



OIL AND GAS  
APPEAL TRIBUNAL  
2017~2019  

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Annual Report

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## Oil and Gas Appeal Tribunal

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The Honourable David Eby  
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The Honourable Bruce Ralston  
Minister of Energy, Mines and Petroleum Resources  
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Dear Ministers:

Please find enclosed the Annual Report of the Oil and Gas Appeal Tribunal, covering from January 1, 2017 to December 31, 2019.

Yours truly,

Darrell Le Houillier  
Chair  
Oil and Gas Appeal Tribunal



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## Message from the Chair

I am pleased to present the Annual Report of the Oil and Gas Appeal Tribunal (the “Tribunal”) for the three-year period from January 1, 2017, to December 31, 2019. Although the Tribunal issued annual reports for 2017 and 2018, the Tribunal issues a more comprehensive report every three years.

This is my first report as the new Chair of the Tribunal. Alan Anderson, the long-standing prior Chair, retired in July 2019. Mr. Anderson worked for the BC public service for over 30 years, and was Chair of the Tribunal since its inception in 2010. During that time, Mr. Anderson was instrumental in establishing the first tribunal cluster in BC, combining the office of Environmental Appeal Board and the then newly-created Forest Appeals Commission. The Tribunal was added to this cluster when it was created in 2010. Mr. Anderson’s service, vision and leadership as Chair, and his dedication and contribution to the law and administrative justice, have benefitted the Province and the administrative justice system.

I wish to thank the Tribunal’s members and staff for their patience and understanding during this time of transition. I also wish to thank staff within the Ministry of the Attorney General, particularly the Tribunal Transformation & Supports Office, for their support as I acclimate to serving as Chair.

Unfortunately, the Tribunal also lost one of its valued members, Lorne Borgal, in an airplane crash in May 2019. Lorne was well-respected on the

Tribunal and a valuable member of his community. He had been a long-time public servant through his membership on the Tribunal. On behalf of the Tribunal, I thank Lorne for his public service and to offer condolences to his friends and family.

While there were no other changes in membership over the year, I anticipate recommending new appointments for Cabinet consideration to increase our roster of Tribunal members. The Tribunal is committed to recruiting members of the highest quality, who represent the diversity that exists within British Columbia.

In 2019 the Tribunal also ushered in a new electronic case management system to replace an outdated system. We will also explore the feasibility of integrating electronic document management, to improve operational efficiency and decrease our environmental impact. This project will continue through 2020-2021 and beyond.

The Tribunal is also in the process of updating its website. We are looking forward to updating our content and modernizing this important way of communicating with the public that we serve.

The Tribunal is also engaged in a service delivery realignment project. We have designed a survey to provide to recent, historical system users. This will help us identify, from a user-focused perspective, what is working well and what could be improved in the Tribunal’s procedures. We have

identified potentially interested citizens' groups, including indigenous communities and indigenous resource delivery groups, and have invited them to participate as stakeholders in the project. We are and will be consulting directly with our "high volume" parties, most notably the Oil and Gas Commission.

The Tribunal is striving toward an efficient, effective, responsive, and user-focused approach to handling appeals. We are actively working toward fulfilling our obligations with a view to proactive engagement with indigenous communities, as described in the Truth and Reconciliation Commission's 94 Calls to Action. We are also looking toward increasingly using technology to allow faster, more efficient, more accessible appeal operations by creating systems to enable remote, electronic hearings.

During this report period, the Tribunal also carried out its core legislated responsibilities: hearing and considering appeals. The Tribunal closed 47 appeals from 2017 to 2019. There were 45 new appeals filed over the same period. This resulted in a reduction in the Tribunal's appeal inventory, from six to four. Most appeals that were closed (32) were concluded with final decisions issued by the Tribunal. A significant number of appeals (9) were withdrawn or settled by consent, with the rest (6) being rejected from the outset due to a lack of jurisdiction or standing, or because of a failure to file the appeal within an applicable statutory timeframe.

