group, where he had operational and strategic responsibilities for two overseas branches (Hong Kong and Taiwan) and 17 domestic branches. Tung has volunteered his time in leadership positions of numerous civic, cultural, business and educational organizations, including E-Comm Emergency Communications (Board Chair), Richmond Public Library (Board Chair), Fairchild TV (Program Advisory Board Chair), International Financial Center Society of BC (Vice Chair), BC Premier's Chinese Community Advisory Committee (Member), Province of BC Equal Opportunity Community Advisory Board (Member), Kwantlen Polytechnic University (Board Member), Asia Pacific Foundation (Board Member), the Immigrant Employment Council of British Columbia (Board Member), the Metropolis BC (Board Member), and the United Way of the Lower Mainland (Board and campaign cabinet member). In 2002, Tung was awarded the Queen's Jubilee Medal in recognition of his contribution to the community. In 2014, Tung was invested into the Order of BC.

Shelene (Shelly) Christie

Shelly Christie is a qualified Early Childhood Educator and obtained her degree in Child and Youth Care from the University of Victoria in 1994. Shelly has worked in the field of early childhood learning and care for more than 35 years in a variety of settings including pre-school, daycare, family resource programs and Child Care Resource and Referral. Shelly has also taught a variety of Early Childhood Education courses at Fraser Valley College (now University of the Fraser Valley), Langley Continuing Education and Pacific Rim Early Childhood Education. Shelly recently retired after working for the past 17 years as a Child Care Licensing Officer with Vancouver Coastal Health Authority and Fraser Valley Health Authority.

Harry Gray

Harry Gray has over 30 years of experience in the health care and post-secondary industries and has worked in a variety of administrative roles, advising employers in sectors including Community Care, Assisted Living, Long Term Care and Acute Care and post-secondary. Harry acquired extensive experience in advocacy and mediation of labour disputes. Harry holds a Master of Industrial Relations from Queen's University and a Bachelor of Commerce, (Finance & HR) from the University of British Columbia. Harry was the Associate Vice President of Administration at Kwantlen Polytechnic University, from 2010-2016 where he was responsible for Human Resources, Facilities Management, Security and Emergency Planning. From 2005 to 2009 he was the Director, Consulting Services at the Health Employers Association of BC. From 2001 to 2005 he worked at Vancouver Coastal Health Authority and prior to that was the Regional Director, Human Resources for the North Shore Health Region.

Patrick Lewis

Patrick Lewis is a Partner at the litigation firm, Sugden, McFee & Roos LLP, in Vancouver, practicing exclusively in the area of civil litigation with an emphasis on commercial disputes. He was admitted as a barrister and solicitor to the Bar of the Province of British Columbia on June 14, 1985. The cases Mr. Lewis handles include securities litigation, mining disputes, professional liability claims and defence thereof involving lawyers, doctors, engineers and accountants, corporate litigation, insurance litigation, real property disputes, defamation claims, banking litigation, employment disputes and personal injury actions. Mr. Lewis has appeared in all levels of courts in British Columbia, the Federal Court of Canada and been involved in opposing applications for leave to appeal to the Supreme Court of Canada in a number of cases. Mr. Lewis has previously been a member of the Financial Services Tribunal, and in that capacity adjudicated appeals from the decisions of statutory regulatory agencies in British Columbia. Mr. Lewis is a member of the B.C. Branch of the Canadian Bar Association, Civil Litigation Subsection. He is also a member of the Trial Lawyers Association of British Columbia, a guest lecturer for the Continuing Legal Education Society of British Columbia and a Moot Court Judge at the U.B.C. Law School.

Richard S. Margetts, Q.C.

Richard Margetts is a Lawyer and Partner with Johns, Southward, Glazier, Walton & Margetts. His area of practice is restricted to personal injury, corporate, commercial and insurance litigation. He is a Life Bencher and past President of the Law Society of British Columbia. Mr. Margetts has chaired and sat on many Law Society Committees including Executive, Discipline, Credentials and Practice Standards. Mr. Margetts is the Past President of CanLII and the past Chair of the British Columbia Justice Review Task Force. In the community, Mr. Margetts is a past Secretary of the YM/YWCA (Victoria) and a past Director of the Vancouver Island Road Relay. Mr. Margetts is a regular speaker on profession, legal and procedure training programs. Mr. Margetts holds his

Bachelor of Arts (Honours) from Monash University in Melbourne, Australia and his Bachelor of Laws from the University of British Columbia. He was called to the British Columbia Bar in 1981.

