



## **Forest Appeals Commission**

# **RULES**

July 1, 2016  
Amended: April 2019

# Forest Appeals Commission

## RULES

### **Table of Contents**

<b>INTRODUCTION .....</b>	<b>4</b>
<b>GENERAL .....</b>	<b>4</b>
Rule 1    Definitions .....	4
Rule 2    Applying the rules .....	5
Rule 3    Effect of non-compliance .....	5
Rule 4    Calculating time .....	5
<b>APPEALS AND PARTIES .....</b>	<b>6</b>
Rule 5    Starting an appeal .....	6
<i>Deemed date of receipt of notice of appeal sent by registered/certified mail .....</i>	<i>6</i>
Rule 6    Extension of time to file an appeal .....	6
Rule 7    Acknowledgement of appeal .....	7
Rule 8    Representation before the Commission .....	7
Rule 9    Change in contact information .....	7
Rule 10   Adding or removing parties to an appeal .....	7
Rule 11   Adding or removing interveners to an appeal .....	8
<b>DOCUMENT DELIVERY .....</b>	<b>9</b>
Rule 12   Filing documents with the Commission .....	9
<i>Filing documents by email or fax .....</i>	<i>9</i>
<i>Filing multiple copies of a document .....</i>	<i>9</i>
<i>When documents are deemed to be delivered to the Commission .....</i>	<i>9</i>
Rule 13   Delivering documents to parties and interveners .....	9
<i>When delivery of a document is deemed to be complete .....</i>	<i>10</i>
<i>Alternative method of delivery .....</i>	<i>10</i>
<b>APPEAL MANAGEMENT .....</b>	<b>10</b>
Rule 14   Joining or consolidating appeals .....	10
Rule 15   Pre-hearing conferences .....	10
Rule 16   Facilitated settlement (mediation) .....	11
Rule 17   Consent orders .....	11
<b>APPLICATIONS .....</b>	<b>11</b>
Rule 18   General procedure .....	11
<i>Applications for documents .....</i>	<i>12</i>
<b>HEARINGS .....</b>	<b>12</b>
Rule 19   Scheduling a hearing .....	12

**Forest Appeals Commission**  
**RULES**

Rule 20	Failure to participate in a hearing .....	13
Rule 21	Oral hearings .....	13
	<i>Pre-hearing submissions (Statement of Points) and document disclosure</i> .....	13
	<i>Non-compliance with pre-hearing disclosure of documents, legal authorities, witnesses</i> .....	14
	<i>Photographing and recording during a hearing [as amended 04/19]</i> .....	14
Rule 22	Written hearings .....	14
Rule 23	Interpreters, assistance for visually and hearing impaired, and other accommodations .....	15
Rule 24	Closing of the record .....	15
<b>WITNESSES</b>	.....	<b>15</b>
Rule 25	Oath or affirmation .....	15
Rule 26	Application for a summons (order to attend as a witness) .....	15
	<i>Serving the summons (order) and witness fees and expenses</i> .....	16
	<i>Application to amend or cancel a summons</i> .....	16
Rule 27	Expert evidence .....	16
	<i>Expert report</i> .....	16
	<i>Notice of expert testimony (without report)</i> .....	17
	<i>Expert reply</i> .....	17
	<i>Expert to be available for cross-examination</i> .....	17
	<i>Proving an expert's qualifications</i> .....	17
	<i>Changing the dates for delivery of an expert report</i> .....	17

**FORMS**

**Form 1** – Notice of Appeal

# Forest Appeals Commission

## RULES

### INTRODUCTION

The Forest Appeals Commission has made these Rules pursuant to [section 11\(1\) of the Administrative Tribunals Act](#). If a matter arises during the appeal process that is not envisioned by these Rules, the Commission will take steps to ensure that the appeal process is fair and expeditious and in accordance with the applicable legislation and the principles of natural justice.

In the case of a conflict with any applicable statute or regulation, the statute or regulation will override these Rules.

In addition to these Rules, the Commission has prepared a comprehensive [Practice and Procedure Manual](#) which describes the general practices, procedures and policies that have been adopted by the Commission to fill in the gaps left by the legislation and the Rules. The Commission has also created [Information Sheets](#) on discrete subjects.

