



# Energy Resource Appeal Tribunal

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## Oral Hearings

Parties and interveners provide information and makes arguments to the Energy Resource Appeal Tribunal (the “Tribunal”) in hearings. The information (or evidence) is what the Tribunal uses to decide the facts of the case (what happened, is happening, or will likely happen). Arguments (or submissions) describe what the parties and interveners think the Tribunal should decide and why.

Hearings are not held by the entire Tribunal. The Chair assigns one or three members (at times including themselves) to decide each appeal. The member(s) that will decide an appeal are called the “panel” for that appeal.

The panel receives evidence and submissions during a hearing. A hearing can take place in writing, orally (either in-person or via telephone or teleconference), or in a mix of the two. The last kind of hearing is called a hybrid hearing. You can find more information on oral hearings in [Rule 21](#) and in the [Practice and Procedure Manual](#). See also the Justice Education Society’s videos on oral hearings at <http://www.adminlawbc.ca/>.

### How do I arrange for an oral hearing?

Early in your appeal, the Tribunal will likely hold one or more pre-hearing conferences. In the conferences, the parties and someone from the Tribunal will discuss what kind of hearing is appropriate. The parties (and, perhaps, interveners) will get to say what kind of hearing they want (oral, written, or hybrid). The Tribunal will decide what kind of hearing is needed.

The Tribunal usually holds an oral or hybrid hearing where there are disagreements about the facts of the case that might determine how the case is decided, and where the Tribunal would likely benefit from hearing that information live. The Tribunal will also choose to hold oral hearings where other concerns (like literacy) that could make a written or hybrid hearing unfair for one party.

### When and where will the oral hearing be held?

The Tribunal will decide when and where a hearing takes place, based on the availability of the parties, the panel, and a site to host the hearing. In-person hearings usually take place in a city as close as possible to the area affected by the appeal. In-person hearings may also take place at the Tribunal’s office in Victoria or somewhere else.

When the Tribunal decides when and where a hearing takes place, it will inform the parties in writing. It will also provide a “Notice of Hearing” containing the details.

An electronic hearing takes place using videoconferencing technology. The Tribunal has [Rules](#) for electronic hearings and has a [guide](#) available to provide technical and process information to those who will be part of an electronic hearing.

### **Is the Tribunal Independent?**

Yes. It is not associated with any decision-maker whose decisions can be appealed. The Tribunal does not have any information about an appeal that the parties and interveners do not provide. If there is anything you think is relevant and important to your case, you will have to give it to the Tribunal during the hearing.

### **What can I discuss at the hearing?**

As part of the pre-hearing conferences, the appellant must describe the issues to be discussed at the hearing. The Tribunal will help explore those issues and ensure that they are within the Tribunal’s authority to consider. Other parties may ask the Tribunal to refuse to hear certain issues. If they do so, the Tribunal will give all parties a chance to comment before issuing a written decision. By the time the hearing is scheduled, the issues should be clearly defined.

### **Will I be required to provide anything before I go to the hearing?**

Before an oral hearing, the parties (and any interveners allowed to present evidence) must provide a “Statement of Points”. This document must be given to the Tribunal and all parties and interveners. The Tribunal’s [Rule 21](#) establishes general deadlines for the Statement of Points, but the Tribunal can change those case-by-case. For each appeal, the Tribunal will confirm the due dates for the Statements of Points, based on discussions at the pre-hearing conferences.

The Statement of Points describes the evidence that the party intends to present at the hearing. It must include any documents the party intends to rely on. It must also identify the witnesses they will present at the hearing. If a party wants to present expert evidence, it must give advance notice. For more information, see [Rule 27](#), the [Practice and Procedure Manual](#), and the Information Sheet, “[Expert Witnesses](#)”.

The Statement of Points also summarizes the arguments that the party intends to make, for each issue under appeal.

For more information, see the Information Sheet, "[Statement of Points and Document Disclosure](#)" or the [Practice and Procedure Manual](#).

## What is the scope of an oral hearing?

In an oral hearing, the Tribunal considers the decision appealed to it. The Tribunal can consider new information and makes its own decision. It does not have to defer to the decision under appeal.

A one-person panel is the Panel Chair. A three-person panel has one Panel Chair, who is appointed by the Chair of the Tribunal, and two other members. The Panel Chair is responsible for ensuring the hearing proceeds in a fair, efficient, and orderly way. The other two members may contribute as the panel considers appropriate.

