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DECISION NOS. EAB-WIL-20-A003(a) & EAB-WIL-20-A004(a)

In the matter of an appeal under the *Wildlife Act*, RSBC 1996, c. 488

BETWEEN:	Chad Sjodin, Hanna M. K. Buchanan, 1002670 BC Ltd., and Scott B. Campbell	**APPELLANTS**
AND:	Director, Wildlife and Habitat Branch	**RESPONDENT**
BEFORE:	A Panel of the Environmental Appeal Board David Bird, Panel Chair	
DATE:	Conducted by way of written submissions concluding on September 15, 2020	
APPEARING:	For the Appellant: Kevin Church, Counsel For the Respondent: Geneva Grande-McNeill, Counsel	

SUMMARY DISMISSAL DECISION

INTRODUCTION

[1] Hannah Buchanan and Chad Sjodin, and 1002670 B.C. Ltd. and Scott Mackenzie (collectively, the "Appellants"), filed two separate appeals with the Environmental Appeal Board (the "Board") in response to a Hunting and Trapping Regulations Synopsis[1] (the "Synopsis") published by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the "Ministry"). The Synopsis sets out updates on provincial hunting and trapping information, by region. Effective July 1, 2020, the Synopsis sets out a regulation change that removes the open caribou hunting season in Management Unit ("MU") 6-27 for the period of July 1, 2020 to June 30, 2022.

[2] The Appellants are licensed guide outfitters and/or hold guiding territory certificates which include areas in MU 6-27. Guide outfitters are authorized to

[1] Annually published by the Ministry of Forest, Lands, Natural Resource Operations and Rural Development, publicly viewable at: https://www2.gov.bc.ca/gov/content/sports-culture/recreation/fishing-hunting/hunting/regulations-synopsis

guide hunters in their guiding territory on hunts for the species and number of game specified in their guide outfitter licence.

[3] The Appellants filed individual notices of appeal with similar grounds of appeal as follows:

- that the Ministry did not provide the opportunity for the Appellant[s] and others to have meaningful and direct input into the decision to close caribou hunting season in MU 6-27;
- that the Director of the Ministry's Fish and Wildlife Branch (the "Director") closed the caribou hunting season in MU 6-27 prior to the receipt of a long-awaited caribou study that is apparently being written by an agency in a separate jurisdiction, and without the Appellant[s] or others having the opportunity to review or comment on the study or have it peer reviewed;
- that the Director did not inform the Appellant[s] in any way of the decision to close the caribou hunting season in MU 6-27 and the Appellant[s] only learned of the hunting closure when reviewing the Synopsis. The failure of the Director to inform the Appellant[s] in a timely manner, or at all, is not in keeping with established protocols and also therefore did not permit the Appellant[s] to modify nor accommodate this change into their hunting strategy for 2020 and beyond; and
- that the Director is, for all the reasons above in addition to such further and additional reasons to be provided in submissions, acting arbitrarily and discriminatorily against the Appeallant[s] regarding the caribou closure in MU 6-27.

PROCEDURE

[4] Upon receipt of the Appellants' notices of appeal, the Board acknowledged the appeals, and invited the Director to participate. I have decided to joined the two appeals under the Board's Rule 12[2] because the issues are the same, the Appellants are represented by the same representative who provided one submission on behalf of both Appellants, and I find it more efficient to conduct the appeals jointly.

[5] In a letter dated August 18, 2020, the Board invited the Director to participate in these appeals, and provided the parties the opportunity to make submissions on the preliminary issues of whether the Synopsis contains an appealable decision under the *Wildlife Act*, and, if not, whether the appeals ought to be summarily dismissed due to lack of jurisdiction.

[6] The hearing on these preliminary issues was conducted by written submissions. All parties provided written submissions, including a joint written submission provided by the Appellants.

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[2] The Environmental Appeal Board's Rules are publicly viewable at: http://www.eab.gov.bc.ca/fileAppeal/rules.pdf#rule_12

ISSUE(S)

1. Is the Synopsis, or does it contain, an appealable "decision" under the *Wildlife Act*?
2. If not, should these appeals be dismissed under section 31(1)(a) of the *Administrative Tribunals Act* (the "*ATA*") for lack of jurisdiction?

DISCUSSION AND ANALYSIS

1. Is the Synopsis, or does it contain, an appealable "decision" under the *Wildlife Act*?

Summary of the Appellants' Submissions

[7] The Appellants refer to sections 101 and 101.1 of the *Wildlife Act*. Section 101.1 provides the "affected person" referred to in section 101(2) with a right to appeal "the decision", as follows:

> **101.1** (1) The affected person referred to in section 101 (2) may appeal the decision to the Environmental Appeal Board continued under the *Environmental Management Act*.

[8] Section 101(2), in turn, refers to subsections (1) and (1.1.). Those sections state as follows:

> **101** (1) The regional manager or the director, as applicable, must give written reasons for a decision that affects
>
> (a) a licence, permit, registration of a trapline or guiding territory certificate held by a person, or
>
> (b) an application by a person for anything referred to in paragraph (a).
>
> (1.1) The regional manager must give written reasons for a decision made under section 61 (1.1) (a) or (b).
>
> (2) Notice of a decision referred to in subsection (1) or (1.1) must be given to the affected person.