### GENERAL

#### Rule 1 – Definitions

1. In these Rules:

“**address for delivery**” means the specific location where documents are to be sent during the appeal as identified by a party or intervener, or as may be inferred from the party or intervener’s usual method of delivering documents to the Commission and/or to the other parties and interveners, and may be the person’s current postal address, fax number, or email address;

“**appellant**” means the person bringing an appeal;

“**Board**” means the Forest Practices Board;

“**business day**” means 8:30 am to 4:30 pm, Monday through Friday, excluding public holidays;

“**calendar day**” is each day shown on a calendar and includes weekends and holidays;

“**Commission**” means the Forest Appeals Commission, and includes a member of the Commission;

“**Council**” means the Private Managed Forest Land Council;

“**day**” means “calendar day” unless it is expressly stated to be a “business day”;

“**document**” includes a letter, email, application, submission, reply, notice, photograph, chart, report, plan, sound recording, videotape, or other thing upon which information is communicated or recorded, but does not include a notice of appeal;

“**file**” or “**filing**” means effective delivery of a document to the Commission;

“**intervener**” means a person invited by the Commission to participate in an appeal under section 83.1 of the *Forest and Range Practices Act*, section 70.1 of the *Range Act*, 40.1 of the *Wildfire Act* or section 33(6) of the *Private Managed Forest Land Act*;

“**member**” means a person appointed by Order in Council as a member of the Commission;

# Forest Appeals Commission

## RULES

“**oral hearing**” means an in-person hearing;

“**panel**” means those members (1 or 3 members) designated by the Commission Chair to hear an appeal;

“**party**” means an appellant, respondent, or third party in an appeal;

“**representative**” includes a lawyer or agent authorized to represent a person in an appeal;

“**respondent**” means the government or the Council, depending on the statute under which the decision being appealed was made;

“**submission**” means written information or argument filed by a party or intervener for consideration by the Commission in support of, or in response to, an application or appeal; and

“**third party**” means a person invited by the Commission to be a third party in an appeal and includes the Board if it is added as a party to an appeal.

### **Rule 2 – Applying the rules**

1. All parties and interveners must comply with these Rules unless the Commission orders or directs otherwise under [section 11\(3\) of the \*Administrative Tribunals Act\*](#).
2. Unless otherwise stated, a Commission member may exercise any power under these Rules on the member’s own initiative or on the application of a party or intervener.
3. Unless otherwise directed by the Commission, these Rules apply to all appeals before the Commission, whether commenced before or after the date of these Rules.

### **Rule 3 – Effect of non-compliance**

1. In addition to the Commission’s powers under [section 18 of the \*Administrative Tribunals Act\*](#), if a party or intervener fails to comply with these Rules or a procedural order or direction of the Commission, the Commission may:
  - a. make an order for costs; and/or
  - b. make any other decision or order the Commission considers appropriate in the circumstances.
2. Despite Rule 3(1), any technical defect or irregularity in form will not invalidate the Commission’s proceedings and does not constitute non-compliance with these Rules.

### **Rule 4 – Calculating time**

1. To calculate deadlines under these Rules, or in any order or direction of the Commission, the days are counted as calendar days.
2. When a due date is to be counted forward in time (e.g., 10 calendar days to do something), the calendar days are counted by excluding the first day and including the last day. If the due

## Forest Appeals Commission RULES

date falls on a Saturday, Sunday or public holiday, the due date will be the next calendar day that is not a Saturday, Sunday or public holiday.

3. When counting backward from a hearing date to determine a due date (e.g., notice of expert reports and statement of points), the calendar days are counted by excluding the first day of the hearing and including the last day (i.e., the last day is the due date). If the due date falls on a Saturday, Sunday or public holiday, the due date will be the calendar day that falls before the Saturday, Sunday or public holiday (e.g., the Friday before the weekend).
4. The Commission may modify a time limit in the Rules or in any order or direction of the Commission, whether or not the time limit has already expired, if the Commission determines that it is fair and appropriate in the circumstances.

### APPEALS AND PARTIES

#### Rule 5 – Starting an appeal

1. A person must file a notice of appeal with the Commission, which may be in [Form 1](#), containing the information required by [section 23 of the Administrative Tribunals Act](#).
2. The notice of appeal may be filed with the Commission by regular mail, registered or certified mail, courier, hand delivery, fax or email.

