



## Public Participation in Environmental Decision Making in Alberta: Part II

### Appeals to the EAB

ELC Webinar  
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## About the ELC

- A charity operating since 1982
- Our mission: To ensure that laws, policies & legal processes protect the environment.
- 2 goals:
  - Good environmental law & policies
  - Effective public participation

Alberta **LAW**  
**FOUNDATION**

## What we can do for you

- Legal information & lawyer referrals
- Presentations
- Library
- Research & law reform

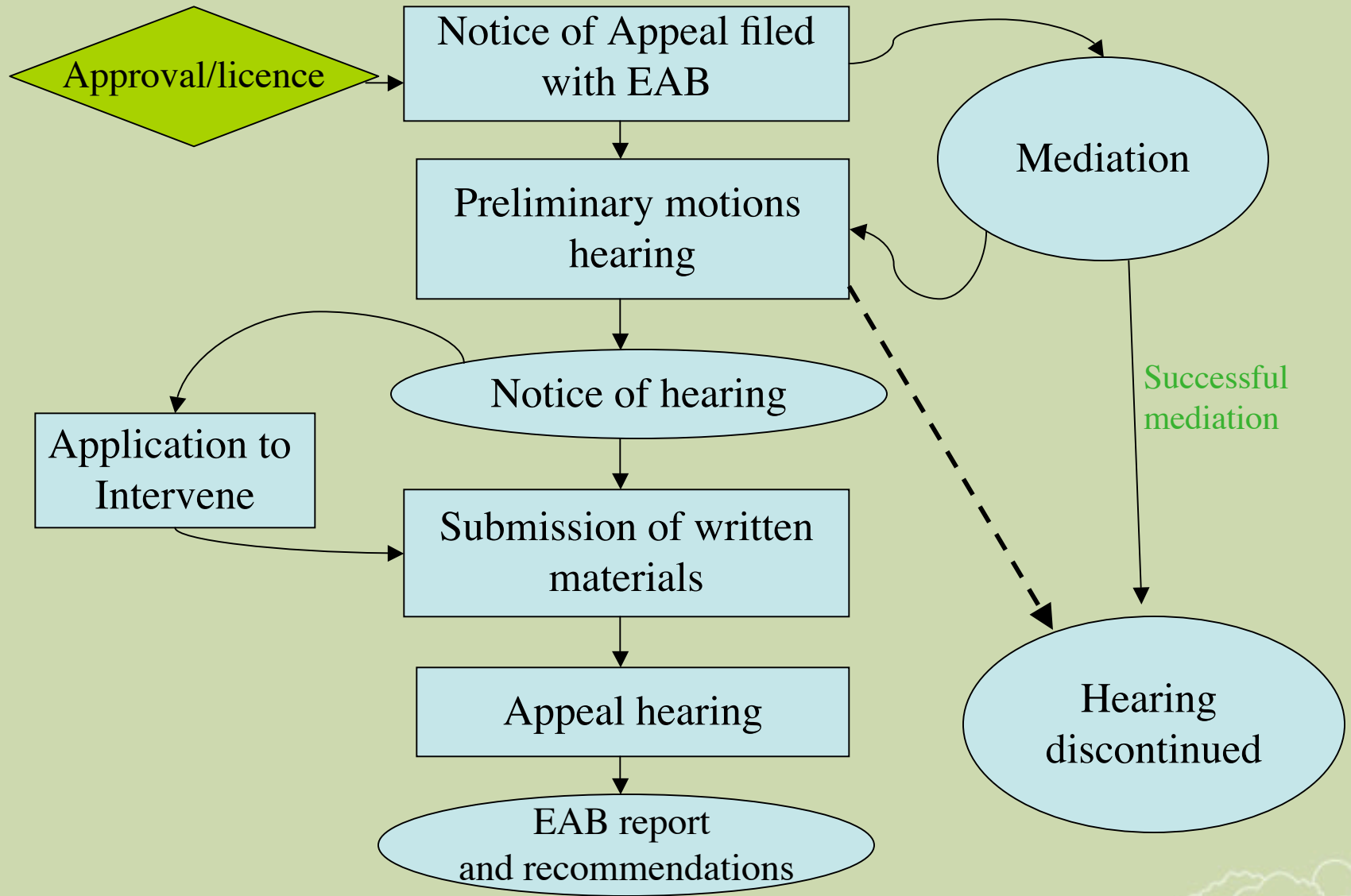


## Purpose of the Guide

### *A Guide to Public Participation in Environmental Decision-making in Alberta*

- <http://www.elc.ab.ca/pages/InformationResources/MaterialsAvailabletoDownload.aspx?id=879>
- Facilitate public participation
  - Informing decision-makers
  - Engaging communities and individuals
- Procedures
- Strategies
  - Standing
  - Effectiveness

