



REVIEW AND APPEAL

1. Purpose

This policy establishes the Board's approach to reviews and appeals under the *Forest and Range Practices Act* (FRPA), the *Wildfire Act* and the *Range 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, certain decisions made by government officials under FRPA or the *Wildfire Act*, such as determinations of non-compliance, penalties, and 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 also has a right to participate in appeals initiated by the person who is subject to the determination.

2. Objectives

The objectives of this policy are to:

- promote a consistent approach to initiating and participating in ministry reviews and appeals to the Forest Appeals Commission (FAC);
- establish standards for carrying out the Board's review and appeal mandate;
- establish roles and responsibilities for reviews and appeals; and
- increase transparency in the conduct of reviews and appeals.

3. Legislation

[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 2.39 (1), 16, 37, 71, 74, 74.2, 74.4 or 74.6 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.*

Appeal to the commission by the board

- 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 is authorized under section 71, 74, 74.2, 74.4 or 74.6 to make a determination and 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 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 FAC's independence and for reasons of efficiency, fairness, and finality, rather than requesting reviews of orders or decisions. While open to pursuing reviews, this option is less common.

In considering whether to initiate or join an appeal, or request a review, the Board will consider the following principles and considerations:

5.1 Principles

- a) The Board advocates for a fair and reasonable application of *FRPA*, the *Wildfire Act* and the *Range Act* in support of a 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 is likely to:

- a) be successful;
- b) help to improve forest or range management;
- c) help to sustain public confidence in forest or range management;
- d) encourage the fair and consistent application of *FRPA*, the *Wildfire Act* and the *Range Act*;
- e) clarify the meaning of important sections of *FRPA*, the *Wildfire Act* and the *Range Act*; and
- f) 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, a contravention had or risked having a material impact to the interests of Indigenous persons, an example of widespread non-enforcement of the law, an incident of strategic importance);
- b) it is desirable for the Commission to make a decision that could serve as a precedent with a province-wide impact;
- c) a legal issue lacks clarity, 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; and
- e) it is desirable for the Board to assert its authority as a public watchdog and as the only third party with a right to appeal.

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; and
- d) the likelihood that the public interest will be represented by the existing parties in the appeal.

5.5 Roles and Responsibilities

Chair

- Give instructions to General Counsel about whether 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.

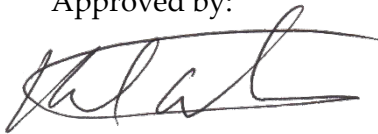
General Counsel

- Review determinations and notices of appeal and make recommendations to the Chair.
- Represent the Board in review and appeal 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.

Approved by:



Keith Atkinson, Chair
Forest Practices Board