#### ***Deemed date of receipt of notice of appeal sent by registered or certified mail***

3. If a notice of an appeal is sent to the Commission by registered or certified mail, the appeal is deemed to be received by the Commission on the official date stamp showing Canada Post's receipt of the document. For all other methods of delivery of a notice of appeal, the date of receipt is set out in Rule 12(9)-(10) [When documents are deemed to be delivered to the Commission].

#### Rule 6 – Extension of time to file an appeal

1. An application for an extension of time to file an appeal pursuant to [section 24\(2\) of the Administrative Tribunals Act](#) may be made by filing with the Commission an "Application to Extend the Time to File an Appeal" attached to [Form 1](#) [Notice of Appeal], or by filing an application with the Commission containing the following information:
  - a. the reasons for the delay in filing the appeal; and
  - b. any special circumstances that the Commission should consider when making its decision on the extension request.
2. The application must accompany a completed notice of appeal in accordance with Rule 5(1);
3. The Commission will not take any further action on an appeal unless an extension of time is granted.

## **Forest Appeals Commission**

### **RULES**

#### **Rule 7 – Acknowledgement of appeal**

1. Following receipt of a notice of appeal, the Commission will:
  - a. notify the appellant that the appeal has been received;
  - b. provide a copy of the notice of appeal and any documents included with it to the respondent, who will immediately be added as a party to the appeal, and to any ministers required to be notified under the legislation;
  - c. if applicable, provide a copy of the notice of appeal and any documents included with it to the person who is the subject of the decision, if different from the appellant, and offer that person third party status in the appeal;
  - d. if required by the legislation, provide a copy of the notice of appeal and any documents included with it to the Board and offer it third party status in the appeal; and
  - e. if applicable, notify any other persons identified as being potentially affected by the Commission's decision on the appeal, and determine whether these persons will be offered third party status in the appeal.

#### **Rule 8 - Representation before the Commission**

1. If a party or intervener appoints a representative, the following information for the representative must be provided to the Commission:
  - a. full name of the representative;
  - b. the name of the party or intervener that the person is representing;
  - c. the representative's address;
  - d. the representative's daytime telephone number;
  - e. the representative's fax number and email address (if any); and
  - f. the representative's address for delivery [defined in Rule 1].
2. If a party or intervener has a representative, the address for delivery of the representative will be the address for delivery of the party or intervener.
3. A representative who withdraws or ceases to represent a party or intervener must immediately notify the Commission, in writing.

#### **Rule 9 – Change in contact information**

1. A party or intervener must immediately notify the Commission, in writing, of a change to the contact information for the party or intervener.

#### **Rule 10 – Adding or removing parties to an appeal**

1. On its own initiative, or on the application of a person, the Commission may add, substitute or remove a person as a party to an appeal.

## Forest Appeals Commission RULES

2. In addition to the requirements of Rule 18 [General application procedure], an application to be added as a party must include the following information:
  - a. The applicant's full name, address for delivery, telephone number, fax number and email address (if any);
  - b. an explanation of how the applicant will be impacted or affected by the subject matter of the appeal and/or what information the applicant can provide on an issue in the appeal;
  - c. the reasons why the applicant should be added as a party or allowed to participate in the appeal; and
  - d. the amount of participation that the applicant seeks (e.g., to make written submissions only, to present evidence on a particular subject or issue, the ability to cross-examine witnesses, the ability to present opening and closing arguments).
3. If the application is allowed, the Commission will advise the person of any terms, conditions or limitations placed on the person's participation in the appeal.
4. The Commission will not substitute a person as an appellant without the consent of that person.
5. An application to remove a party must explain why the person to be removed is not, or has ceased to be, a proper or necessary party to the appeal.

### **Rule 11 – Adding or removing interveners to an appeal**

1. In addition to the requirements of Rule 18 [General application procedure], an application to be added as an intervener must include the following information:
  - a. the applicant's full name, address for delivery, telephone number, fax number and email address (if any);
  - b. the amount of participation sought in the appeal (e.g., to make written submissions only, to present evidence on a particular subject or issue, the ability to cross-examine witnesses, the ability to present opening and closing arguments); and
  - c. a description of the following if the intervention is sought in an appeal filed under a statute other than the *Private Managed Forest Land Act*:
    - i. the issues the applicant seeks to address;
    - ii. the applicant's expertise or interest in a particular subject; and
    - iii. the particular perspective that the applicant will provide to the Commission and whether it is different from the perspectives of the parties.
2. If the intervention is sought in an appeal filed under the *Private Managed Forest Land Act*, the applicant must comply with Rule 11(1)(a) and (b), and also provide a description of how the applicant is "materially affected" by the outcome of the appeal.
3. If the application is allowed, the Commission will advise of any terms, conditions or limitations placed on the intervention in the appeal.



