



# BCCAT 2014 Newsletter

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# Message From the President



Welcome to the latest iteration of the BCCAT Newsletter, and thanks to all those who contributed to it.

We have had a productive year.

*We pursued our goals of providing educational offerings to members of the Tribunal community, familiarizing newcomers with our activities and formulating policy papers that affect the community.*

We had a successful conference in the fall which not only produced a profit, but addressed such matters as new ways of conducting hearings and making decisions and the potential use of social media in connection with tribunal work.

Work has already begun preparing next year's BCCAT conference, which has the special attribute of falling within our 20 year anniversary year.

## **Our educational committee continues to put on introductory and other courses, including:**

- Administrative Justice, Practice and Procedure for Decision makers
- Administrative Justice, Practice and Procedure for Staff
- Hearing Skills
- Decision Writing

BCCAT has also been increasingly called upon to provide custom tailored courses to various organizations across Western Canada, including post secondary educational institutions, Additionally, it is currently updating the BCCAT Adjudication Manual, which will be available soon.

Our upcoming activities will include a new website redesign with more online features.

BCCAT depends on and welcomes participation from the Tribunal Community. **Please contact us at [registrar@bccat.net](mailto:registrar@bccat.net) if you are interested in serving on any of our committees:**

- Policy and Research
- Education
- Communication and Outreach
- Conference Planning Committee
- Nominations

*Happy Holidays to all,*

Alison Narod



# Board Members



## **Alan Andison**

Environmental Appeal Board

## **Emily Drown** (Board Secretary)

Safety Standards Appeal Board

## **Steve Guthrie** (Treasurer)

Property Assessment Appeal Board

## **Diana Juricevic**

BC Human Rights Tribunal

## **Shelley Lopez**

Workers Compensation Appeal Tribunal

## **Brent Mullin**

Labour Relations Board

## **Alison Narod** (President)

Community Care & Assisted Living Appeal Board

## **Ellen Riley**

WCAT

## **Shannon Salter** (Vice President)

Civil Resolution Tribunal

## **Simmi Sandhu**

Property Assessment Appeal Board

## **Jeremy Sibley**

Employment and Assistance Appeal Tribunal

## **Debe Simpson**

Workers Compensation Appeal Tribunal

## **Daphne Stancil**

620 Stewart Mountain Road

## **Cheryl Vickers**

Property Assessment Appeal Board

## **Tiina Williams**

Mental Health Review Board



*Past & Present BCCAT Board Members at the 2014 Annual BCCAT Conference*

## Departing Board members include:

### **Debbie Cameron**

Past President

### **Jim Collins**

Farm industry Review Board and (former) Chair of the BCCAT Conference Committee

### **Richard Bullock**

Agricultural Land Commission and (former) Chair of BCCAT Membership Committee

### **Elizabeth McPherson**

Canada Industrial Relations Board

*On behalf of BCCAT, we want to thank our outgoing board members for all of their hard work and dedication to the organization*

# Conference Report

## The BCCAT Annual Education Conference – Going Platinum

Yes, next year's Annual Education Conference in 2015 will be BCCAT's 20th! The first was held in the fall of 1996 and since then the conference has formed an important part of tribunal training, development and networking in BC.

Conference themes have ranged from 'Reshaping Administrative Justice' (1997), 'Ethical Issues' (1999), 'Surviving and Evolving' (2003), 'Aspirations for the Future' (2005 – 10th annual conference), 'Diversity and Integrity' (2006), 'Getting to Resolution: New Horizons' (2012), 'Access to Justice' (2013) and most recently, exploring the role of government the courts and tribunals in 'Making a Three way Relationship Work' (2014). BCCAT is proud of the contribution that the conference makes to continuous learning in the BC tribunal community.

The October 6-7, 2014 conference was very successful with 120 people attending over the two days. Sessions were well received and attendees appreciated the opportunity to network with members and staff of other tribunals. The two day format – first day devoted primarily to plenaries and the AGM with the second day to workshops – seems to be a popular option for most people.

As well, evaluations suggested many interesting and useful ideas for the 2015 and future conferences. As the conference themes from previous years indicate, there is no shortage of challenges in the administrative justice system and no doubt the 2015 conference will have lots of issues – both ongoing and new – to include in its agenda. BCCAT also intends to increase the use of social media options

to enhance participation during the conference. It is not only our clients that will need to learn how to navigate a brave new world!

The conference requires a lot of work to plan, organize and run so **many thanks to the 2014 conference committee and best wishes to the 2015 committee as they prepare for the 20th annual BCCAT Education Conference in October 2015.**

*Hopefully you can attend and participate as BCCAT continues to survive and evolve and to have aspirations for the future!*

# Policy Paper



## Lessons in Restructuring Tribunals

Prepared by: BCCAT Policy and Research Committee

The Government of British Columbia is transforming the delivery of administrative justice services with the goal of creating a more transparent system capable of delivering timely, well-balanced services to British Columbians.

