



Environmental Appeal Board

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Remedies

A remedy is an order that a party asks the Environmental Appeal Board (the “Board”) to make at the end of an appeal. Each party 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!

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

Confirm, Reverse, or Vary the Decision

If the Board 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 Board to do this.

If the Board considers that the appealed decision should not have been made at all, it will **reverse** the decision. This means that the decision is treated as though it was never made. Mostly, the Board 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 Board for this remedy.

If the Board thinks that the decision is partly correct, it may **vary** (change) the decision. The Board will do this where it thinks that the general idea of the decision is correct, but some details are not. For example, the Board 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 Board to vary a decision.

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

Aside from appeals under the [Mines Act](#), the Board can return some or all of a decision to the original decision-maker. When it does this, the Board also provides directions, to help the decision-maker come to the right decision.

The Board may do this in a number of situations. The Board 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 Board decides that a decision-maker failed to adequately consult with a First Nation, the Board may send the decision back to the decision-maker with directions. The Board might also decide that an air emissions permit 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 Board to return decisions to the decision-maker, with instructions.

Make Any Decision the Decision-Maker Could Have Made

Aside from appeals under the [Mines Act](#), the Board can make any decision the original decision-maker could have made, and that the Board considers appropriate. When deciding to do this, the Board must remember that it is intended to decide appeals, not to make decisions on new matters.

For example, if an appeal relates to the elk hunting quota assigned to a hunting guide under the [Wildlife Act](#), the Board will not confirm the elk quota, but increase the guide's quota of a different animal, such as moose.

Also, the Board must not make a decision affecting the rights of another person (including a corporation or a society) who is not involved in the appeal. For example, the Board will not confirm a decision that an Appellant should not have a water use licence from Stream "A", but grant a water licence under Stream "B". Stream "B" may have other licence-holders that could be affected.

Describing Remedies

At the start of the appeal, the Appellant must describe the remedies they are seeking from the Board. 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 Board to **reverse** 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 Board to **return the decision to the decision-maker, with directions** (remember, this option is not available under the [Mines Act](#)). If the answer is "no", you should ask the Board to **vary** the decision.

You may also want the Board to make a different decision altogether. Remember that the Board will only make decisions about the same subject area, and will not affect the rights of

others who have not been involved in the appeal. If this is something you would like the Board to consider doing, you should ask the Board to **make a decision the decision-maker could have made** (but remember, this is not an option under the [Mines Act](#)).

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 Board to consider, if it will not grant your first remedy.

For example, consider an appeal involving a permit authorizing a factory to emit air contaminants into the environment, appealed by a neighbour of the factory (who is a member of a First Nation in the area). The neighbour may say that the decision-maker lacked the authority to issue the permit and also that it is not the right outcome. The Appellant's list of remedies might look like this:

I want the Board to:

1. reverse the decision, or alternatively,
2. return the matter to the decision-maker, so that they can consult with the neighbouring First Nation, or alternatively,
3. vary the decision to reduce the authorized emissions to 100 tonnes per year, or alternatively,
4. return the matter to the decision-maker so that they can calculate the level of emissions that will result in no pollution of the Appellant's property.

The Respondent would likely ask the Board to confirm the decision. The factory-owner, as a Third Party in this appeal, would likely also ask for this.