[9] The Appellants submit that because a "decision" is not defined in the *Wildlife Act* or the *Interpretation Act*, the usual definition provided in the Oxford Canadian Dictionary applies, which would be either "a conclusion or resolution reached, esp. as to future action, after consideration" or "a formal judgment."

[10] The Appellants submit that there was a "decision" made, "be it by the Lieutenant Governor, the Regional Manager or Director", and that "decision" did "affect" the Appellants, triggering the obligation of the Regional Manager or the Director to give the Appellants written reasons under section 101(1)(a) of the *Wildlife Act*.

[11] The Appellants submit that the Lieutenant Governor in Council did not act independently and without consultation with the Regional Manager or the Director

in making the decision. In the Appellants' submission, to allow the Director or the Regional Manager to avoid oversight by having the Lieutenant Governor in Council make decisions affecting hunting seasons, quotas, licences, permits and certificates of the Appellants sets a "dangerous precedent, that would remove further the decisions from any scrutiny other than the ballot box."

[12] The Appellants further submit that the *Wildlife Act* does not require that the decision be made by the Regional Manager or the Director – rather only that a decision was made that "affects" the tenures and rights noted.

[13] In addition, the Appellants argue that this is a threshold question and is of importance because if the practice becomes to "simply bypass notification to certificate holders and guides of changes to regulations and seasons, then they will have no recourse to change in those decisions." The Appellants argue this is contrary to what the appeal provisions in the *Wildlife Act* were designed to address. Therefore, in the Appellants' submission, the appeals ought to be heard on the merits.

Summary of the Director's Submissions

[14] The Director submits that the appeals ought to be dismissed under section 31(1)(a) of the *ATA* because the open season for caribou in MU 6-27 was removed by an amendment to the *Hunting Regulation*, B.C. Reg. 190/84, and this change was enacted by the Minister of Forests, Lands, Natural Resource Operations and Rural Development under section 16(1)(a) of the *Wildlife Act*. Therefore, is not an appealable decision referred to in section 101.1(1) of the *Act* as it is not a decision of the Director or the Regional Manager. The Director provided a copy of Ministerial Order No. M205, dated June 26, 2020, which made several amendments to the *Hunting Regulation*. One of those amendments removed the open season for caribou in MU 6-27.

[15] In addition, the Director submits that "it is also an established principle of administrative law that the principles of administrative fairness will not apply to the exercise of a legislative function", citing *Mikisew Cree First Nation v. Canada (Governor General in Council)*, 2018 SCC 40 [*Mikisew*], at paragraph 168.

[16] The Director further argues that the power delegated to the Minister through section 16(1)(a) of the *Wildlife Act* grants "a 'complete' discretion to create or amend a regulation which restricts hunting for any species of wildlife in any area of British Columbia". The Director submits that amendment to the *Hunting Regulation* is legislative in nature and, "even if the amendment were within the Board's jurisdiction to review, the Minister owed no duty of procedural fairness to anyone affected by the amendment, including the appellants."

The Panel's Findings

Principles of Statutory Interpretation

[17] Reaching a decision on this preliminary question of jurisdiction requires me to apply the principles of statutory interpretation. In *Vincent Smoluk v. Assistant Water Manager* (Decision No. 2019-WSA-001(a), May 20, 2020), at paragraph 42, the modern approach to statutory interpretation was stated as follows:

> My role in interpreting the [*Water Sustainability Act*] is to read it in its entire context, and to consider the relevant portions in their ordinary and grammatical sense, harmoniously with the objects and schemes of the [the *Water Sustainability Act*] and the intention of the Legislature in passing it. Section 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, requires that I read the [*Water Sustainability Act*] in a liberal and remedial manner.

[18] I agree with and adopt the approach set out in paragraph [42] of *Smoluk* which reflects the Court's approach used in *Rizzo & Rizzo Shoes Ltd. Re* [1998] 1 SCR 27, at para. 21:

> … Elmer Driedger in Construction of Statutes (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Application to the Act

[19] I acknowledge the Appellants' submission that the *Wildlife Act* does not define the word "decision". However, I am not persuaded the word "decision", as it is used in sections 101.1 and 101 of the *Wildlife Act*, has a meaning that is as broad as the Appellants claim. While I agree the *Wildlife Act* has not specifically defined what a decision is and it is reasonable to accept the dictionary definition to understand what is intended as a decision in the statue. However, the fact that a decision has been made does not make it a decision that can be appealed to the Board.

[20] In considering the full context and intent of the *Wildlife Act* read together with the individual sections that are relevant in this case referenced above, I find that the Board's jurisdiction under the *Wildlife Act* is limited to hearing appeals of the types of decisions referred to in sections 101(1) and (1.1) of the *Act*.

[21] In examination of sections 101 and 101.1 of the *Wildlife Act*, I find that their language shows an intent that only certain decisions of the Director or the Regional Manager may be appealed to the Board. The language of section 101.1 states that "[t]he affected person referred to in section 101(2) may appeal the decision" to the Board. I find that "the decision" clearly means the decision that affected the affected person referred to in section 101(2).