Over the past year, the Ministry of Justice has set the foundation for justice transformation in

the form of a two-part white paper. In support of the first part of the white paper, in the spring of 2013, the government passed the Justice Reform and Transparency Act, which established the Justice and Public Safety Council. The priorities of the second part of the white paper include reforming the delivery of services in the administrative justice and civil justice sectors.

To assist the government in these efforts, BCCAT has created a policy paper identifying the key issues involved in reforming the delivery of services in the administrative justice sector across Canada and other common law jurisdictions. The policy paper provides neutral and informative content regarding different organizational structures and service models, integration of staff functions, optimization of space utilization, provision of common technology supports, integration of different organizational cultures, and enhancement of common administrative tribunal principles.

The full paper can be [viewed online on the BCCAT website](#).



# Student Sponsorship



## Five Student Sponsorships Available

To help promote exposure to – and encourage participation in – B.C.’s administrative tribunal community, BCCAT is offering five, no-cost registrations for students in legal or dispute resolution studies to attend the 2015 BCCAT Educational Conference.

**What’s included:** Funding includes a full conference package, up to \$250 for travel and accommodation expenses, and plenty of networking opportunities for each student selected.

**Eligibility:** One sponsorship is available to an administrative justice and/or dispute resolution student enrolled in each of the following programs:

- University of Victoria – Faculty of Law
- University of Victoria – MA in Dispute Resolution
- University of BC – Faculty of Law
- Royal Roads University – MA in Conflict Analysis and Management
- Thompson Rivers University – Faculty of Law

**How to nominate:** If you know a student who may be interested in attending our Conference and meets the eligibility criteria above, please contact, or encourage the student to contact, Anne McCaw, Project Coordinator at [registrar@bccat.net](mailto:registrar@bccat.net)



# Case Study



## *Katsoulakos v. Association of Professional Engineers of Ontario* 2014 ONSC 5440 (Div. Ct.)

One of the hallmarks of procedural fairness is that where an allegation of misconduct is made against an individual, they must be provided with formal notice of the allegation and an opportunity to respond. In the professional discipline context, this is usually accomplished through issuing a notice of hearing which sets out the particulars of what is alleged to constitute misconduct.

*A recent case from Ontario highlights the need for professional regulators to carefully draft statements of particulars and for hearing tribunals to limit their decision in a professional misconduct case to the specific allegations set out in the notice of hearing.*

In *Katsoulakos v. Association of Professional Engineers of Ontario*, an engineer was alleged to have committed misconduct in negligently designing a manure storage tank, which leaked after the farmer it was designed for cut a 2' x 2' hole in it to install some transfer pipes. The engineer had also provided the farmer with advice on repairing the cut out after the leak. While some deficiencies in that advice were noted in the investigation, this issue was not referred to in the notice of hearing. However, in its decision, the disciplinary panel ruled that the engineer had been negligent in addressing the cut out issue and found him guilty of professional misconduct as a result. The engineer appealed.

The Court ruled that a professional regulator must limit their decision to allegations specified in the notice of hearing. The Court confirmed that because of the severe effect a disciplinary sanction can have on an

individual, a charge of professional misconduct must contain sufficient particulars to allow the defendant to prepare their defence with the degree of particularity resembling that in judicial proceedings. Ambiguous language may offend the duty of fairness. The Court stated as follows:

In a disciplinary proceeding the obligation is on the professional association to specify the allegations of professional misconduct with reasonable particularity, not on the member to discern from the general “subject matter” of the circumstances what he may or may not be alleged to have done wrong. (*para.24*)

In overturning the finding of the disciplinary tribunal, the Court also reaffirmed that standards of review do not apply to issues of procedural fairness and natural justice.

*(continued on page 7)*

## Case Study *(continued)*



While the standard of review of the decision of a professional disciplinary body for a finding of professional misconduct is reasonableness, breaches of the duty of fairness are errors of law which will attract no deference from a court. In other words while typically a professional disciplinary tribunal will have some margin for error with respect to its decision, it must get it right on fairness issues or the Court will intervene.

The lesson for professional regulators is that statements of particulars contained in a notice of

hearing must be carefully crafted to ensure that the respondent has adequate notice of the essential elements of the allegations in order to be able to properly and fully respond to them. Broadly drafted allegations which only may become clear during the course of a hearing will not satisfy this fairness requirement.

Prepared by:

**Steven M Boorne**

Barrister & Solicitor

Alternate Chair, B.C. Review Board

## Spring & Fall 2015 Courses

Administrative Justice – Practice & Procedure for Decision Makers	April 9 & 10 / October 22 & 23, 2015
Administrative Justice – Practice & Procedure for Staff Members	May 13 / October 14, 2015
Decision-Writing Workshop	May 7 & 8 / November 5 & 6, 2015
Hearing Skills Workshop	April 23 & 24 / November 19 & 20, 2015
Administrative Justice – Practice & Procedure for Post Secondary Education Institutions	Institutions should Contact BCCAT

BCCAT will tailor courses to specific needs or provide in-house training. All courses are approved as continuing education for members of the bar in completing the Annual Report to the Law Society of BC. [Register now for courses.](#)

***BCCAT is looking forward to another exciting new year! Thank you.***