The appeals took, on average, 485 days to complete, compared to an average of 229 days in the 2014-2017 reporting period. For appeals that involved a decision on the merits, the appeal process took, on average, 665 days in this reporting period (up from 368 days on average in the 2014-2017 reporting period). Appeals completed without decisions on the merits took, on average, 135 days in this reporting period (down from 143 days in the 2014-2017 reporting period). Variability in these timeframes reflects a small

number of appeals. Timeliness in decision-making will be a focus in the service delivery realignment project.

The Tribunal's average annual expenditures in the reporting period (2017/2018 to 2019/2020 fiscal years) totalled \$21,931. This was a decrease from the average annual expenditures in the preceding reporting period (2014/2015 to 2016/2017 fiscal years), which were \$22,920. This likely represents natural variability in the appeal load handled by the Tribunal.

Since assuming the role of Chair, I have emphasized early intervention in appeals, in an attempt to resolve contentious preliminary issues and to encourage dispute resolution between parties, where appropriate. I will continue to do so, to encourage fast and economical resolution of appeals and, where appropriate, on terms decided between the parties. The service delivery realignment project will strive to achieve the same aims, while also working to make the Tribunal more accessible, accountable, and responsive to the needs of its users, private and governmental alike. Given that this transition to a new style of appeal management only started in late-2019, significant impacts have likely not yet been experienced.

In closing, I wish to thank the members and staff of the Tribunal for their excellent public service. I am fortunate to work with such a group of dedicated, expert individuals.



Darrell Le Houillier  
Chair



# Introduction

The Oil and Gas Appeal Tribunal was established in 2010 under the *Oil and Gas Activities Act* (the “Act”), to provide an independent level of appeal for certain decisions made by the Oil and Gas Commission (the “Commission”) under the Act. The Tribunal addresses issues related to the regulation of oil and gas activities in the province. These activities include geophysical exploration, the construction and operation of pipelines, road construction, the production and storage of petroleum and natural gas, and the storage or disposal of by-products from petroleum and natural gas production.

As required by the *Administrative Tribunals Act*, the Tribunal’s annual reports provide Cabinet with information about appeal operations, through the ministers responsible for its oversight.

When deciding appeals, the Tribunal weighs evidence and makes findings of fact. It interprets the legislation and common law principles. It applies those sources of law to its factual findings. The Tribunal may compel the production of evidence and must ensure that its processes are procedurally fair to those involved in appeals.

Any party to an appeal may seek a judicial review of a decision of the Tribunal by the Supreme Court of British Columbia.

The Tribunal publishes certain decisions, its Rules, its Practice and Procedure Manual, and information to assist the public through the appeals process, on its website ([ogat.gov.bc.ca](http://ogat.gov.bc.ca), until replaced at a date in 2020, by [bcogat.ca](http://bcogat.ca)).



# Review of Tribunal Operations

The principal work of the Tribunal is to hear appeals of some statutorily authorized decisions of the Commission made under the Act.

The Tribunal, through its annual reports, also provides the ministers responsible for its oversight with information over the preceding reporting year: a review of its operations, performance indicators, its appeal inventory, the results of any surveys undertaken, a forecast of the upcoming workload for the tribunal, any foreseen trends or special problems, and plans for improving operations in the future.



# Appeal Procedures

An appeal begins when a notice of appeal is filed in response to a decision made by the Commission. The Tribunal assesses whether the appeal seems to meet threshold requirements: that the appellant has the ability to appeal the decision, that the decision is appealable, that the appeal was filed within the statutory timeframe allowed, and whether the Tribunal has the authority to grant the requested outcome of the appeal. The Act specifies which decisions can be appealed and who can appeal those decisions.

The Tribunal may conduct appeals in writing or in person (an oral hearing), depending on the needs of the parties and based on principles of procedural fairness in administrative law. Written evidence and arguments are exchanged in either case. In written hearings, only written material is exchanged; in oral hearings, written summaries of the arguments to be presented precede the oral hearing itself. The Tribunal is working toward making live, electronic (remote) hearings available in 2020.

## *Oil and Gas Activities Act*

The Act regulates oil and gas and related activities in the province including oil and gas wells, facilities, oil refineries, natural gas processing plants, pipelines, and oil and gas roads.