Donald W. Storch

Donald holds a BA from the University of Alberta in Sociology and a Masters in Social Work from McGill (MSW). Following graduation from McGill he was employed as a counsellor and family life educator at the Family Service Association in Edmonton. He became Executive Director of that organization in 1970. From 1976 to 1991 he was Vice President of Services for Children for Catholic Social Services. In 1991 he joined an Employee Assistance firm in Calgary (Kelly Lutmer and Associates) and managed the EAP at the University of Calgary. From 1997 to 2001 he was a counsellor with an EAP program in Duncan BC, (South Vancouver Island Counselling and Assessment Service). He then operated his own private practice in Victoria from 2001 to 2014. Don received an Order of Canada for his extensive volunteer activities in 2008. These volunteer activities included serving on many boards and becoming Chair of the Board of the Victorian Order of Nurses of Canada, the Good Samaritan Society of Canada (on 2 separate occasions), the Alberta Association of Children and Families, of Our Place in Victoria and Council member and Chair of several Lutheran congregations in Alberta and BC. He was a member of the Governing Council of the Evangelical Lutheran Church in Canada beginning in 1997 and then served as Council Secretary from 2000 to 2011. Donald was a peer reviewer for the North American Council of Accreditation for Children and Families from 1975-2001, conducting visits in the USA and Canada. Mr. Storch is also a member of the Employment and Assistance Appeal Tribunal.

Susan L. Beach

Susan L. Beach has been litigator in criminal and civil courts for 15 years. She has complex trial and tribunal experience, in particular involving expert testimony. She practiced for 10 years in the area of recovery of wildland fire suppression costs and property and timber loss arising from wildland fires. Ms. Beach is also a qualified mediator. She has taken courses in arbitration offered by the ADR Institute of Canada and in adjudication offered by the BC Administrative Tribunals Association. She has been a member of the Natural Resource Law Subsection of the CBA and has delivered talks to the Administrative Law Subsection of the CBA and at the Annual Meeting of the Forest Appeals Commission and Environmental Appeal Board.

Operations

Effective December 1, 2004, the administrative support functions of the CCALAB were consolidated with the Environmental Appeal Board/Forest Appeals Commission Appeals Office (Appeals Office) in Victoria.

In addition to the CCALAB, 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:

- Health Professions Review Board;
- Hospital Appeal Board
- Financial Services Tribunal;
- Industry Training Appeal Board; and,
- Oil and Gas Appeal Tribunal.

Although the resourcing issues identified earlier in this report continue to impact the Board's ability to carry out its legislative mandate effectively, the operation of the CCALAB as part of a shared services cluster has resulted in significant savings to government. This model of service delivery takes advantage of synergy and assists government in achieving economic and program delivery efficiencies. This arrangement has been in operation for 16 years now and has proven to be a very effective and efficient means for providing administrative support to the CCALAB.

Effective April 1, 2017, host Ministry responsibilities for administration of the Community Care and Assisted Living Appeal Board (including budget oversight and member appointments, human resources, facilities, and records supports, etc.) were transferred to the Attorney General as part of the Tribunal Transformation Initiative.

Contact Information

MAILING ADDRESS: Community Care and Assisted Living 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: info@bcccalab.ca

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

Appeal Activity and Decisions Issued

APPEALS FILED

There were five new appeals filed during this reporting period. There were no appeals which were open from the previous period. The new appeals filed are described below. Two matters were outstanding at the end of this reporting period.

CCALB-CCA-20-A002 BY A COMMUNITY ORGANIZATION, FILED APRIL 9, 2020 – Appeal of a reconsideration decision of a Medical Health Officer for Vancouver Coastal Health Authority (“VCHA”) attaching conditions to the license of one of the Appellant’s daycare centres. The Appellant withdrew its appeal and the matter was dismissed without a hearing.

CCALB-CCA-20-A003 BY A COMMUNITY ORGANIZATION, FILED JUNE 4, 2020 – Appeal by a Seniors’ Residence of the issuance by Island Health Authority (“IHA”) of a series of invoices for “annual health operating permits”. The Board rejected the Appeal for lack of jurisdiction.

CCALB-CCA-20-A004 BY AN EARLY CHILDHOOD EDUCATOR, FILED SEPTEMBER 17, 2020 – Appeal by an Early Childhood Educator of an Investigation Report issued by Vancouver Coastal Health Authority (“VCHA”). The Appeal was rejected by the Board for lack of jurisdiction.

