BRITISH COLUMBIA

Environmental Appeal Board

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DECISION NO. EAB-WIL-21-A001(a)

In the matter of an appeal under the *Wildlife Act*, R.S.B.C. 1996, c.488

BETWEEN:	Christopher Shawn Kitt	**APPELLANT**
AND:	Deputy Regional Manager, Recreational Fisheries and Wildlife Programs	**RESPONDENT**
AND:	Mountainside Quarries Group Inc.	**THIRD PARTY**
BEFORE:	A Panel of the Environmental Appeal Board Darrell LeHouillier, Panel Chair	
DATE:	Conducted by way of written submissions concluding on March 24, 2021	
APPEARING:	For the Appellant: Matthew J. Jackson, Counsel For the Respondent: Sonja Sun, Counsel For the Third Party: Christopher A. Becker, Counsel	

PRELIMINARY DECISION ON JURISDICTION

BACKGROUND

[1] This appeal relates to a permit that authorizes removing or destroying peregrine falcon nests located at a rock and gravel quarry in Abbotsford, British Columbia.

[2] Section 34(b) of the *Wildlife Act*, R.S.B.C. 1996, c. 488 (the "*Act*") states that a person commits an offence if they possess, take, injure, molest or destroy the nest of a peregrine falcon, except as provided by regulation. Section 3 of the *Permit Regulation*, B.C. Reg. 253/2000 (the "*Regulation*"), allows a regional manager to issue a permit exempting someone from section 34 of the *Act*.

[3] On January 13, 2021, Josh Malt, the Deputy Regional Manager of Recreational Fisheries and Wildlife Programs (the "Respondent") with the Ministry of Forests, Lands, Natural Resource Operations and Rural Development, issued Permit SU20-609433 (the "Permit"). The Permit exempts Mountainside Quarries Group Inc. (the "Third Party") from section 34(b) of the *Act*, with respect to peregrine falcon nests located at a rock and gravel quarry it has rights to operate.

[4] The Permit was issued pursuant to section 19 of the *Act*, which allows a regional manager or delegate to, to the extent allowed by the *Act* and its regulations, exempt someone from prohibitions under the *Act* or its regulations by issuing a permit.

[5] The Respondent had been delegated the authority to issue a permit by the Director of Wildlife[1] for the South Coast Region.

[6] On February 8, 2021, Christopher Shawn Kitt (the "Appellant") filed a Notice of Appeal with the Environmental Appeal Board (the "Board"). Mr. Kitt's Notice of Appeal explains that he lives about 500 metres from the quarry and has long been opposed to quarrying operations there because of the danger those operations pose to the peregrine falcons that live and nest onsite. The Appellant asks that the Board rescind the Permit for a variety of reasons.

[7] The Appellant has a particular interest in the fate of the peregrine falcons. He is a professional biologist and goes to watch the falcons with some regularity. He interacts with other bird-watching enthusiasts. He has experience with conservation and with the application of the *Act*. He has, for some time, lobbied and advocated for the preservation of the falcons' nests at the quarry and has opposed industrial activity there. A considerable number of conservation, birding, and similar organizations have expressed support for the Appellant's appeal, as have several people who live in the area.

[8] On February 16, 2021, the Board wrote to the Appellant, Respondent and Third Party, and referenced section 101 and 101.1 of the *Act*, which set notice requirements for some decisions under the *Act* and grant rights of appeal for decisions made under the *Act*. Section 101 provides, in part:

> (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) …
>
> (2) Notice of a decision referred to in subsection (1) or (1.1) must be given to the affected person.

[9] Section 101.1 of the *Act* provides that, "The affected person referred to in section 101 (2) may appeal the decision to the Environmental Appeal Board continued under the *Environmental Management Act*."

[10] The Board then asked for submissions on the question of whether:

1. The Permit could be appealed to the Board;

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[1] Under section 100(1) of the *Act*, a director may do an act or thing that a regional manager is empowered to do.

2. The Appellant has standing (i.e., is allowed to appeal the decision); and
3. The Board should dismiss the appeal due to a lack of jurisdiction, pursuant to section 31(1)(a) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 ("*ATA*").

[11] All parties responded and those responses were shared between the parties, with an opportunity for reply, in accordance with Board procedure.

ISSUES

[12] This preliminary decision addresses three issues. They are whether:

1. The Permit is appealable to the Board;
2. The Appellant has standing to appeal the Permit; and
3. The Board should dismiss the appeal due to a lack of jurisdiction, pursuant to section 31(1)(a) of the *ATA*.

POSITIONS OF THE PARTIES

The Appellant's Position

[13] The Appellant says that the Permit is appealable, without elaborating on that point.

[14] The Appellant also argues that this question involves statutory interpretation, which requires me to discern the legislative intent behind the *Act*, and whether granting standing furthers or frustrates the objectives of the *Act*. The Appellant says the *Act* should be interpreted as set out in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) [*Rizzo*], which the Appellant summarized as: "… by reading the words of the provisions in question 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".