## **Forest Appeals Commission**

### **RULES**

4. An application to remove an intervener must explain why the intervener ought to be prevented from participating in the appeal.

#### **DOCUMENT DELIVERY**

### **Rule 12 – Filing documents with the Commission**

1. Unless otherwise ordered or directed, any document filed with the Commission must also be provided to all other parties and interveners to the appeal.
2. Each document filed with the Commission shall have all pages numbered consecutively or the documents must be organized using tabs.
3. Documents may be filed with the Commission by mail, courier, hand delivery, email or fax, subject to any restrictions or conditions set out in these Rules.

#### ***Filing documents by email or fax***

4. Documents, including any attachments, with a combined total of 10 pages or less may be filed with the Commission by email or by fax.
5. Documents, including any attachments, with a combined total of more than 10 pages may be sent to the Commission by email or fax, provided that a printed copy is filed with the Commission by mail, courier or hand delivery.
6. An email to the Commission must include the name of the sender.
7. A document sent to the Commission by fax must include a cover page with sufficient information to identify the sender, recipient, number of pages sent, date and time of transmission, and a telephone number to call if there are transmission problems.

#### ***Filing multiple copies of a document***

8. If multiple copies of a document are required to be filed with the Commission by these Rules, or by direction of the Commission, the required number of paper copies must be filed by mail, courier or hand delivery. The Commission will not make additional copies.

#### ***When documents are deemed to be delivered to the Commission***

9. A document that is received by the Commission after the business day is deemed to be delivered on the next day business day.
10. If a document is sent to the Commission by fax or email, the document is not deemed to be delivered to the Commission until the transmission is received by the Commission, regardless of the date or time that it is shown to have been sent.

### **Rule 13 – Delivering documents to parties and interveners**

1. Documents must be sent to the address for delivery of a party or intervener, unless the party or intervener consents to an alternative address for delivery or the Commission orders otherwise.

## **Forest Appeals Commission**

### **RULES**

2. When an address for delivery is an email address, the sender of a document is not required to mail or otherwise provide a paper copy unless directed to do so by the Commission.
3. If a party or intervener does not consent to the delivery of documents by fax or email, the Commission may make an order directing that documents be delivered by fax or email, subject to any terms, conditions or limitations that are appropriate in the circumstances.

#### ***When delivery of a document is deemed to be complete***

4. A document that is received by email or fax after the business day is deemed to be delivered on the next business day.
5. If the Commission is required to serve notice or a document on a party or other person, and that party or other person wants to establish that, pursuant to [section 19\(5\) of the \*Administrative Tribunals Act\*](#), the notice or document was not received by the deemed date of delivery due to absence, accident, illness, or other cause beyond his or her control, the person must notify the Commission, in writing, as soon as practicable.

#### ***Alternative method of delivery***

6. The Commission may approve an alternate method of delivering documents to a party or intervener if it is impractical to deliver a document to the specified address for delivery, or an alternate method is otherwise warranted in the circumstances.

## **APPEAL MANAGEMENT**

### **Rule 14 – Joining or consolidating appeals**

1. In addition to the powers under [section 37 of the \*Administrative Tribunals Act\*](#), if two or more appeals before the Commission involve the same parties, the Commission may direct, upon such terms as it considers appropriate, that the appeals be consolidated (combined), heard together with any other appeal before the Commission, or the Commission may direct that one appeal be heard immediately after the other.
2. The Commission will notify all parties and interveners if it decides to combine the appeals or use any other procedure listed above.
3. An objection to the Commission's decision to consolidate an appeal must be made to the Commission, in writing, as soon as practicable.

### **Rule 15 – Pre-hearing conferences**

1. On its own initiative, or at the request of a party or intervener, the Commission may schedule a pre-hearing conference.
2. A request for a pre-hearing conference must be in writing, provide the reasons for the conference, potential dates, and include a list of the items to be discussed.