The Act is divided into 12 parts:

- Definitions;
- Administration of the Oil and Gas Commission and the Tribunal;
- Oil and Gas Activities (permits, authorizations, permit amendments);
- Dormant Sites;
- Orphan Sites;
- Compliance and Enforcement;
- Reviews and Appeals;
- General;
- Offences and Court Orders;
- Regulations;
- Transitional Provisions; and
- Consequential Amendments and Repeals.

Appeals may be filed by “eligible persons”, who are defined in the Act as: applicants for permits or authorizations; permit holders; owners of land on which an operating area is located; persons who are subject to orders issued under section 49(1) of the Act;



and persons who have been found by the Commission to be in contravention of the Act.

A land owner of land on which an operating area is located may appeal a decision made by the Commission:

- to issue a permit to carry out an oil and gas activity on the land of the land owner, and
- to amend a permit, if the amendment changes the effect of the permit on the land of the land owner.

All other eligible persons may appeal:

- a decision by the Commission to issue, refuse to issue, suspend, cancel or amend a permit or permission in a permit;
- a declaration by the Commission on its own initiative that a permit or a permission in a permit is spent if no longer needed by the permit-holder;
- an order by the Commission that the holder of a cancelled, spent, or expired permit or authorization must carry out actions for the purposes of restoration or the protection of public safety;
- an order by an official or the Commission under Division 2 of Part 5 of the Act, including orders that are necessary mitigate a public safety risk, protect the environment, or promote the conservation of oil and gas resources;
- a finding of contravention by the Commission;
- an administrative penalty imposed by the Commission; and
- a prescribed decision made under the Act.

There is generally a 30-day time limit for the filing of appeals; however, there is a 15-day time limit for land owners to file appeals. The scope of appeal is also limited for land owners. The Tribunal can only consider whether the Commission had “due regard” for certain documents submitted during permit applications or permit amendment applications: submissions the land owner made to the Commission while it considered the application, or reports the applicant was required to submit about consultations with other parties, in support of their application.

Decisions to impose administrative penalties are automatically stayed on appeal; however, a party may apply to the Tribunal for an order removing the stay of an administrative penalty. The Tribunal has the discretion to stay all other decisions under appeal.



# Statutory Framework

The statutory framework governing the operation of the Tribunal is generally found in sections 19, 20, and 72 of the Act. The following sections of the *Administrative Tribunals Act* apply to the Tribunal:

- Parts 1, 2, 3, 4 (except sections 23, 25, 34 (1) and (2)), 6 (except section 47.2 (1) (a) and (c)), 7, 8, and 10 (except section 62); as well as
- sections 44 and 46.3; 57, 59, 59.1, and 59.2.



# Performance Indicators

## Tribunal Processes

In the period from January 1, 2017 to December 31, 2019, the appeal process took, on average, 485 days to complete. Where decisions were issued on the merits of an appeal, the average was 665 days. Where decisions were resolved without a decision on the merits (by rejection, abandonment, withdrawal, consent order, or dismissal), the average was 135 days.

During the previous three-year report period, the appeal process took, on average, 229 days to complete. Where decisions were issued on the merits of an appeal, the appeal process took an average of 368 days. For appeals that were concluded without a decision on the merits (by rejection, abandonment, withdrawal, consent order, or dismissal), the appeal process took an average of 143 days.

## Judicial Reviews

One judicial review of a Tribunal decision was active from January 1, 2017 to December 31, 2019: *ARC Resources Ltd. v. Richard Bruce Mitchell et al*, BC Supreme Court, Vancouver Registry No. S179084.

In October 2017, ARC Resources Ltd. (“ARC”) filed a petition for a judicial review of the Tribunal’s decision in *Richard Bruce Mitchell and Sharan Mitchell v. Oil and Gas Commission* (2017-OGA-026(a), September 20, 2017). In that

decision, the Tribunal granted the Mitchells’ application for a stay of a permit authorizing ARC to build and operate a pipeline on lands that included the Mitchells’ land. The Mitchells argued that building the pipeline where it was planned would cause erosion and permanent loss of soil from their land. The stay meant that ARC could not build the pipeline on the Mitchells’ land, pending the Tribunal’s decision on the merits of the appeal.

