



Energy Resource Appeal Tribunal

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

Tel: (250) 387-3464

bcerat.ca

Fax: (250) 356-9923

info@bcerat.ca

Written Hearings

The Energy Resource Appeal Tribunal (the “Tribunal”) decides appeals based on the information and arguments that it receives. It receives information and arguments in a “hearing”. A hearing can be written, oral, or hybrid (a combination of both). This Information Sheet describes written hearings. You can find more information in [Rule 22](#) and the Tribunal’s [Practice and Procedure Manual](#).

When does the Tribunal hold a written hearing?

The Tribunal holds written hearings when all parties are able to present their cases in writing, and the Tribunal member(s) who hear the appeal (the “panel”) can decide the appeal without needing to decide if a witness is credible.

How do I arrange for a written hearing?

In pre-hearing conferences, the Tribunal will likely ask all parties if they think the Tribunal needs to hold a written hearing. You can ask for a written hearing in the pre-hearing conference or by writing to the Tribunal. It is best to make this request as early in the process as possible. You will likely need to explain why you think the Tribunal can fairly and efficiently decide the appeal in writing. The Tribunal will also ask the other parties about this before deciding whether to hold a written hearing.

When will a written hearing happen?

When the Tribunal decides to hold a written hearing, it works with all parties to create a schedule of when the written submissions are due. Each party and intervener will be given a deadline to provide written arguments, evidence, and legal authorities (laws, previous decisions of courts, the Tribunal, or other administrative bodies, etc.). For more information about presenting your case in writing, see the Information Sheet, “[Preparing for a Written Hearing](#)”.

Each party will get a chance to respond to the submissions from the other parties. The Tribunal might allow interveners to have the same chance. Normally, submissions come in the following order:

- (1) appellant's submissions,
- (2) respondent's submissions,
- (3) third party's (if any) submissions,
- (4) interveners' (if any) submissions, and
- (5) submissions in reply, from the Appellant.

One person's submissions in reply can only address new arguments raised in other submissions, that the person did not discuss in their previous submissions. Generally, new evidence cannot be included with submissions in reply. The Tribunal will refuse to consider any portions of submissions in reply that should not have been included.

Submissions must be sent to the Tribunal, and copied to the other parties, participants, and interveners, by their due dates. When the last deadline passes, the written hearing is over. Written hearings are normally decided by one member of the Tribunal, often the Chair of the Tribunal.

What if I need more time?

If you are unable to meet the deadline for your submissions, you can request more time. [Rule 18](#) explains how to make a request. It must be in writing. It must clearly state how much of an extension you want and explain why you need the extension. You must say if the other parties will agree with your request (if you know). If you need to submit any evidence in support of your request, you must provide it along with your request. For more information, see the Information Sheet, "[How to Request More Time in an Ongoing Appeal](#)".

What do I include in my written submissions?

The Tribunal will only have the information and documents about the appeal that the parties, participants, and interveners give to it. Therefore, you must give **everything** that you think is relevant and supports to your case to the Tribunal.

You are allowed to submit new evidence that was not before the original decision-maker. For more information, see the Information Sheet, "[Preparing for a Written Hearing](#)".

Failure to file submissions

If the Appellant does not provide their submissions by the deadline, the Tribunal can decide the appeal, dismiss the appeal, or make any other order it considers appropriate. If any of the other parties, participants, or interveners do not provide their submissions by the deadline, the Tribunal may deny them from being involved further in the appeal. For more information, see [Rule 20](#).

Additional information requested by the Tribunal

After all of the submission deadlines have passed, the panel may write to the parties to ask follow-up questions or for clarification about something. If the panel requests additional information, all parties and interveners will have an opportunity to respond to whatever information the panel gets.

Arranging for oral (in person) evidence and cross-examination

The panel may decide, after reviewing the submissions, that an oral hearing is necessary on at least some points, to decide the appeal. In this case, the panel will switch the hearing to a hybrid one. A hybrid hearing is likely to involve some witnesses giving evidence orally. This involves giving the other parties (and any participants or interveners allowed to respond to evidence) the chance to question the witness in a “cross-examination”.

The parties can also ask for a hybrid hearing at any point, but ultimately the Tribunal will decide whether one is appropriate.

How do I win my case?

To win your case, you will have to convince the panel of one or two things. The first is that your understanding of the facts (what has happened, is happening and will happen) is most likely true. The second is that you have the correct idea about what the Tribunal should do.

To prove your understanding of the facts is mostly likely true on a balance of probabilities, you need to explain your understanding and provide any documents that support your understanding.

To convince the panel that it should do what you say, you will need to convince them that you are interpreting the law correctly, and applying it correctly to the facts of the case. It will probably help your case if you refer to legal authorities when you make this argument. Legal authorities can be laws, previous decisions from the Tribunal or the courts, or other respected sources of legal thought.

The Tribunal may have to follow decisions from some courts. It does not have to follow previous decisions it made, or that other administrative agencies (like the Environmental Appeal Tribunal) made. The Tribunal can still find non-binding decisions persuasive, however. Previous decisions of the Tribunal might also show how the panel will view and apply the law in certain situations. At the end of the day, however, the Tribunal decides each case on its own merits.

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

The Tribunal can:

- return a decision to the original decision-maker, with directions; or
- confirm, rescind or vary the decision.

What happens after a written hearing is finished?

The panel reviews the submissions of the parties and any participants or interveners. The panel writes a decision, with reasons, and gives it to the parties and any participants or interveners. The Tribunal will also generally post a copy of the decision on its website. It may also share the decision with other websites that host legal and administrative decisions.

The time this will take depends on a number of factors, especially the nature and complexity of the appeal. [Practice Directive #1](#) gives the usual timeframes.

Public access

In written hearings, all written material is generally available to anyone that requests it. If there is material you want the Tribunal to keep confidential, you need to ask the Tribunal to do so. Speak to the Case Manager assigned to your appeal if you are concerned about any of the material you plan to submit being available to the public.