



Energy Resource Appeal Tribunal

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About the Tribunal and the Appeal Process

The Energy Resource Appeal Tribunal is a specialized, quasi-judicial agency created by the [Oil and Gas Activities Act](#) to hear appeals made by the BC Energy Regulator under that Act. The Tribunal is independent of the Regulator, and does not have any of the information or documents considered by Regulator in making its decisions. The Tribunal was created as a separate entity to ensure that it could hear appeals from certain decisions made the Regulator independently and fairly. The Tribunal is committed to providing a fair, impartial and independent appeal process.

The Tribunal's powers are set out in the [Oil and Gas Activities Act](#) and the [Administrative Tribunals Act](#). In addition to the legislation, the Tribunal has published [Rules](#), which set out a number of additional procedural requirements. In order to make all of these powers and requirements more easily accessible, the Tribunal has created a comprehensive [Practice and Procedure Manual](#). It has also created a number of [Information Sheets](#) on various subjects. Tribunal staff are also available to assist the parties.

Tribunal Members

All Tribunal members are appointed by Cabinet after a merit-based process. The Tribunal has a full-time chair, a full-time vice-chair, and a number of part-time members (one or more of whom could also be designated as a vice-chair). Tribunal members are appointed on the basis of their specific knowledge and experience with environmental and natural resource matters and administrative justice. They include professional engineers, biologists, and lawyers.

The chair is responsible for the effective management and operation of the Tribunal, and the organization and allocation of work among the members.

Tribunal's role in an appeal

The Tribunal is responsible for accepting, screening, mediating and adjudicating appeals filed under the *Oil and Gas Activities Act*.

Mediation/settlement

Parties may settle/resolve an appeal on their own at any time in the appeal process. A party may also ask the Tribunal to arrange a facilitated settlement meeting (mediation) to try to resolve the appeal issues. If the parties do not resolve the appeal, the Tribunal will hold a

hearing. Facilitated settlement meetings are confidential and without prejudice to the positions that the parties may take in a hearing.

The parties to an appeal

A party to an appeal has various rights, including the right to present opening and closing statements, present evidence and to cross-examine witnesses (in an oral hearing). The parties to an appeal are:

Appellant: the individual or organization that is bringing the appeal;

Respondent: the BC Energy Regulator; and

Third Party: in some cases, a person or organization that may be affected by the appeal is added as a party (e.g., the permit holder or licensee if someone else appealed their permit or licence).

In addition, the Tribunal may allow a person or organization to “participate” in an appeal if that person or organization has some information that would be relevant and helpful to the Tribunal. A participant may only participate in the appeal to the extent allowed by the Tribunal.

Note: To ensure fairness and compliance with the law, parties and participants **MUST** provide a copy of any letter, document or submission that it sends to the Tribunal, to all other parties and participants.

A party or participant may represent him/herself in an appeal, be represented or assisted by someone who is not a lawyer, or be represented by a lawyer. It is not necessary to be represented by a lawyer. A party that chooses to have a lawyer is responsible for the cost of the lawyer.

Overview of the appeal process

The Tribunal has created Information Sheets that provide more details about the various stages of an appeal. However, as an overview, the main stages in the appeal process are as follows:

- The appellant files a Notice of Appeal with the Tribunal.
- The Tribunal sends a letter acknowledging the appeal notice and providing more information about the appeal process. A copy is sent to the respondent and any third parties.
- The Tribunal will decide whether to hold an oral or a written hearing and will notify the parties. It will also confirm the date(s) that any submissions or documents are due.
- The hearing will take place. All parties will present their evidence and submissions.
- The Tribunal will issue a decision, in writing.

Note: The appeal may be resolved or settled at any time prior to the Tribunal's decision.

The hearing

The hearing is either conducted in writing, in person (orally), or a combination of both. In some cases, an oral hearing may be conducted by telephone or by videoconference. The chair or a member of the Tribunal will ultimately decide what type of hearing will be the most appropriate and effective to hear and decide the matters in issue.

The chair of the Tribunal will also decide which Tribunal member(s) will hear and decide the appeal. The members that hear an appeal are referred to as "the Panel". When determining who will be on a particular Panel, the chair will consider the background, qualifications and availability of the members.

Oral hearings will be conducted by a Panel of 1 or 3 members, depending on the length and complexity of the hearing. Written appeals are often considered by a Panel of 1. The Panel has all of the powers and duties given to the Tribunal.

In advance of the hearing, the Tribunal will confirm the timelines for submitting documents and other information. Some timelines are prescribed in the Rules, but will be confirmed in a letter.

During the hearing, the Tribunal may accept any evidence that is relevant to an issue in the appeal.

Decision-making

The Tribunal must decide an appeal on the basis of information presented to it by the parties. However, the Tribunal will also consider its past decisions on similar cases. (Parties may therefore wish to review the Tribunal's past decisions as they indicate how the Tribunal has previously viewed particular types of cases.) The Panel will carefully consider all of the information provided by the parties and write its decision.

Freedom of Information (Public Process)

Parties should be aware that the appeal process is an open process. Hearings are open to the public and the documents, evidence and names of parties and witnesses, are **not** confidential unless they are protected under the [Freedom of Information and Protection of Privacy Act](#) or an order of the Tribunal. Decisions are posted on the Tribunal's website and may appear in the Board's annual report, as well as law-related books or articles. The Tribunal's decisions are also available on the LexisNexis® Quicklaw® database for subscribers to that service (<http://www.lexisnexis.ca/en-ca/home.page>) and on [CanLII](#).