



EAB Tribunal Cluster

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Delegation Letter #1: Notices of Appeal

The following delegations are made, as authorized by section 26(9) of the *Administrative Tribunals Act*, with respect to preliminary or interim matters within appeals filed with the Environmental Appeal Board, Forest Appeals Commission, and Energy Resource Appeal Tribunal (the "Environmental Cluster").

Dismissal for Not Filing Within the Applicable Time Limit

I delegate to Case Managers the authority, found in section 31(1)(b) of the *Administrative Tribunals Act* (the *ATA*), to dismiss appeals to the Environmental Cluster that were not filed within the applicable time limit.

Incomplete Notices of Appeal

Pursuant to sections 22(4) and 23(3) of the *ATA*, I delegate to the Case Manager and the Intake Administrator the authority to:

- determine whether a notice of appeal complies with the requirements of section 22(2), 22(3), and 23(2) of the *ATA*;
- determine and provide a "reasonable period of time" for an appellant to correct their notice of appeal, pay their prescribed fee, or both; and
- reject a notice of appeal where it does not comply with the requirements of section 22(2), 22(3), or 23(2) of the *ATA*, and after expiry of the "reasonable period of time" allowed pursuant to section 22(4) or 23(3), as applicable.

For the purposes of this delegation, the following limits are set to the delegations above:

- a "reasonable period of time" must be at least eight calendar days and cannot be more than 30 days;
- a "reasonable period of time" may only be more than 21 days where the appellant provides a specific and reasonable justification, to the satisfaction of the Case Manager or Intake Administrator, as to why they cannot correct the notice of appeal, pay the prescribed fee, or both, within 21 days; and
- a notice of appeal can only be rejected where
 - a "reasonable period of time" has been allowed, and
 - the appellant has not requested that the "reasonable period of time" be extended, or had requested an extension that brings or would bring the total amount of the "reasonable period of time" to more than 30 days.

Dismissal for Lack of Jurisdiction

I delegate the authority found in section 31(1)(a) of the *ATA* to the Case Managers, to dismiss appeals for lack of jurisdiction of one of the appeal bodies in the Environmental Cluster.

The Environmental Cluster may lack jurisdiction over an appeal because the person submitting the appeal lacks a right of an appeal, and therefore does not have standing before the Environmental Cluster. The Environmental Cluster may also lack jurisdiction over an appeal if there is no appropriate remedy available to be granted on the conclusion of a hearing of the appeal, based on the relevant legislation. For the purposes of this delegation, an appeal may only be dismissed for lack of jurisdiction after an appellant has been given the opportunity, in writing, to make written submissions on the issue of the dismissal.

Furthermore, for the purposes of this delegation, an appeal may only be dismissed for lack of jurisdiction due to the lack of an appropriate remedy where the appellant's opportunity to provide written submissions follows a pre-hearing or case management conference in which the Case Manager (or member of any tribunal within the Environmental Cluster):

- discussed the remedy identified in the appellant's notice of appeal or otherwise conveyed to the and parties to the appeal;
- described the remedies allowed under the relevant legislation;
- informed the appellant that they could request to amend their Notice of Appeal if they wished to adjust the remedy they were seeking in the appeal; and
- provided the appellant with a reasonable opportunity of at least eight days to request an amendment to their Notice of Appeal, and the reasonable opportunity has since passed.

Environmental Appeal Board

Lack of Appeal Rights

The Case Manager can dismiss an appeal for lack of appeal rights where the decision the appellant seeks to appeal was not made pursuant to:

- the imposition of an administrative penalty under section 6.2(1) of the *Ecological Reserve Act* or a decision that a person failed to perform a term or condition of a compliance agreement under section 6.3(3) of the *Ecological Reserve Act*;
- any provision within
 - the *Environmental Management Act* or its regulations, or
 - the *Integrated Pest Management Act* or its regulations;

- a decision as defined in section 40(1) of the *Greenhouse Gas Industrial Reporting and Control Act* (including the reference to section 12 of the *Greenhouse Gas Emission Administrative Penalties and Appeals Regulation*);
- a decision contained in an administrative penalty notice under section 38, or a reconsideration decision under section 47(4)(b), of the *Low Carbon Fuels Act*;
- a notice of decision issued under section 36.3 of the *Mines Act*;
- the imposition of an administrative penalty under section 27.1(1) of the *Park Act* or a decision that a person failed to perform a term or condition of a compliance agreement under section 27.2(3) of the *Park Act*;
- an order issued by the comptroller, a water manager, or an engineer, pursuant to the *Water Sustainability Act*, the *Water Users' Communities Act*, or the regulations of either;
- a decision, made pursuant to the *Wildlife Act*, by
 - a regional manager or director, affecting
 - a licence, permit, registration of a trapline, or guiding territory certificate held by a person, or
 - an application by a person for any of those things, or
 - a regional manager, pursuant to section 61(1.1)(a) or (b) of the *Wildlife Act*; or
- a decision as defined in section 36(1) of the *Zero-Emission Vehicles Act*.

