



Energy Resource Appeal Tribunal

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Remedies

A remedy is an order that a party asks the Tribunal to make at the end of an appeal. The appellant(s) must describe all remedies they want when starting their appeal. If they fail to list a remedy at the start of the appeal, they may not be able to ask for it during the hearing. This is why it is important for the parties to accurately describe all the remedies they are seeking in the appeal!

Types of Remedies

The Tribunal can order a range of remedies, in deciding an appeal. They are discussed below.

Confirm, Rescind, or Vary the Decision

If the Tribunal denies the appeal, it will **confirm** the decision that was appealed. This means that nothing about the decision is changed. The Appellant will never ask for this remedy. The Respondent (and, sometimes, a Third Party) will often ask the Tribunal to do this.

If the Tribunal considers that the appealed decision should not have been made at all, it will **rescind** the decision. This means that the decision is treated as though it was never made. Mostly, the Tribunal does this if it thinks the decision-maker did not have the authority to make the decision or if no part of the decision should be allowed to remain. The Appellant (and, sometimes, a Third Party) will often ask the Tribunal for this remedy.

If the Tribunal thinks that the decision is partly correct, it may **vary** (change) the decision. The Tribunal will do this where it thinks that the general idea of the decision is correct, but some details are not. For example, the Tribunal may adjust the amount of an administrative penalty, if it thinks that a penalty is appropriate, but that the penalty was for too much (or too little) money. The Appellant (and, sometimes, a Third Party) will often ask the Tribunal to vary a decision.

Send the Decision back to the Decision-Maker, with Directions

The Tribunal can return some or all of a decision to the original decision-maker, so that the decision-maker can reconsider the decision. When it does this, the Tribunal must provide directions, to help the decision-maker come to the right decision.

The Tribunal may do this in a number of situations. The Tribunal may know enough to determine that the decision is wrong, but not have enough information to tell what the right

answer is. The right answer could depend on input from others who are not involved in the appeal. The decision could involve technical information or calculations that are best considered by the original decision-maker. There may also be other situations where it is best to send the matter back to the decision-maker.

For example, if the Tribunal decides that a decision-maker failed to adequately consult with a First Nation, the Tribunal may send the decision back to the decision-maker with directions. The Tribunal might also decide that a decision about the route authorized for a pipeline is based on faulty assumptions, and send the matter back for a second, in-depth look by the decision-maker.

Appellants (and, sometimes, a Third Party) will often ask the Tribunal to return decisions to the decision-maker, with directions.

Describing Remedies

At the start of the appeal, the Appellant must describe the remedies they are seeking from the Tribunal. When completing a Notice of Appeal, consider if the appealed decision should have been made at all. If you think not, you should ask the Tribunal to **rescind** it.

Next, ask yourself if others would be affected by the remedy you are seeking. Consider whether the remedy you want would require consultation with different groups or gathering additional information. If the answer to any of these questions is “yes”, consider asking the Tribunal to **return the decision to the decision-maker, with directions**. If the answer is “no”, you should ask the Commission to **vary** the decision.

After deciding what remedies you want, consider which one you want most. You will always have at least one. You can ask for additional remedies, to be granted along with the first. You can also ask for alternative remedies for the Tribunal to consider, if it will not grant your first remedy.

For example, consider an appeal where you have been assessed a \$15,000 penalty for an alleged violation of a permit issued under the [Energy Resource Activities Act](#). You do not think you violated your permit, but even if you did, you think that the penalty is too high. You might also notice that there was an error in the decision, but note this involves some complicated mathematics. Your list of remedies might look like this:

I want the Commission to:

1. rescind the decision, or alternatively,
2. vary the decision to reduce the administrative penalty to \$5,000, or alternatively,

3. return the matter to the decision-maker so that they can redo their calculations, with directions on the underlying assumptions from the Tribunal.

The Respondent would likely ask the Tribunal to confirm the decision. There may also be a Third Party or intervener involved, who might ask the Commission to confirm, or increase, the penalty!