



# Energy Resource Appeal Tribunal

Fourth Floor, 747 Fort Street, Victoria BC V8W 3E9

Tel: (250) 387-3464

[bcerat.ca](http://bcerat.ca)

Fax: (250) 356-9923

[info@bcerat.ca](mailto:info@bcerat.ca)

## Statements of Points and Sharing Documents Pre-Hearing

The Energy Resource Appeal Tribunal (the “Tribunal”) has a rule, [Rule 21](#), which discusses Statements of Points. A Statement of Points is a written summary of the main points and arguments a party will make in an oral hearing. The Statement of Points must include:

- the names of all witnesses to be presented (including the party, if they will testify);
- all documents to be presented or referred to by that party’s witnesses;
- all legal authorities the party will refer to (statutes, regulations, court decisions, previous decisions of the Board, etc.); and
- an argument about what the Tribunal should decide and why, referencing all of the above.

The parties must provide their Statements of Points and attached documents to the Tribunal and the other parties and interveners in an appeal. If any interveners are authorized to present evidence at the hearing, they need to do this too.

Do not assume that the Tribunal member(s) who hear the appeal (the “panel”) will have any materials, documents, or authorities, unless a party includes them with their Statement of Points. Even if a party submitted material to the Tribunal during a pre-hearing application, the panel will not have it. Therefore, you must ensure that everything you want to rely on in the hearing is included with your Statement of Points.

### Timing

The Tribunal’s [Rule 21](#) says the Appellant’s Statement of Points is due **30 days** before the hearing starts. Everyone else presenting evidence must provide their Statements of Points **15 days** before the hearing starts. [Rule 21](#) also describes how many copies of those materials each party (and any interveners presenting evidence) must provide. In any given appeal, the Tribunal can set different due dates.

The due dates are minimum requirements. The Tribunal encourages parties to exchange information and documents earlier than the due dates. The Tribunal will discuss the exchange of documents early and often in the pre-hearing process, to ensure the appeal proceeds fairly and efficiently. A co-operative and early exchange of documents helps to ensure that happens.

## **Why exchange Statements of Points and documents early on?**

Exchanging materials early in the process helps everyone prepare for the hearing. The hearing will move more quickly and efficiently if all sides are familiar with the evidence to be presented and the arguments that will be made. Exchanging materials also protects against surprises and suspicion between the parties. The experience is less frustrating for everyone, and there is a better chance the parties will decide to settle the appeal between themselves!

Also, preparing your Statement of Points will help you prepare your case. It helps you create questions for witnesses. It helps you identify the documents and evidence that will be important for you to succeed in the appeal. It helps you decide on what to say for your opening and closing statements. You can even use it as speaking notes during those statements. Although it is time-consuming to create your Statement of Points, it saves time in the hearing.

## **How do I organize an effective Statement of Points?**

An effective Statement of Points is well-organized. It clearly and briefly outlines your case. This can be done in summary or point form, but a detailed version is best.

Before you write your Statement of Points, review the Notice of Appeal. Consider the issues under appeal, as confirmed during the pre-hearing appeal process. For each issue, think of what witnesses you will be calling at the hearing. Think of what documents and other evidence you will rely on to make your case. Take this opportunity to fully think through your case, issue by issue.

In your Statement of Points, you must summarize the main points and arguments that you will make in the hearing. Be sure to refer to all the witnesses, evidence, and legal authorities (e.g., laws, court decisions, or previous decisions of the Tribunal or other administrative bodies) you will rely on to make your case. Also be sure to attach any documents you or your witnesses will refer to during the hearing.

The Appellant's Statement of Points should say what exactly about the decision under appeal should be changed. Be sure that, for each issue, you describe what the Tribunal should change in the decision under appeal. For each issue, be sure you refer to all the witnesses, evidence, and legal authorities you will rely on at the hearing.

The Respondent's Statement of Points should respond to each issue addressed in the Appellant's Statement of Points. The Respondent should explain if they disagree with the Appellant and why. The Respondent should refer to all witnesses, evidence, and legal authorities that they will rely on to make their case.

Any Third Party, Respondent, or Intervener providing a Statement of Points should also respond to the issues in the Appellant's Statement of Points. They should explain their position on each issue and explain why. They should refer to all witnesses, evidence, and legal authorities they will rely on to make their cases.

### What documents should be provided, and how?

You should organize your Statement of Points and any documents into one or more binders. You should include **all** of the documents you will refer to or rely on at the hearing. "Documents" include all written materials, such as affidavits, correspondence, reports, articles, photographs, maps, charts, policies, previous court cases, previous Tribunal decisions, decisions of other administrative bodies, etc. **Please note that you should provide whole documents, not excerpts from them.**

If you need to include more than one document with your Statement of Points, they must be either numbered consecutively or divided using tabs. If there are many documents, an index is helpful. Providing documents that are not properly bound, tabbed, numbered, or indexed makes the hearing longer and more difficult, as documents become hard to find.

Please note that all parties must bring an extra copy of all documents to the hearing, so the official recorder can mark exhibits (see [Rule 21\(6\)](#)).

### Document-Related Applications

If you include an affidavit with your Statement of Points, any other party (or intervener allowed to challenge the evidence of parties) may ask the Tribunal for the right to cross-examine the person who swore the affidavit. They must make the request in writing, a reasonable time before the hearing is scheduled to start.

If one party (or intervener allowed to present evidence) needs a document that another person has, and the other person refuses to share it, that party (or intervener) can ask the Tribunal for help. The Tribunal can order the person with the document to share it. For more information, see [Rule 18](#), the Tribunal's [Practice and Procedure Manual](#), and the Information Sheet, "[Requesting an Order for Documents to be Disclosed](#)".

### Failure to produce the Statement of Points or documents

If a party or intervener does not provide the Tribunal (and the other parties or interveners) with its Statement of Points or documents as required, the Tribunal may find that party or intervener has not complied with the [Rules](#).

If the Appellant is non-compliant, the Tribunal may dismiss the appeal. If any other party (or any participant) is non-compliant, the Tribunal can restrict them from any further involvement in the appeal.

Also, a party or intervener must request to present any evidence not disclosed in their Statement of Points. As a result, failure to share a document could mean that it is not allowed to be presented during the hearing. It is important to properly submit the Statement of Points and associated documents!