



## REVIEW AND APPEAL

### [Definitions](#)

1. [Purpose](#)
2. [Objectives](#)
3. [Legislation and Regulations](#)
4. [Application](#)
5. [Policy](#)
6. [Procedures](#)
7. [References](#)
8. [Document Control Information](#)

## Definitions

The following definitions apply for the purposes of this Policy:

*“Appointed Board”* means the appointed members of the Forest Practices Board and includes the Chair, the Vice-Chair and Board Members.

*“Appointed Board members”* means individual members of the Appointed Board.

*“Board staff”* means staff employed by the Forest Practices Board.

*“Board”* means the Forest Practices Board organization as a whole, and includes Appointed Board members and Board staff.

*“Board or Board’s mandate”* means the purpose and duties of the Forest Practices Board as specified in the following legislation:

- *Forest and Range Practices Act*
- *Wildfire Act*
- Forest Practices Board Regulation

*“Chair”* means Chair of the Forest Practices Board.

*“Party”* means government, or the holder of a licence under the *Forest Act* or the *Range Act*.

## 1. Purpose

This policy establishes the Board's approach to reviews and appeals under the *Forest and Range Practices Act* (FRPA) and the *Wildfire Act*. It describes when, and under what circumstances, the Board will engage in reviews and appeals.

The Board can request a review of, or appeal, decisions made by government officials under FRPA or the *Wildfire Act*, such as determinations of noncompliance, penalties or approvals of plans for forestry or range operations. Reviews and appeals can be made in response to a public request, or initiated by the Board. The Board can also participate in appeals of contravention determinations made by licensees.

## 2. Objectives

The objectives of this policy are to

- Ensure a consistent approach to participation in, and initiation of, reviews and appeals to the Forest Appeals Commission (FAC).
- Establish standards for implementation of the Board's review and appeal mandate.
- Establish roles and responsibilities for reviews and appeals.
- Increase transparency in the conduct of reviews and appeals.

## 3. Legislation and Regulations

### *Forest and Range Practices Act*

#### **Board may require review of a determination**

- 81 (1) If the board first receives the consent of the person who is the subject of a determination under section 16, 37, 71 or 74 of this Act, the board may require a review of the determination by the person who made the determination, or another person employed in the ministry and designated in writing by the minister.
- (2) To obtain a review of a determination under subsection (1), the board must require the review not later than 3 weeks after the date the notice of determination was given to the person.
- (3) The minister may extend the time limit for requiring a review under this section before or after its expiry.
- (4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

#### **Appeal to the commission by a person who is the subject of a determination**

- 82 (1) The person who is the subject of a determination referred to in section 80, other than a determination made under section 77.1, may appeal to the commission either of the following, but not both:
- (a) the determination;
- (b) a decision made after completion of a review of the determination.

- (2) The board, if it so requests, has standing to be a party to an appeal under this section.
- 83 (1) The board may appeal to the commission either of the following, but not both:
- (a) a determination referred to in section 81;
  - (b) a decision made after completion of a review of the determination.
- (2) The board may apply to the commission for an order under section 84 (2) if
- (a) the minister authorized under section 71 or 74 of this Act to make a determination has not done so, and
  - (b) a prescribed period has elapsed after the facts relevant to the determination first came to the knowledge of the official or the minister.

### *Wildfire Act*

#### **Board may require review of an order**

- 38 (1) If the board first receives the consent of the person who is the subject of an order referred to in section 37 (1), the board may require a review of the order by the person who made the order, or another person employed in the ministry and designated in writing by the minister.
- (2) To obtain a review of an order under subsection (1), the board must require the review not later than 3 weeks after the date the notice of the order was given to the person who is the subject of the order.
- (3) The minister may extend the time limit for requiring a review under this section before or after the time limit's expiry.
- (4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the order under review.

#### **Appeal to the commission by the board**

- 40 (1) The board may appeal to the commission from either of the following, but not both:
- (a) an order referred to in section 37;
  - (b) a decision made after completion of a review of the order.

## **4. Application**

This policy applies to Board staff and Appointed Board Members.

## **5. Policy**

The Board normally prefers to appeal matters to the FAC due to the Commission's independence and for reasons of efficiency, fairness and finality, rather than requesting reviews of orders or decisions. While open to the option of administrative review, this route would be the rare exception based on unique circumstances.

In considering whether to pursue an appeal, or request a review, the Board will apply the following principles and considerations:

### **5.1 Principles**

- a) The Board advocates for fair and reasonable application of the *FRPA* and the *WA* to achieve sustainable use of forest and range lands.
- b) The Board acts on behalf of the public interest, not any single group.

### **5.2 Main Considerations**

The Board will consider whether a review or appeal will, in the opinion of the Board:

- a) Help to improve forest or range management.
- b) Help to sustain public confidence in forest or range management.
- c) Encourage the fair and consistent application of the *FRPA* and the *WA*.
- d) Provide clarification or interpretation of important sections of the Acts.
- e) In cases where the Board has received a complaint, help to solve the problem.

### **5.3 Strategic Considerations**

The Board will consider whether:

- a) The specific determination is important in and of itself (e.g., an egregious breach, an example of widespread non-enforcement of the law, an incident of strategic importance.).
- b) The Board wants to obtain a legally binding decision that is likely to set a precedent with a province-wide impact.
- c) A legal issue is inherently fuzzy, and it would be helpful to get a definitive FAC ruling on the point.
- d) Government and the Board disagree on a point of law, and it needs to be clarified.
- e) It is desirable for the Board to assert its authority as a public watchdog.

### **5.4 Other considerations**

The Board may also consider:

- a) Whether there is a better way to address the issue.
- b) The financial and legal resources of the subject of the determination.
- c) Whether the Board has been asked to seek a review or appeal.
- d) The likelihood that the public interest will be represented by the subject of the determination (licensee) or the government.

## **5.5 Roles and Responsibilities**

### **Chair**

- Determine if the Board will request a review or appeal, or participate in an appeal.

### **Appointed Board Members**

- When requested by the Chair, review and provide advice on participation in specific review or appeal cases.

### **Executive Director**

- Approve procedures for implementing this policy.

### **General Counsel**

- Develop procedures for implementing this policy. Review determinations and requests for review or appeals and recommend to the Chair whether or not the Board should participate. Where the Chair decides to proceed, represent the Board in the proceedings.

### **Board Staff**

- At the request of General Counsel, review determinations to assist with preparing recommendations for involvement, provide professional expertise and participate in review and appeal cases.

## **6. Procedures**

Review and Appeal Procedures to be developed.

## **7. References**

- Board Policy and Procedures Policy
- Information-Sharing Guidelines between the Forest Practices Board and the Ministry of Forests, Lands and Natural Resource Operations regarding Administrative Determinations, Reviews and Appeals

## 8. Document Control Information

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Approved by:



Kevin Kriese, Chair  
Forest Practices Board