[22] Section 101(2) requires that "[n]otice of a decision referred to in subsection (1) or (1.1) must be given to the affected person." Thus, notice of a decision is required under section 101(2) if the decision is one that is referred to in sections 101(1) or (1.1). The logical implication of this is that if the decision is not one that is referred to in section 101(1) or (1.1), then it does not fall within the scope of section 101(2). I am not persuaded by the Appellants' argument that notice of the change to regulation by the Minister was statutorily required.

[23] The *Wildlife Act* also imposes requirements for written reasons on the decisions that fall under sections 101(1) and (1.1). Section 101(1) requires

written reasons for any decision of the Director or the Regional Manager that affects: a licence, permit, registration of a trapline or guiding territory certificate held by a person, or an application by a person for any of these items. Similarly, section 101(1.1) requires that the Regional Manager give written reasons for a decision made under section 61(1.1)(a) or (b) of the *Wildlife Act* to prohibit a person from guiding as an assistant guide in a specified area and/or for a specified period. In this case, the regulatory cancellation of the caribou hunting season was not a decision by a Director or Regional Manager captured by sections 101(1) or 61(1.1)(a) or (b) of the *Wildlife Act*.

[24] I find that a proper interpretation of the Board's jurisdiction under the *Wildlife Act* does not rest on the dictionary definition of a "decision." Rather, I find that the *Wildlife Act* has specifically excluded the making or amending of a regulation from an appealable "decision", even if the regulation affects a licence, permit, registration of a trapline or guiding territory certificate held by a person.

[25] Further, I am not persuaded an allegation that the Director or the Regional Manager may have provided advice or recommendations to the Minister before he amended the *Hunting Regulation* under section 16(1)(a) of the *Wildlife Act* supports a conclusion that an obligation is created to provide written reasons under section 101(1) or (1.1) of the *Wildlife Act*. The Appellants have provided no evidence that the Director or a Regional Manager provided advice or recommendations to the Minister before the *Hunting Regulation* was amended. The Appellants merely speculate the Director or Regional Manager advised or provided recommendations to the Minister. However, even if the Director or a Regional Manager had provided advice or recommendations to the Minister about the amendment, section 16(1)(a) expressly states that it is "the Minister" who "by regulation" may limit hunting for a species of wildlife in an area of British Columbia; such regulations are not made by the Director or a Regional Manager.

[26] In my view, if the Legislature had intended for there to be a right of appeal in response to a decision to make or amend regulations, it would have specifically set out those powers in the *Wildlife Act*. Section 101.1 authorizes the Board to hear appeals of some decisions made by the Director or the Regional Manager, but not the Minister or the Lieutenant Governor in Council. The absence of this language in sections 101 and 101.1, or elsewhere in the statue, supports the conclusion that the Legislature did not intend to grant the Board jurisdiction over decisions of the Minister or the Lieutenant Governor in Council to make or amend regulations.

[27] For these reasons, I conclude that the portion of the Synopsis that advises of the cariboo hunting closure in MU 6-27 reflects the Minister's amendment of the Hunting Regulation, which is not an appealable "decision" within the meaning of sections 101.1(1) of the *Wildlife Act*.

2. Should these appeals be dismissed under section 31(1)(a) of the *ATA* for lack of jurisdiction?

[28] Section 93.1(1) of the *Environmental Management Act* (the "*EMA*") sets out provisions of the *ATA* which apply to the appeal Board and includes section 31

under Part 4 of the *ATA*. Section 93.1(1) of the *EMA* applies to this appeal because section 101.1(3) of the *Wildlife Act* states:

> (3) Subject to this Act, Division 1 of Part 8 of the [*EMA*] applies to an appeal under this Act.

[29] Section 31(1)(a) of the *ATA* provides that if an appeal[3] is not within the jurisdiction of a tribunal, the tribunal may dismiss all or part of the appeal.

[30] Section 31(2) of the *ATA* requires that the tribunal must give the appellant an opportunity to make written submissions or otherwise be heard in response to whether the application and/or appeal is within the tribunal's jurisdiction.

[32] Accordingly, the Board provided the parties to this appeal with the opportunity to make written submissions before deciding whether to dismiss these appeals for lack of jurisdiction, and their submissions are summarized above.

[33] As discussed above, the Board's jurisdiction is defined by its enabling legislation. Since I have found that the Board lacks the legal authority to hear an appeal of the Minister's decision to make or amend the *Hunting Regulation*, it follows that the appeals must be dismissed under section 31(1)(a) of the *ATA* for lack of jurisdiction.

DECISION

[34] For the reasons provided above, I find that the Board has no jurisdiction to hear these appeals on the merits.

[35] Therefore, I summarily dismiss the appeals under section 31(1)(a) of the *ATA* for lack of jurisdiction.

"David Bird"

David Bird, Panel Chair
Environmental Appeal Board

November 16, 2020

[3] Section 31(1) of the *ATA* refers to the summary dismissal of an "application", and section 1 of the *ATA* defines "application" as including an appeal.