ARC asked the Court to overturn the Tribunal’s decision on the basis that the Tribunal had misapplied the legal test for granting a stay.

After the judicial review was filed, ARC applied to the Commission for a permit amendment to alter the pipeline’s route so that it would no longer cross the Mitchells’ land. The Commission granted the permit amendment. Consequently, the judicial review became moot and was not heard by the Court.



# Applications and Appeals from January 1, 2017 to December 31, 2019

Forty-four of the 45 appeals filed under the Act during this reporting period were in response to decisions of the Commission made under Part 3 of the Act (Oil and Gas Activities – permits, authorizations and permit amendments). One appeal was filed by an operator in the oil and gas industry against a decision made under Part 5 (Compliance and Enforcement) by the Commission to suspend its operating permit.

All 44 of the appeals against decisions made under Part 3 were filed by owners of land on which an oil and gas operating area was located. The single

appeal of a decision made under Part 5 was filed by an operator in the oil and gas industry whose permit was suspended by the Commission.

The table below summarizes the number of appeals in the Tribunal's inventory at the start of 2017, filed in the three-year report period, and completed by the end of 2019. These figures are broken down by the Part of the Act under which each appeal was filed. Each appeal was filed against a separate decision of the Commission.

	Inventory (Start of 2017)	New Appeals in Period	MATTERS RESOLVED VIA...				Inventory (End of 2019)
			Rejection due to Jurisdiction or Standing	Abandonment or Withdraw	Consent Orders	Final Decisions	
<i>Oil and Gas Activities Act</i>							
Part 3	6	44	6	9	0	31	4
Part 5	0	1	0	0	0	1	0
<b>TOTAL</b>	<b>6</b>	<b>45</b>	<b>6</b>	<b>9</b>	<b>0</b>	<b>32</b>	<b>4</b>

The Tribunal conducted two oral hearings which took a total of seven days in this reporting period. One of the oral hearings involved a group of five related appeals that were heard together.

The Tribunal also conducted a one-day mediation for one appeal. The mediation resulted in that appeal being withdrawn.



## Forecast of Workload

During the previous three-year reporting period (January 1, 2014 to December 31, 2016), 17 appeals were filed with the Tribunal, for an average of approximately six appeals per year. This represents typical intake for the Tribunal.

From January 1, 2017 to December 31, 2019, 45 appeals were filed, resulting in an average of 15 appeals per year. This is a significant increase compared to the previous three-year report period. One appellant filed 28 of the 45 appeals that were filed in this reporting period which accounts for the variance in this reporting period. The Tribunal considers this increase to be due to particular circumstances and not an indicator for ongoing increased volume for the Tribunal.

The appellant that filed 28 appeals holds a lease over Crown land that the appellant uses for ranching. Under the Act, the appellant is considered a “land owner” of the leased Crown land. The appellant appealed numerous permits and permit amendments that authorized oil and gas activities on its leased land. The number of appeals filed in the future by this appellant will depend on whether new oil and gas permits or permit amendments are issued in relation to the appellant’s leased land.

Given the slowdown in the oil and gas industry due to low commodity prices and the impacts of COVID-19, the Tribunal expects a relatively slow period in 2020, and projects four to six appeals to be filed in 2020.



# Forecast of Trends and Special Problems

In this three-year report period, almost 98% of appeals were filed by owners of land on which oil and gas operating areas were located. These land owners appealed permits or permit amendments that authorized oil and gas activities on their land. Only one appeal was filed by an operator in the oil and gas industry. This trend has been consistent since the Tribunal's inception in 2010, and is expected to continue.

The Tribunal is unaware of any other trends or special problems that need to be addressed.



## Surveys

No surveys were undertaken during this report period, but a survey is planned for 2020 and the results will be available for the next annual report.



# Plans for Improving Tribunal Operations

The Tribunal's operations will improve with the continuing transition to the new case management system implemented in the fourth quarter of 2019. As staff becomes more familiar with the system and as we continue to address issues with its functionality, we will achieve greater efficiency in our operations and service delivery.

