



Forest Appeals Commission

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Remedies

A remedy is an order that a party asks the Forest Appeals Commission (the “Commission”) to make at the end of an appeal. The appellant(s) 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!

Types of Remedies

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

Confirm, Rescind, or Vary the Decision

If the Commission 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 Commission to do this.

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

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

Send the Decision back to the Decision-Maker, with or without Directions

The Commission can return some or all of a decision to the original decision-maker, so that the decision-maker can reconsider the decision. When it does this, the Commission may provide directions, to help the decision-maker come to the right decision.

The Commission may do this in a number of situations. The Commission 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 Commission decides that a decision-maker failed to adequately consult with a First Nation, the Commission may send the decision back to the decision-maker with directions. The Commission 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.

The Commission might also return a matter to a decision-maker without directions, if the Commission does not have enough information to provide any helpful instructions. For example, if a decision-maker decided that it could not have amended a permit, on appeal, the Commission finds that the decision-maker could have done so, the Commission may send the matter back to the decision-maker. If the decision-maker did not even consider whether they should have amended the permit, or how, the Commission may not be in a position to provide any helpful directions.

Appellants (and, sometimes, a Third Party) will often ask the Commission to return decisions to the decision-maker, with or without instructions.

Direction to Make a Determination

Generally, the Commission cannot order a decision-maker to make a decision that they have not made. There is one important exception, however. The Forest Practices Board can ask the Commission to order an official or a minister to make a determination, where they have not done so for a period of time set by regulation, under two sections of the *Forest and Range Practices Act*. They are: section 71, which deals with administrative penalties; and section 74, which deals with remediation orders.

Describing Remedies

At the start of the appeal, the Appellant must describe the remedies they are seeking from the Commission. 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 Commission to **rescind** 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 Commission to **return the decision to the decision-maker, with directions**. If the answer is “no”, you should ask the Commission to **vary** the decision.

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

For example, consider an appeal where you have been given a penalty and a cost recovery order for starting or contributing to the spread of a wildfire. You do not think you started or contributed to the spread of the wildfire, but even if you did, you think that the penalty is too high. You might also notice that there was an error in how the decision-maker classified land that was damaged in the wildfire, but note this involves some complicated mathematics. Your list of remedies might look like this:

I want the Commission to:

1. rescind the decision, or alternatively,
2. vary the decision to reduce the administrative penalty to \$5,000, or alternatively,
3. return the matter to the decision-maker so that they can calculate the appropriate level of cost recovery, based on the correct classification of terrain damaged by the wildfire.

The Respondent would likely ask the Commission to confirm the decision. The Forest Practices Board may be a Third Party in this appeal (or they may have also started their own appeal), might ask the Commission to confirm, or increase, the penalty!