



# Environmental Appeal Board

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## Preparing for a Written Hearing

This information is designed to help you prepare for your written hearing before the Board. You should also review the Board's [Practice and Procedure Manual](#) and [Rules](#), especially Rule 20. You must comply with the Board's requirements for a written hearing.

During a written hearing, you can present your own case, or you can be represented by someone else. This can be a lawyer, but you are responsible for any legal fees.

## Settling an appeal

The Board encourages the parties to resolve the issues under appeal among themselves. It supports those parties to communicate to cooperatively resolve some or all issues before the hearing starts. In the right circumstances, the Board will also offer to help the parties settle issues through mediation. You can expect the Board to ask about settlement discussions during pre-hearing conferences.

The parties may not be ready or motivated to settle issues under appeal until after reviewing the evidence or arguments of another party. Any party may write to the Board to ask for the appeal to be put on hold so the parties can have time to try to settle issues under an appeal. It will be up to the Board whether to do so.

## Burden of proof in an appeal and the Board's powers

If you are the person bringing the appeal (the "Appellant"), you bear the burden of proof. This means you must show that what you are arguing is likely to be true. You need to show why the decision under appeal should be changed. Except for appeals under the *Mines Act*, the Board's can:

- send the decision being appealed back to the person who made the decision, with directions,
- confirm, reverse or vary the decision being appealed, or
- make any decision that the person whose decision is appealed could have made, and that the Board considers appropriate in the circumstances.

Under the *Mines Act*, the Board's powers are to "confirm, vary or rescind" the decision under appeal. Under the *Mines Act*, the Board cannot send the decision being appealed back to the decision-maker or make any decision the decision-maker could have made.

If you made the decision that is under appeal (the "Respondent"), you should provide evidence that supports your decision. While the Appellant will define the issues under appeal, you will want to provide evidence and explain the reasons for your decision when you respond to the evidence the Appellant presents.

If you are a Third Party in an appeal, you will need to provide evidence to support your position. If you are asking to change the decision under appeal in some way, you are responsible for proving your case, just like the Appellant.

If you have been given Participant status in an appeal, you should provide evidence and/or submissions in support of your position, to the limits defined by the Board.

## The Board is independent

The Board is independent from the person who made the appealed decision and that person's Ministry or organization. It does not have any information or documents relevant to the issue(s) under appeal except what the parties give to it. For this reason, the parties must ensure they give everything they think is relevant and important to their case to the Board.

## How do I get started?

- **Know what you want:** think about what you want the Board to do and why. Then think about how to convince the Board that this is the right outcome. You will need to show that certain facts are true and what the correct course of action is. Gather the information that you will need in order to build a strong and convincing case.
- **Decide what evidence you will need:** Evidence is information that helps to show whether a fact asserted by a party is true or not. Think about the evidence that you will need as soon as possible so you can prepare your case. For each issue in the appeal, reflect on the facts you would like to establish and how you can prove those facts. Several kinds of evidence may be presented in a written hearing, including:

**Documents:** paper or electronic documents, such as records, maps, letters, reports, etc.

**Visuals:** photographs, images, or videos.<sup>1</sup>

**Affidavits:** statements signed and either sworn or affirmed before a lawyer or Notary Public.

**Statements:** written statements that were not sworn or affirmed before a lawyer or Notary Public. These statements might not be given the same “weight” (evidentiary value) as a sworn statement (affidavit).

**Expert Evidence:** an opinion by someone with education, training, or experience that gives the opinion weight as evidence. For example, medical doctors, engineers, or scientists giving opinions on their practice areas are all expert evidence.<sup>2</sup>

- **Include all relevant information:** your submissions must include everything that you want the Board to know about your case. Even if you provided information you want the Board to consider as part of a pre-hearing process, you need to re-submit that material during the written hearing.

It is not usually enough to provide background information, explanations and arguments. You should also provide evidence (see description above). Do not assume that someone else will provide any particular evidence, or that the Board will already know something.