The Tribunal will be updating its website in 2020. This will improve communication and transparency with the public. In 2020 and beyond, the Tribunal will work to make its processes more accessible by taking advantage of more electronic and web-based solutions for appeal processes.

The Tribunal is engaged in a comprehensive service delivery realignment project. The Tribunal is actively working to improve its accessibility, efficiency, efficacy, responsiveness, and timeliness. The Tribunal is modifying its operational philosophy towards a user-focused approach. We will be consulting with our historical system users and with other significant stakeholders to develop processes and procedures to more quickly and efficiently adjudicate the appeals that come before us. As noted previously, the completed survey provides useful feedback on user experience, to assist us in the consultation and with ultimate realignment.





# Tribunal Membership

Members of the Tribunal are appointed by the Lieutenant Governor in Council under Part 2 of the *Administrative Tribunals Act*. The Tribunal has diverse, highly qualified members, including biologists, engineers, and agronomists. The Tribunal also has lawyers with expertise in natural resource and administrative law. Members are appointed from across British Columbia, and the Tribunal is committed to soliciting applications to ensure its membership reflects the diversity of British Columbians, while ensuring members have the requisite expertise and experience to carry out their responsibilities to the highest standards.

The following tables summarize the membership of the Tribunal as of March 31, 2020, as well as changes in membership during the 2019/2020 reporting period.

## Members of the Oil and Gas Appeal Tribunal with Special Duties as of December 31, 2019

Name	End of Term
Darrell Le Houillier (Chair)	July 29, 2022
Gabriella Lang (Vice Chair)	December 31, 2021
Robert Wickett, Q.C. (Vice Chair)	December 31, 2021

## Members of the Oil and Gas Appeal Tribunal as of December 31, 2019

Name	End of Term
Maureen Baird, Q.C.	December 31, 2020
Monica Danon-Schaffer	December 31, 2020
Brenda L. Edwards	December 31, 2022
Les Gyug	December 31, 2020
Jeffrey Hand	December 31, 2022
Lana Lowe	December 31, 2020
James Mattison	December 31, 2020
Linda Michaluk	December 31, 2020
Susan Ross	December 11, 2022
Teresa Salamone	December 31, 2020
Howard M. Saunders	December 31, 2022
Daphne Stancil	December 31, 2021
Douglas Vandine	December 31, 2020
Reid White	December 31, 2020
Norman Yates	December 31, 2020

## New and Former Members of the Oil and Gas Appeal Tribunal

New Members	Start of Term
None	
Former Members	End of Term
Lorne Borgal	May 4, 2019
Alan Andison (Chair)	July 26, 2019



# The Tribunal Office and Use of Resources

The Tribunal is clustered with six other appeal bodies for administrative efficiency. The other appeal bodies are: the Community Care and Assisted Living Appeal Board, the Financial Services Tribunal, the Environmental Appeal Board, the Forest Appeals Commission, the Health Professions Review Board, the Hospital Appeal Board, and the Industry Training Appeal Board. Administrative support includes registry services, legal advice, research support, systems support, financial and administrative services, professional development, and communications support.

Some expenses associated with the Tribunal's operations are shared with the other appeal bodies. Such shared expenses include professional services for information technology, information

systems, office expenses, and small-scale miscellaneous expenses.

With that limitation in mind, I have provided a summary of the Tribunal's direct expenses in 2019/2020 and historically. The figures below account for administrative support offered to the other appeal bodies, but do not account for shared expenses proportionately distributed among those appeal bodies.

The following table summarizes the Tribunal's averaged annual expenditures, rounded to the nearest dollar, for the reporting period (the 2017/2018 fiscal year to the 2019/2020 fiscal year), as well as the average annual expenditures over the preceding reporting period (the 2014/2016 fiscal year to the 2016/2017 fiscal year).

Area of Expenditure	Fiscal Years 2014-2017, Averaged	Fiscal Years 2017-2020, Averaged
Member Fees and Expenses	\$16,071	\$11,273
Professional Services	\$2,457	\$4,491
Office and Venue Expenses	\$4,392	\$6,167
<b>TOTAL</b>	<b>\$22,920</b>	<b>\$21,931</b>