## Part II - The appeal process



## Practical issues –before and after NoA



Collecting & analyzing evidence

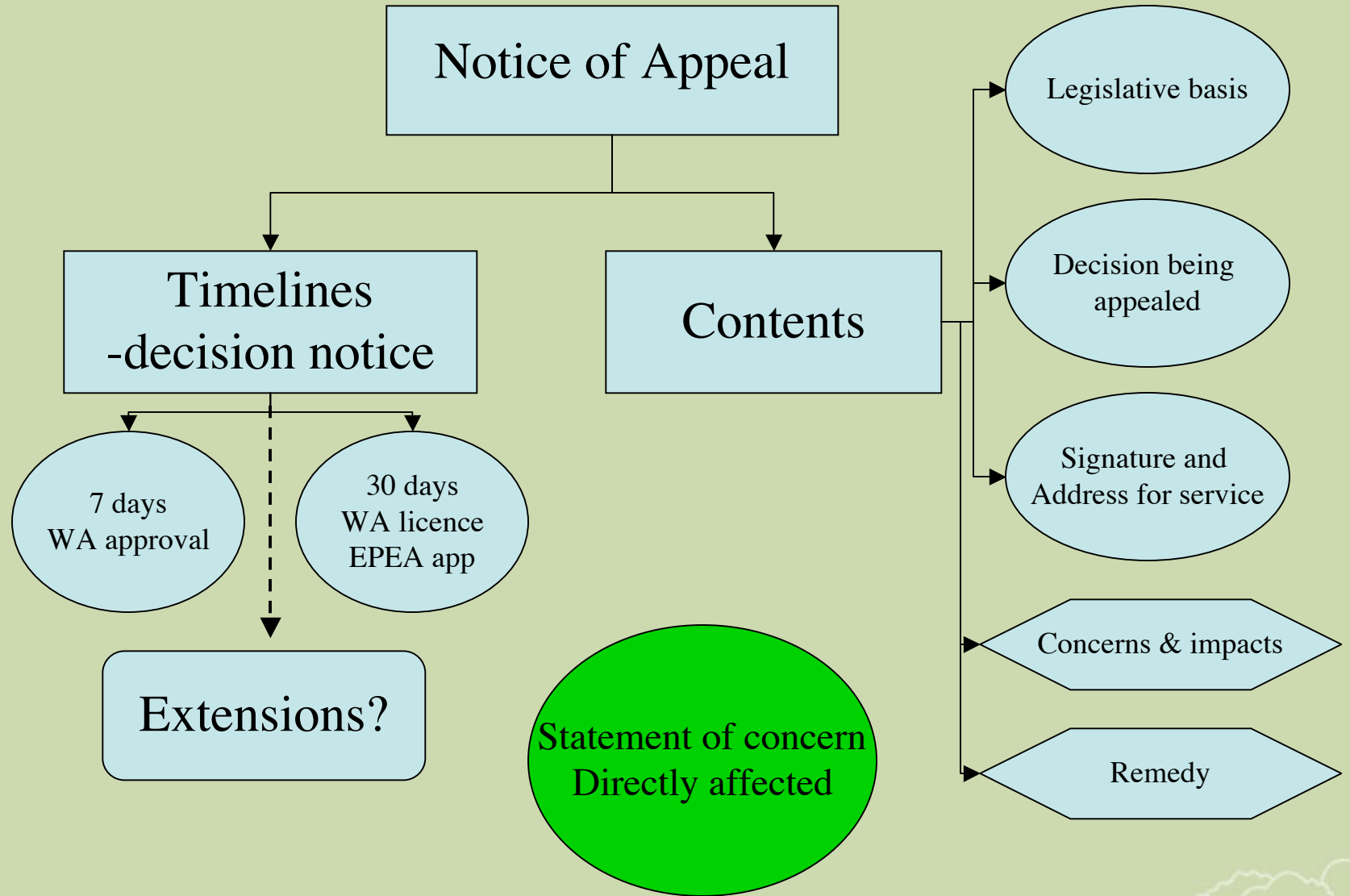
Meeting deadlines

Finding & preparing witnesses

Preparing written and oral submissions

Keeping a record

# Notice of Appeal



## EAB Resources

- Rules of Practice
  - <http://www.eab.gov.ab.ca/pub/Rules-August-2008.pdf>
- Decisions
  - <http://www.eab.gov.ab.ca/decisions.htm>
  - Contact directly for more recent decisions
- Mediation
  - [http://www.eab.gov.ab.ca/mediation\\_about.htm](http://www.eab.gov.ab.ca/mediation_about.htm)



## Mediation

- Voluntary
- Cost minimization
- Flexible remedies
  - Conditions beyond jurisdictional constraints
- Without prejudice

## Issues

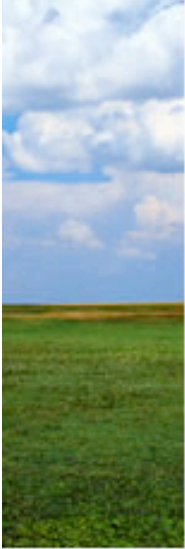
- Public scrutiny & setting “precedents”
- Enforcement = Court

## Pre-hearing matters

- Preliminary motions
  - Stay of the Director's decision
  - Interim costs
  - Standing – “directly affected”
  - Disclosure

## Pre-hearing matters

- Determination of issues
- Determination of redundancy with other hearing processes



## Interveners

- Apply to EAB
  - Explain how intervention will be “value added”
    - Interest & expertise related to issues, history in area, membership in the area
    - Distinguish evidence from main party
      - uniqueness of evidence
    - Indicate which side you support

## Hearing preparation

- EAB procedure letter
  - Time lines for the hearing
  - Witnesses
  - Order
- Written submission
  - approval and the process
  - Facts - environmental effects
    - reports (attached as exhibits)
  - Argument -how the facts justify outcomes
  - Relief
  - Proposed witnesses

