



Energy Resource Appeal Tribunal

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Oral Hearing Procedure

An oral hearing usually follows a standard format. The oral hearing is managed by the Panel Chair appointed by the Energy Resource Appeal Tribunal (the “Tribunal”). The Panel Chair is responsible for the hearing running fairly and efficiently. Unless the Tribunal changes the format for a hearing, the process is described below.

Introductions and Preliminary Matters

The Panel Chair will:

1. start the hearing and identify themselves, any other panel members, and any official recorder;
2. summarize the decision under appeal;
3. describe the panel’s authority to hear the appeal;
4. ask parties and interveners to introduce themselves;
5. clarify the issues under appeal, if necessary;
6. review procedural information for the hearing, including the order for presentation of evidence and submissions, any limitations on the proceedings, and logistical information; and
7. give the parties the chance to make any preliminary objections or requests.

There is a standard order for making opening and closing statements and for presenting witnesses. This order applies unless the Tribunal changes it for a specific hearing. The appellant goes first. The respondent goes second. Any third parties go third. Any interveners go last. During closing statements, the appellant will also have a chance to make a final reply.

Opening Statements

Opening statements will be given in the order described by the Panel Chair at the start of the hearing.

The appellant’s opening statement should describe the issues under appeal. It should explain what the appellant is asking the Tribunal to do and why. It should list the witnesses the appellant will present and estimate how long the appellant will need to do so.

The opening statements of the other parties (and interveners allowed to give one) are similar to one another. Each one should state their position on each issue and give their reasoning. Each should explain what they want the Tribunal to decide any why. Each should also list any witnesses they will present and estimate how long they need to do so.

Presentation of Evidence

Those who are allowed to present witnesses do so in the order described by the Panel Chair at the start of the hearing. The Panel Chair will not let witnesses, other than expert witnesses, parties, or interveners, watch or listen to the hearing until after they have given their evidence.

Anyone presenting witnesses can do so in the order they choose. The Panel Chair will usually insist that hearing time is not wasted, however. This means that schedules may need to change during a hearing, as each witness is likely to be questioned for more or less time than the parties might predict!

When a witness is called to give evidence, the following steps occur:

1. the reporter or a Panel member asks the witness to swear an oath (a promise sworn on a holy book) or affirm (a promise without any religious element) to the truth and completeness of what they will say;
2. the party calling the witness asks the witness questions to provide the panel with relevant information;
3. the other parties (and any interveners allowed to question witnesses) ask the witness questions to provide the panel with relevant information;
4. the party calling the witness may ask the witness questions to clarify and expand on information the other parties (and any interveners) asked the witness; and
5. the Panel may ask the witness questions. If they do, the parties (and any interveners allowed to ask questions of witnesses) will be allowed to ask questions to allow the witness to clarify or expand on what they told the Panel.

When the Panel Chair decides to schedule a break, they may limit the witness being questioned from talking to anyone about the case. This may happen if the witness is being questioned by anyone but the person who presented the witness. It is likely if the hearing will resume on the same day. It is less likely to happen on breaks that last until the next day, and even less likely for longer breaks. When deciding whether to limit the witness in this way, the Panel Chair may seek comments from the parties (and any interveners allowed to question witnesses). The Panel Chair will give directions based on what is appropriate for that case.

After a party (or intervener) has finished presenting witnesses, their case is closed. They do not have a **right** to present more witnesses or evidence after that point. There are two ways that they might **ask** to do so, however.

First, if a party (or intervener allowed to present evidence) is surprised by any evidence presented at the hearing, they can ask to present one or more witnesses. This is called “reply” evidence. The Panel Chair will allow this only if the person asking to present “reply” evidence could not have reasonably expected the surprising evidence. The Panel Chair will only allow “reply” evidence that responds to the surprise evidence.

Second, a party (or intervener allowed to present evidence) can ask to “reopen” its case and present one or more witnesses. The Panel Chair may allow this if new and unforeseen information relevant to the appeal is discovered after the person making the request closed their case.

Closing Statements/Arguments

After all parties and interveners have closed their cases, the Panel Chair will ask for closing statements. These statements are also called “arguments” or “submissions”. The Panel Chair may ask these to be given orally or in writing. For more information, see the Information Sheet, “[Closing Statements](#)”.

Evidence cannot be provided in the closing statements. Closing statements summarize and emphasize evidence already presented. They explain what conclusions can be drawn from the evidence. Closing statements also suggest what the panel should decide and why. These statements often refer to legal principles, statutes, or previous decisions from courts, the Tribunal, or other administrative bodies.

Often, closing statements request alternative decisions. For example, an appellant might argue they want the Tribunal to cancel a permit that has been appealed. That appellant might also argue that, if the Tribunal is unwilling to cancel the permit, it should change the permit in some way. When making these “alternative” arguments, it is best to give a rationale to support each proposed decision.

The Hearing is Closed

At the end of the oral hearing, the Panel Chair will conclude the hearing. If the hearing is in-person, everyone packs up and leaves the room. If the hearing is done by teleconference or videoconference, everyone disconnects.

The panel will not make a final decision at the end of the hearing. The panel provides its decision in writing, with reasons. The decision is provided to all parties and interveners.

Unless the Tribunal considers it inappropriate to do so, it will publish the decision on its website and may give the decision to other legal websites for public access.

The amount of time the panel will take to decide the appeal depends on a number of things. Most important is the length and complexity of the hearing. Typical timeframes can be found in the Tribunal's [Practice Directive #1](#).