CCALB-CCA-20-A005 BY A LICENSEE OF A FAMILY DAYCARE, FILED OCTOBER 13, 2020 – Appeal of a reconsideration decision of a Medical Health Officer for Island Health Authority (“IHA”) attaching conditions to the License of a Family Child Care Provider. The Appeal was withdrawn prior to hearing.

CCALB-CCA-21-A001 BY A LICENSEE OF A COMMUNITY CARE CENTRE, FILED JANUARY 20, 2021 – Appeal of a reconsideration decision of a Medical Health Officer for Vancouver Coastal Health Authority (“VCHA”) attaching conditions to the License of the Appellant’s Group Child Care Centre. The Appeal was outstanding as of the close of this reporting period.

DECISIONS ISSUED

There were no decisions on the merits issued in this reporting period, however the Board issued two dismissal orders for matters which settled or which were withdrawn or abandoned, and

issued fifteen preliminary decisions on various appeals. Several of the Board's significant³ preliminary decisions are described below.

Ofra Sixto (Operating as ICARE Childcare Inc.) v. Vancouver Coastal Health Authority, 2019-CCA-004(b) (May 7, 2020) - The Appellant appealed the reconsideration decision of a Medical Health Officer ("MHO") for Vancouver Coastal Health Authority ("VCHA") to suspend and cancel her Group Child Care Licenses. The Respondent originally brought an application for adjournment on the basis that the MHO was unavailable for a hearing due to the COVID-19 pandemic. The Respondent then requested a written hearing in place of an oral hearing. The Board held that the usual practice of the Board is to hold oral hearings, but that practices weren't binding and parties were able to request alternate forms of hearing in appropriate cases. The Board further held that where new evidence is tendered which needs to be tested, or where issues of credibility arise when testimonial and other evidence is disputed, and/or where breaches of procedural fairness in the underlying proceeding have been alleged, an oral hearing is generally the most balanced and appropriate way to accept this new evidence, test witness testimony through cross-examination, and cure breaches of procedural fairness if they have occurred. The Board considered the context of the particular appeal and ordered that an oral hearing would be held.

Decision: <http://www.ccalab.gov.bc.ca/decisions.htm>

Safwana Ahmed v. Vancouver Coastal Health Authority, 2019-CCA-003(a) (April 22, 2020) - The Appellant appealed the reconsideration decision of a Medical Health Officer ("MHO") for Vancouver Coastal Health Authority ("VCHA") to refuse to issue her a Family Child Care License. The Respondent brought an application to have the matter proceed by way of written submissions. The Respondent argued that the MHO would be unable to attend an oral hearing due to her professional obligations in relation to the COVID-19 pandemic. The Respondent further argued the appeal was one which could adequately be dealt with in writing. The Appellant sought an oral hearing on the basis that she said the contested facts in the appeal raised issues of credibility that are central to the dispute. The Board noted that the usual practice of the Board is to offer oral hearings, however the Board acknowledged the difficulty posed by the COVID -19 pandemic and ultimately ordered a hybrid hearing with both written and oral components.

Decision: <http://www.ccalab.gov.bc.ca/decisions.htm>

Safwana Ahmed v. Vancouver Coastal Health Authority, 2019-CCA-003(b) (June 19, 2020) - The Appellant appealed the reconsideration decision of a Medical Health Officer ("MHO") for

³ The Board issues numerous preliminary decisions on simple issues such as extensions of time and uncontested applications for temporary adjournment, however the Board only publishes and reports on preliminary decisions which are significant and of precedential value.

Vancouver Coastal Health Authority (“VCHA”) to refuse to issue her a Family Child Care License. The Appellant brought an application to have one of the panel members assigned to hear the appeal recuse herself from the appeal on the basis that she had worked as a Licensing Officer for a number of years. The Panel considered the application using the legal test for reasonable apprehension of bias. The Panel held that the threshold for a finding of a reasonable apprehension of bias is very high. The Panel further held that some level of expertise of the Board in the area that the Board is organized to adjudicate is of benefit to the parties and the public at large. The Panel held it is illogical and without foundation to assume that knowledge of, or experience with the issues being deliberated would create an inference that the Panel would be negatively impacted by the professional expertise of one of its members. The Panel dismissed the application for recusal on the basis that the Member’s past employment as a licensing officer would not, in the context of the appeal, lead an informed person, viewing the matter realistically and practically – and having thought the matter through – to conclude that she or the Panel would not decide the appeal fairly and with an open mind.