Lack of Standing

The Case Manager can dismiss an appeal for lack of standing where the appellant:

- was not the one to whom notice was given of an appealed decision made under the *Mines Act*;
- is not the "person who is liable" for an administrative penalty under the *Ecological Reserve Act* or the *Park Act*;
- was not the "person affected" by a decision under an appealed decision made under the *Wildlife Act*; or
- was not served with an appealed decision under the
 - *Greenhouse Gas Industrial Reporting and Control Act*,
 - *Low Carbon Fuels Act*, or
 - *Zero-Emission Vehicles Act*.

Lack of Appropriate Remedy

The Case Manager can dismiss an appeal for lack of standing where the remedy sought for an appeal under the *Mines Act* does not involve varying or rescinding the decision.

Forest Appeals Commission

Lack of Appeal Rights

The Case Manager can dismiss an appeal for lack of appeal rights where the appealed decision:

- was not made pursuant to the *Forest Act*, *Forest and Range Practices Act*, *Private Managed Forest Land Act*, *Range Act*, or *Wildfire Act*;
- was made under the *Private Managed Forest Land Act*, but not under sections 26(1), 27(1), 27(2), 30, 31(1), or 32 of that act; or
- is a review, under
 - section 80 of the *Forest and Range Practices Act* of a determination made under that act,
 - section 69(1) of the *Range Act*, an order, decision, or amendment under that act, or
 - section 37(1) of the *Wildfire Act*, or an order under that act,

where that review is of a determination, order, or decision that was already the subject of an appeal to the Forest Appeals Commission.

Lack of Standing

The Case Manager can dismiss an appeal for lack of standing where the appellant is not:

- for appeals filed under the *Forest Act*,
 - the person about whom, or about whose agreement, the appealed determination, order, or decision was in respect of;
- for appeals filed under the *Forest and Range Practices Act*,
 - the subject of the decision they seek to appeal, or
 - the Forest Practices Board;
- for appeals filed under the *Private Managed Forest Land Act*, the person who was the subject of the appealed order, decision, or determination;
- for appeals filed under the *Range Act*, the subject of the appealed order, decision, or amendment(s);
- for appeals filed under the *Wildfire Act*, the subject of the appealed order or the Forest Practices Board.

Lack of Appropriate Remedy

The Case Manager can dismiss an appeal for lack of standing where the remedy sought is not, other than for the *Private Managed Forest Land Act*:

- variation or rescission of the appealed determination, decision, or order,
- a referral of the matter back to the decision-maker, or

- in the case of the *Forest and Range Practices Act*, a request by the Forest Practices Board, that the Forest Appeals Commission order requiring an official or the minister to make a determination under sections 71 (administrative penalty) or 74 (remediation order) of that act.

Energy Resource Appeal Tribunal

Lack of Appeal Rights

The Case Manager can dismiss an appeal for lack of appeal rights where the appealed determination or decision:

- was appealed by a land owner, and the determination or decision was not made
 - under section 25 of the *Energy Resource Activities Act*, to issue a permit allowing energy resource activities to be carried out on the land of the land owner,
 - under section 31 of the *Energy Resource Activities Act*, to amend a permit, where the amendment changes the effect of the permit on the land of the land owner,
 - a decision by a review official under section 71 of the *Energy Resource Activities Act*, with the effect that
 - a permit is issued to allow energy resource activities on the land of the land owner, or
 - a permit is amended such that the amendment changes the effect of the permit on the land of the land owner; or
- is a determination that was appealed by an eligible person, as defined in section 69(1) of the *Energy Resource Activities Act*, but for which the eligible person has already applied for a review of the determination under section 70(1) of that act.

Lack of Standing

The Case Manager can dismiss an appeal for lack of standing where the appellant is not an eligible person as defined in section 69(1) of the *Energy Resource Activities Act*, including the owner of land on which an “operating area”, as defined in section 1 of the *Energy Resource Activities Act*, is located.

Lack of Appropriate Remedy

The Case Manager can dismiss an appeal for lack of standing where the remedy sought is not:

- variation or rescission of the appealed determination or decision, or

- a referral of the matter back to the decision-maker.

A handwritten signature in black ink, appearing to read "D. Le Houillier". The signature is fluid and cursive.

Darrell Le Houillier, Chair