## Forest Appeals Commission RULES

3. If the Commission decides that a pre-hearing conference is warranted in the circumstances, it will notify the parties and interveners of the time, date and place for the conference, or the dial-up instructions (if conducted by teleconference), and will advise of any terms or conditions that apply.
4. Where notice of a pre-hearing conference has been properly given and a party or intervener fails to participate without advance written notice, the Commission may proceed in their absence.
5. If a Commission member conducts a pre-hearing conference and confidential settlement matters are discussed, that member will not sit on the panel that hears the merits of the appeal unless all parties agree, in writing.

### **Rule 16 – Facilitated settlement (mediation)**

1. On its own initiative, or at the request of a party, the Commission may conduct a settlement meeting (mediation) to resolve one or more issues in dispute.
2. The Commission will not convene a settlement meeting (mediation) unless all parties to the appeal agree to participate in settlement discussions.
3. The Commission may appoint a Commission member or other person to conduct the facilitated settlement.
4. If a Commission member conducts the settlement meeting and the appeal is not resolved, that member will not sit on the panel that hears the merits of the appeal unless all parties agree, in writing.

### **Rule 17 – Consent orders**

1. If the parties request an order from the Commission under [section 16\(1\)](#) or [section 17\(2\) of the Administrative Tribunals Act](#), the parties must provide the Commission with a copy of the order, executed by all parties, for consideration and signing by the Commission. The date must be left blank and will be filled in if the Commission signs the order.
2. An unexecuted copy of the consent order must also be provided to the Commission in Word format for posting on the Commission's website.

## APPLICATIONS

### **Rule 18 – General procedure**

1. All pre-hearing and post-hearing applications must be made to the Commission in writing. Pre-hearing applications include, but are not limited to, the following matters:
  - a. extensions, postponements, and adjournments ([section 39 Administrative Tribunals Act](#));

## Forest Appeals Commission RULES

- b. type of hearing (oral/written), expedited hearing, and change in the venue or location of a hearing;
  - c. summary dismissal of an appeal ([section 31 of the Administrative Tribunals Act](#));
  - d. disclosure of particulars;
  - e. production of documents or objects ([section 34\(3\) of the Administrative Tribunals Act](#));
  - f. summons for a witness (order to attend a hearing) ([section 34\(3\) of the Administrative Tribunals Act](#));
  - g. party or intervener status;
  - h. costs ([section 47 of the Administrative Tribunals Act](#));
  - i. site visits; and
  - j. evidentiary issues.
2. All applications must include:
- a. the grounds (the reasons) for the application;
  - b. the relief requested (the nature of the order or direction);
  - c. whether the other parties agree to it (if known); and
  - d. any evidence to be relied upon.
3. If more than 1 document is provided to the Commission as part of the evidence identified in Rule 18(2)(d), the documents must be organized by either numbering all documents consecutively, or by dividing the documents using tabs.

### ***Applications for documents***

4. Before applying for an order to produce documents under [section 34\(3\)\(b\) of the Administrative Tribunals Act](#), the applicant must ask the person in possession or control of the documents, in writing, to voluntarily produce the documents.
5. In addition to the requirements in Rule 18(2), an application for an order for documents must describe the attempts made to have the person voluntarily produce the documents.

## HEARINGS

### **Rule 19 - Scheduling a hearing**

1. The Commission will decide whether a hearing will be conducted:
  - a. orally,
  - b. by way of written submissions,
  - c. by telephone or videoconferencing, or
  - d. a combination of the above.

## **Forest Appeals Commission**

### **RULES**

2. If the Commission schedules an oral hearing, or a hearing by telephone or videoconference, it will notify all parties and interveners of the date, time and location (or dial-in directions) of the hearing in a “notice of hearing”.
3. If the Commission schedules a written hearing, it will notify the parties and interveners of the submission schedule.

#### **Rule 20 - Failure to participate in a hearing**

1. If an appellant has been given timely notice of the hearing and fails to attend the hearing or, if a written hearing, provide submissions in support of the appeal, the Commission may proceed with the hearing, dismiss the appeal as abandoned, or make any order appropriate in the circumstances.
2. If a respondent, third party, or intervener has been given timely notice of the hearing and fails to attend the hearing or, if a written hearing, provide submissions, the Commission may proceed with the hearing and disposition of the appeal without further notice to that party or intervener.