Decision: <http://www.ccalab.gov.bc.ca/decisions.htm>

Society of Richmond Children's Centres v. Vancouver Coastal Health Authority, CCALB-CCA-20-A002(b) (December 15, 2020) - The Appellant appealed the reconsideration decision of a Medical Health Officer for Vancouver Coastal Health Authority (“VCHA”) to attach conditions to the License of one of the daycare centres operated by the Appellant. Prior to the hearing, the Respondent applied for and order from the Board ordering the Appellant to disclose certain documents relating to a civil proceeding, and certain internal documents relating to an incident at the child care centre. The Board canvassed the law regarding disclosure of settlement documents, documents indicating an apology had been made and documents where significant privacy interests are at stake and held that the documents having to do with the civil proceeding would not be ordered disclosed. The Board ordered the Appellant to provide a sworn affidavit setting out that it had disclosed all relevant internal documents not protected by privilege.

Safwana Ahmed v. Vancouver Coastal Health Authority, 2019-CCA-003(c) (October 13, 2020) - The Appellant appealed the reconsideration decision of a Medical Health Officer (“MHO”) for Vancouver Coastal Health Authority (“VCHA”) to refuse to issue her a Family Child Care License. During the course of the hybrid hearing, the Appellant applied to the Board for a right to cross-examine the Respondent’s witnesses on their affidavit evidence. The Respondent objected and argued cross-examination was not a right and should only be permitted in circumstances that align themselves with court practice. The Board held that the CCALAB is not a court, and that it had the authority to determine its own processes. The Board further held that it was not clear that a court would not order cross-examination on the facts of the case. The Board granted the application and

allowed the cross-examination to test the reliability and accuracy of the information in the affidavits.

Decision: <http://www.ccalab.gov.bc.ca/decisions.htm>

Matters Outstanding at end of Period

There were two matters⁴ outstanding at the end of this reporting period.

Judicial Review of CCALAB Decisions

There were no applications for judicial review of CCALAB decisions filed in or issued by the BC Supreme Court in 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.

The CCALAB appeal process has been designed to be a timely, efficient and cost effective means to hear these important matters. Appeals are a full rehearing of the matter akin to “hearings de novo”, except that the onus remains on the Appellant under section 29(11) of the *Community Care and Assisted Living Act* to prove that the decision being appealed was not justified. Hearings are primarily conducted orally and in person with a three person panel, however, where circumstances are appropriate, hearings have also been heard in writing before a single panel member. The Board generally designates a lawyer to act as panel chair, with side panelists having

⁴ One of the matters filed in this reporting period related closely to a matter which was outstanding from the previous reporting period, and the two related files were grouped and handled as one matter. Therefore, rather than having three matters outstanding at the close of this reporting period, the Board had two matters outstanding.

adult or child care or administrative experience to ensure the appropriate expertise on the panel to deal with the various issues arising on appeal. 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 takes pride in its internal mediation services, as oftentimes appeals before the Board are settled by the parties with the assistance of a Board-appointed mediator prior to progressing to a hearing on the merits. This saves unnecessary time and expense.

For those four appeals closed within this reporting period, the overall average time from the date of filing an appeal to its disposition was 131 days (approx. 4.5 months). The shortest time from open to close was 50 days, and the longest was 298 days.

The Board's Practice Directive #1, which is available on the Board's website, provides that the Board will make its best efforts to hear each appeal, orally or in writing, within 120 days of receiving the notice of appeal; noting that this time period may be longer where a party or parties request to adjourn an appeal, or where the appeal is complex and takes multiple hearing days. The Directive also provides that for matters that proceed to hearing, 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; again noting that for more complex appeals this timeline may be longer.

As no appeals proceeded to hearing during this reporting period, the Board does not have any data on practice directive timelines.

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. As a means of evaluating the impact on the Board's shift from in-person hearings to hearings held via videoconferencing technology, the Board developed a survey to administer to hearing participants. The Board expects to be able to report on survey results in the next reporting period after scheduled hearings have completed.

Statement of Financial Performance

(For the fiscal year ending March 31, 2021)

In fiscal year 2020/2021, the CCALAB incurred expenses of \$30,697 as detailed below in this six-year chart.

<i>Direct Expenses</i>	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021
	\$	\$	\$	\$	\$	\$
Salaries and Benefits	0	0	0	0	0	0
Board Member Fees & Expenses	23,481	80,171	14,578	22,123	7,250	18,797
Professional Services	819	16,615	0	12,784	0	605
Office and venue Expenses	1,437	4,182	306	3,713	12,395	11,295
Other	27	27	0	0	0	0
Total CCALAB Expenses	\$25,764	\$100,995	\$14,884	\$38,620	\$19,645	\$30,697