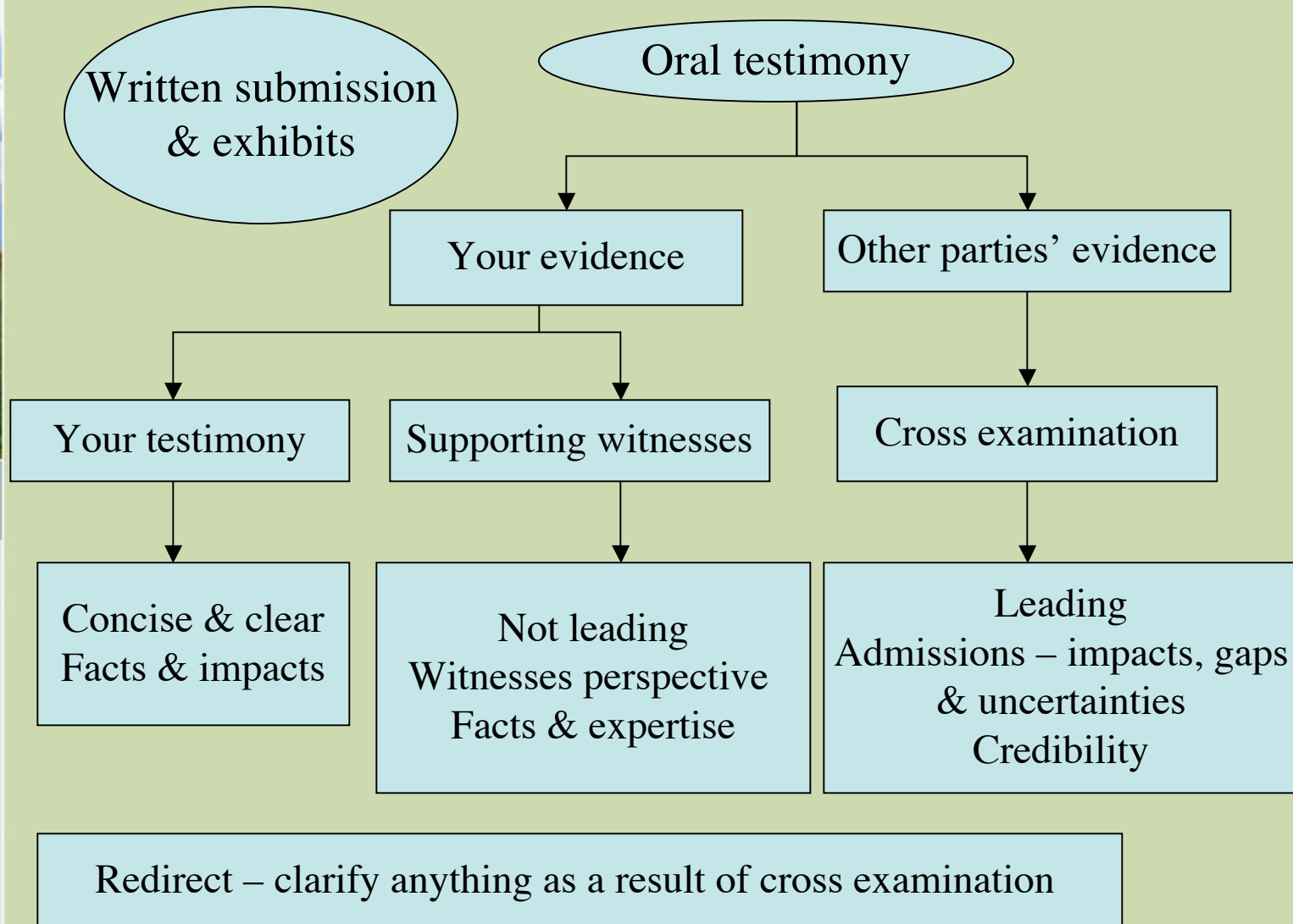
### Hearing

Opening statement

Oral testimony

Closing argument

## Evidence during the hearing



## The evidence “battle”

- Competing experts
- Relevance & probative value of evidence
- Uncertainty
  - Probability of harm
  - Causation
- Evidence problems
  - Cumulative effects
  - Policy questions

## Opening Statement & Closing Arguments

- Summary
  - Relevant issues
  - Relevant evidence & witnesses
  - How the appeal should be resolved
  
- Closing
  - in light of evidence presented why your argument should be accepted by the EAB
  - relief
  - costs



## Relief – opposition & conditions

Standards	Monitoring/reporting	Post activity
Operational limits (specific standards)	Timing and reporting requirements (incident and regular)	Specifics of reclamation standards
Storage/use/disposal of waste/contaminants	Sampling techniques to be used	Timeline for decommissioning
Continuous improvement requirements	Substances to be tracked	Amount of security (if legislatively required)
Emergency plans and management systems	Nature of monitoring (point source and ambient)	Post closure monitoring
Site requirements	Transparency & data availability	Conditions for re-entry and remediation

## Costs

- Who pays? If anyone
  - Typically the proponent
  - Government only if they acted in bad faith
- Record keeping
  - Time
  - Receipts

## Costs

- Justification
  - Need
  - Complexity
  - Relevance of evidence



## The Result

- Report and Recommendations
- Minister's decision
- Post decision impacts



## Support the ELC

- Registered charity – donations receive a tax receipt
- 100% of donations fund ELC public programs

<https://www.elc.ab.ca/pages/SupportELC/default.aspx>

CRA Registration Number - 11890 0679 RR0001

## Questions?

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