#### **Rule 21 – Oral hearings**

##### ***Pre-hearing submissions (Statement of Points) and document disclosure***

1. All parties are required to provide:
  - a. a Statement of Points containing:
    - i. a summary of his or her case to be presented at the hearing,
    - ii. a list of the witnesses to be called by that party (if any),
    - iii. the legal authorities (e.g., case law, legislation, legal articles or excerpts from text books) that will be relied upon at the hearing (if any); and
  - b. a copy of the documents that he or she will be referring to, or relying upon, at the hearing,in the following quantities and according to the following schedule unless the Commission directs otherwise:
  - i. the appellant must deliver 2 copies of its Statement of Points and documents to the Commission, and 1 copy to each party and intervener, at least 30 calendar days before the hearing commences;
  - ii. the respondent and any other party must deliver 2 copies of their respective Statements of Points and documents to the Commission, and 1 copy to each other party and intervener, at least 15 calendar days before the hearing commences.
2. Documents must be organized by numbering all pages consecutively, or by dividing the documents using tabs.
3. If a party intends to produce affidavit evidence at the hearing, the party must provide the affidavit evidence with the Statement of Points.

## **Forest Appeals Commission**

### **RULES**

4. If a party wishes to cross-examine the affiant on the contents of the affidavit, that party must apply to the Commission within a reasonable amount of time after receiving the affidavit.
5. The Commission may require interveners to provide a Statement of Points, witness list, authorities and documents.
6. All parties and interveners must bring to the hearing 1 additional copy of all documents (excluding legal authorities and Statements of Points) intended to be tendered as evidence. This copy will be provided to the official recorder and marked as an exhibit, if and when required.
7. The Commission may allow an appeal to proceed to a hearing even if an appellant has not fully complied with this Rule if it is satisfied that the other parties and interveners have sufficient information to prepare for the hearing.

#### ***Non-compliance with pre-hearing disclosure of documents, legal authorities, witnesses***

8. Despite Rule 21(1), at a hearing, a party or intervener may refer to, or rely upon, documents or legal authorities not previously disclosed, or hear from witnesses that were not previously identified, with the approval of the hearing panel.
9. The party relying on new documents or legal authorities must bring sufficient copies to the hearing such that there is a copy for each panel member, the Commission's appeal file, and each party and intervener. A copy of a new document must also be provided to the official recorder. The official recorder does not require a copy of new legal authorities.

#### ***Photographing and recording during a hearing*** [as amended 04/19]

10. Photographing, audio recording, video recording or other electronic recording of Board proceedings is prohibited without the prior approval of the Board or the panel.

### **Rule 22 - Written hearings**

1. All parties and interveners are required to provide their written submissions in accordance with the submission schedule established by the Commission, and in the following quantities, unless the Commission directs otherwise:
  - a. 2 copies to the Commission; and
  - b. 1 copy to each party and intervener.
2. All evidence (including affidavits and documents) and legal authorities must be included with the written submission.
3. Documents must be organized by numbering all pages consecutively, or by dividing the documents using tabs.
4. If a party:
  - a. seeks to cross-examine an affiant on the contents of an affidavit, or

## **Forest Appeals Commission**

### **RULES**

- b. seeks to have a portion of the written hearing conducted orally, the party must apply to the Commission.

#### **Rule 23 – Interpreters, assistance for visually and hearing impaired and other accommodations**

1. At least 30 calendar days before the hearing commences, a party or intervener must notify the Commission if he or she requires some type of accommodation or assistance to enable their meaningful participation at the hearing.
2. The Commission will make every effort to accommodate that person's needs, as is reasonable in the circumstances.

#### **Rule 24 - Closing of the record**

1. At the conclusion of the hearing, the record will be closed unless the panel directs otherwise.
2. Once the record is closed, no additional evidence will be accepted unless the panel decides the evidence is material, and that there is a good reason for the failure to produce it in a timely fashion.
3. If an application to reopen the hearing to allow additional evidence is granted by the panel, the other parties will have an opportunity to reply to the new evidence.
4. The hearing will not be reopened once the Commission's final decision is issued.