In your submissions, you should explain how your evidence proves your case. You should discuss any laws or previous decisions from the Board, courts, or other administrative bodies that support your appeal. Your aim is to convince the Board about facts that you think are significant, and to persuade the Board what it should do and why, given the facts that your evidence proves.

- **Organizing and structuring your submissions:** As part of the pre-hearing conferences, the issues under appeal will be defined. The parties might agree about them or the Board might have to decide any points of disagreement. For

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<sup>1</sup> The person who created the visual should explain, in the hearing, what the visual shows, and when and where it was made.

<sup>2</sup> The Board has special rules and deadlines that apply where parties wish to present expert evidence. If you think you will be providing an expert report as part of your case, see [Rule 25](#), the Practice and Procedure Manual, and the Information Sheet, “Expert Witnesses”. You should let the Board know of your plans to present expert evidence when the subject is discussed at pre-hearing conferences.

each issue, decide what evidence you need to prove the facts you are asserting. Decide what you are asking the Board to do once you prove those facts, and consider if there are any laws, regulations, or previous decisions from the Board, courts, or other administrative bodies that might support your argument.

In your submissions, you should explain how the evidence you are submitting (described above) supports the factual claims you are making. You should tell the Board what it should do and why. You should reference any legal authorities (laws or previous decisions of the Board, courts, or other administrative bodies) that support your argument. Be sure to refer to the information and arguments supplied by other parties too, if you think they support your position.

Your submission and any attached documents (usually evidence and previous court or Board decisions) must be organized as described in [Rule 20](#). You must number all pages consecutively, or divide the attached documents using tabs. It is helpful to include an index for larger submissions and to place everything in a binder.

- **Replying to/disagreeing with information provided by others:** make sure you address things the other parties have said that you disagree with. The Board will ensure that all parties have a chance to do so. These replies can only address new evidence or arguments that the other parties have made. The Board will not consider new evidence or arguments that are not responses to the positions advanced by the other parties.
- **Ensure you file submissions as required:** the Board will tell you how and when to provide your submissions to the Board. According to [Rule 20\(1\)](#), you must file two hard copies with the Board “unless directed otherwise”. You must also provide a copy to each party and participant or intervener involved in the appeal, as directed by the Board. You will receive the submissions of the others involved in the appeal as well.

## When is the hearing over?

The hearing is over after everyone has had a chance to file their submissions and respond to the submissions of the others involved in the appeal. Normally, the Appellant’s reply is the last submission. If the Board allows additional submissions or responses, then the hearing is over at the conclusion of the last submission.

Once the hearing is over, the Board member(s) assigned to decide the appeal will consider the evidence, submissions, and law. They will write a decision that will be sent to all of the

parties and participants. Unless the Board decides not to for a specific case, it will also put the decision on its website. It may also share the decision with other websites that allow legal decisions to be searched.

## Preparation Checklist

- Review the notice of appeal and any other relevant documents, as well as the issues under appeal, as determined in pre-hearing processes.
- Decide what you want the Board to decide and why for each issue.
- For each issue, list the facts you need to establish in order to support the outcome you are seeking.
- Consider the evidence you will need to prove each fact (documents, photos, affidavits, expert report, etc.).
- For each issue, list the arguments you need to make to convince the Board what it should order and why, given the facts you seek to establish.
- Consider any sources (court cases, previous decisions of the Board, law texts, statutes, regulations, etc.) that will support your position.
- Gather the documents you need and organize them in logical order.
- Arrange for any expert witnesses or reports and provide the required advance notice under [Rule 25](#).
- Contact any witnesses you decide are necessary to prove your case.
- Have your witnesses prepare their reports, witness statements or affidavits.
- Prepare your written submissions.
- Provide your submissions to the Board and the other parties within the timelines set out by the Board, and in the quantities required by the Board.

For additional information about administrative law generally, see the videos produced by the Justice Education Society at <http://www.adminlawbc.ca/>.