A party or intervener can represent themselves at the hearing, or be represented by another person, including a lawyer. Whoever speaks for the party has the chance to do several things at the hearing:

- make opening statements to describe the appeal and outline the case they will make;
- call witnesses to present evidence;
- have their witnesses present documents and other evidence;
- cross-examine the witnesses of the other parties to strengthen the cross-examining party's case or weaken its opponents' cases; and
- make closing statements to summarize the important evidence and explain how the panel should decide the appeal and why.

Oral hearings will be recorded, either by an official recorder or by the Tribunal. No other recording of the proceedings by the parties is allowed without the Tribunal's permission. Parties can order a transcript of the hearing, at their expense. For more information, see the Information Sheets, "[Oral Hearing Procedure](#)" and "[Preparing for an Oral Hearing](#)".

## Are the Tribunal's oral hearings as formal as court proceedings?

No. Although many people will wear business clothing, you do not have to. You are expected to dress appropriately for an important meeting. You are also expected to act as you would in an important meeting. The Panel Chair will address any concerns about conduct. Everyone present must follow the directions of the Panel Chair during the oral hearing. The level of formality will depend on the panel, the parties, and the nature of the appeal.

## **How do I object to something or get information about what to do in a hearing?**

The panel will explain the procedures used in the hearing. If a party or intervener has any questions about what is happening, what will happen, or what to do, they should ask the Panel Chair for direction or clarification.

The panel also rules on objections. A party (or intervener allowed to cross-examine witnesses) should object if they think an improper question was asked to a witness or that the panel should not allow certain evidence to be presented. The panel may ask the parties to comment on the objection. The panel will then rule on the objection and state whether the question is allowed to be asked or the evidence is allowed to be presented. The objection should be made politely and should include the reason(s) for the objection.

## **What happens if someone is disrespectful or disruptive during the hearing?**

The Panel Chair can make orders and give directions that they consider necessary to maintain order at the hearing. It is important that everyone present obeys directions and orders from the Panel Chair. If they do not, the Panel Chair can restrict a person's ability to continue to attend or participate in the hearing, including by banning them from the hearing. The Panel Chair can call upon police officers to enforce their orders within a hearing.

## **Is the Tribunal required to follow its past decisions?**

Although the Tribunal may be bound by some decisions of certain courts in certain situations, it is not required to follow its past decisions or the decisions of other administrative agencies. While prior decisions of the Tribunal may show how the panel will view particular types of cases, it must decide each case on its own merits. The panel may not find the reasoning in previous cases to be persuasive, given the merits of any given appeal.

## **Does the appellant have to prove its case "beyond a reasonable doubt"?**

No, the appellant must prove their case on a balance of probabilities. This means that it is more likely than not that the appellant's claim is true.

## What can the Tribunal order at the end of the appeal?

The Tribunal has the power to:

- confirm, vary, or rescind any decision appealed to it, or
- refer a decision appealed to it back to the decision-maker for reconsideration, with directions.

## What happens after a hearing is finished?

After closing submissions are done, the panel will tell parties the hearing is closed. This means that no more evidence or arguments can be provided, unless the panel orders otherwise. Parties then disconnect from an electronic hearing or leave the hearing room in an in-person hearing.

The panel does not provide its final decision at the end of the hearing. It will consider the case and complete a written decision, with reasons. The decision will be sent to all parties and intervenors. It will be published on the Tribunal's website (and perhaps other legal websites) unless the Tribunal orders otherwise.

The amount of time that it takes to issue its written decision depends on the individual circumstances of the case. [Practice Directive #1](#) provides guidance on the Tribunal's usual timeframes for completing decisions.

## Public access

Oral hearings are open to the public. Members of the public are welcome to attend unless the panel determines that all or a portion of the hearing should be closed to the public. Active participation in the appeal, however, is restricted to the parties, any intervenors, and witnesses.

The Tribunal is subject to the [Freedom of Information and Protection of Privacy Act](#). Because the hearing is a public proceeding, information and evidence provided to the Tribunal may be disclosed to the public. In the case of electronic hearings, the proceedings will be broadcast live to the Internet, accessible world-wide, unless the panel orders otherwise.