## **WITNESSES**

#### **Rule 25 - Oath or affirmation**

1. A person who gives evidence at an oral hearing is required to give that evidence under oath or affirmation.

#### **Rule 26 - Application for a summons (order to attend as a witness)**

1. If a proposed witness refuses to voluntarily attend a hearing to give evidence, a party may apply for an order requiring the person to attend the hearing to give evidence (a summons).
2. An application for this order must be made to the Commission at least 60 calendar days before the hearing is scheduled to commence.
3. Before applying to the Commission for this order, the applicant must ask the person to voluntarily attend as a witness.
4. In addition to the requirements in Rule 18 [General application procedure], an application for an order requiring a person to attend a hearing to give evidence must include the following information:
  - a. the name and address of the person wanted as a witness;

## **Forest Appeals Commission**

### **RULES**

- b. a brief summary of the evidence to be given by the witness, and an explanation of why the evidence is relevant and necessary;
  - c. the attempts made to have the witness voluntarily attend the hearing; and
  - d. if required, a list of the particular documents or other things the person must bring to the hearing.
5. Unless there is evidence that a proposed witness will not attend the hearing voluntarily, the Commission will not issue an order under this Rule.

#### ***Serving the summons (order) and witness fees and expenses***

6. The party who requested the order will be responsible for serving it on the person by leaving it with that person, or by leaving it at the person's usual residence, within a reasonable time before the date the person is required to appear.
7. The party who requested the order must pay any witness fees and expenses in accordance with [Schedule 3 of Appendix C of the BC Supreme Court Civil Rules](#), unless the witness is:
  - a. a party or intervener in the appeal;
  - b. a present officer, director or partner of a party or intervener in the appeal;
  - c. an employee of the provincial government; or
  - d. the Commission directs otherwise.

#### ***Application to amend or cancel a summons***

8. A person who is subject to a summons ordered by the Commission may apply to the Commission for an order cancelling or varying the summons. The application must set out the reason(s) the order should be cancelled or its terms should be varied.
9. An application to vary the terms of, or to cancel, an order must also be delivered to the person that requested the order.

## **Rule 27 – Expert evidence**

#### ***Expert report***

1. Unless the Commission directs otherwise, a party must deliver a written statement or report by an expert at least 84 calendar days before the scheduled oral hearing date or, if the hearing is in writing, 84 calendar days before the appellant's first written submission is due, in the following quantities:
  - a. 2 copies to the Commission; and
  - b. 1 copy to each party and intervener.
2. The expert's qualifications must be included with the report.
3. If there is an oral hearing, 1 additional copy of the statement or report and the expert's qualifications must be brought to the hearing for the official recorder.



## **Forest Appeals Commission**

### **RULES**

#### ***Notice of expert testimony (without report)***

4. Unless the Commission directs otherwise, a party that wishes to call an expert witness to testify at a hearing without a report must provide a notice of expert testimony at least 84 calendar days before the oral hearing is scheduled to commence in the following quantities:
  - a. 2 copies to the Commission; and
  - b. 1 copy to each party and intervener.
5. The notice must include:
  - a. the qualifications and areas of expertise of the witness;
  - b. a written summary of the opinion to be given at the hearing; and
  - c. the facts on which the opinion is based.
6. If there is an oral hearing, 1 additional copy of this notice must be brought to the hearing for the official recorder.

#### ***Expert reply***

7. Unless the Commission directs otherwise, a party must deliver an expert's reply report or notice of an expert witness in reply, without a report, at least 42 calendar days before the oral hearing is scheduled to commence or, if the hearing is in writing, then 42 calendar days before the appellant's first written submissions are due, in the following quantities:
  - a. 2 copies to the Commission; and
  - b. 1 copy to each party and intervener.
8. Notice of an expert reply must contain the same information required in Rule 27(2) or (5), whichever applies.
9. If there is an oral hearing, 1 additional copy of the reply report or notice must be brought to the hearing for the official recorder.

#### ***Expert to be available for cross-examination***

10. If a party wants to cross-examine an expert on his or her report, the party must provide reasonable advance notice to the party tendering the expert report, the Commission, and the other parties and interveners, advising that the expert is required to attend the hearing for cross-examination.

#### ***Proving an expert's qualifications***

11. A written statement of an expert's qualifications is proof that the expert has those qualifications, unless there is evidence to the contrary and the Commission finds otherwise.

#### ***Changing the dates for delivery of an expert report***

12. The parties may, by agreement, change the dates for delivery of a report or summary under this Rule, provided that they will be prepared to proceed on the date scheduled for the hearing, and advise the Commission of the agreement.

Forest Appeals Commission  
RULES

**FORMS**

[Form 1](#): Notice of Appeal