[15] The Appellant also references section 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238 ("*Interpretation Act*"), noting that I must interpret the *Act* as remedial, and give it "… such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".

[16] According to the Appellant, the legislative intention behind the *Act* is "…to ensure the protection of threatened wildlife and to ensure continuation of wildlife through its proper management." In support of that contention, the Appellant relies on various prohibitions on activities that are harmful to wildlife, and on powers granted to the Minister for the protection of wildlife, both contained in the *Act*.

[17] The Appellant also references the introduction of the *Act* for reading in the legislature, in 1982, where the Hon. Mr. Rogers described it as "… best for the wildlife of the province." Minister Rogers went on to say that the *Act* offered "… better protection and management for fish and wildlife …" than its predecessor.[2]

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[2] See Hansard, June 24, 1982, Afternoon Sitting, 4th session, 32nd parliament.

[18] The Appellant also quoted from *The Association for the Protection of Fur-Bearing Animals v. British Columbia (Minister of Environment and Climate Change Strategy)*, 2017 BCSC 2296 [*The Association for the Protection of Fur-Bearing Animals*], in support of his position. In that case, the Court notes that some purposes of the Act include: the preservation and conservation of wildlife habitat, the enhanced production of wildlife, and the regulation of the consumption of wildlife.

[19] The Appellant also argues that I should interpret the *Act* in a way that is consistent with the rule of law, and in particular with the principles of legality (that government legislation and action should be reviewable by the courts or a similar, judicial or quasi-judicial body) and access to justice.

[20] Turning to the interpretation of the *Act* itself, the Appellant argues that he has standing because the Permit constitutes a decision affecting an application by a person for a permit. He argues that I should follow the rationale in a previous decision of the Board, *Leggett v. Director, Fish and Wildlife*, Decision No. 2009-WIL-022(a)&(b), April 28, 2009 [*Leggett*]. In that case, Mr. Leggett, who held an angling licence, sought to appeal a permit granted to the Freshwater Fisheries Society of BC, to stock Chimney Lake with kokanee salmon.

[21] The Board concluded, at paragraph 36 of the decision, that Mr. Leggett's standing to appeal a permit issued to a third party was not solely determined by the fact that he held an angling licence. The panel also considered it relevant that Mr. Leggett lived near Chimney Lake, had fished in the lake for many years, and had actively opposed the stocking proposal due to his concern for the local trout fishery, had expert knowledge as a registered biologist and former Section Head of Fish and Wildlife with the Ministry of the Environment, and was the director of a local landholders association.

[22] The Appellant argues that, in *Leggett*, the Board considered some factors that may be relevant to finding that an appellant has standing to appeal a decision issued under the *Act*. The Appellant argues the list of factors considered in *Leggett* is non-exhaustive and the Board should adopt the following analysis when deciding standing to appeal a decision under the *Act*:

> … standing should be granted to any person, representative or organization who can demonstrate on a prima facie basis that the issuance of the permit, licence or amendment at issue has or will likely impact protected or managed wildlife, and that person, representative or organization seeking standing has more of an interest in the impact of the decision than other BC residents.

[23] The Appellant also references three court cases in support of his position: *Canada v. Vavilov*, 2019 SCC 65 [*Vavilov*], *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2 [*Delta*], and *Council of Canadians with Disabilities v. British Columbia (Attorney General)*, 2020 BCCA 241 [*CCD*].

[24] With respect to *Vavilov*, the Appellant argues that the legislature conferred exclusive authority on the Board to hear appeals of permits, licences, and certificates under the *Act*, and to determine questions of standing. This suggests that the Board has a wide discretion in how it determines standing.

[25] The Appellant referenced both *Vavilov* and *Delta* to assert that an administrative body like the Board can adapt common law principles to their administrative contexts, and it may be unreasonable for administrative bodies to do so without first adapting them to their particular administrative context. The Appellant notes that *Delta* involved a standing decision made by the Canadian Transportation Agency (the "Agency"). The Agency had assumed that public interest standing was available in matters brought before it, but then applied a test used by courts which meant that standing could never be granted before the Agency. In doing this, it applied an inflexible approach at odds with the test for public interest standing, and it fettered its discretion by rigidly applying the test as formulated by the courts. Both errors were reasons that the court referenced in overturning the decision.

[26] The Appellant referenced *CCD* for its review of "… recent developments in the law of standing as it applies in public law contexts." The Appellant noted the goals of standing law, to ensure the lawfulness of legislation and state action. The Appellant says the Board has the discretion to incorporate public interest standing doctrines when assessing the standing of parties who are neither the decision-maker nor the permit holder.

[27] The Appellant says that public interest standing principally gives effect to the principle of legality, and provides access to justice, and so to contribute to the rule of law.

[28] The Appellant argues that there is an evolution toward granting public interest standing, and that the Board should follow suit in assessing standing under the *Act*. The Board should exercise its discretion to incorporate and apply the public interest standing doctrine and its underlying principles to ensure that standing is granted where the public interest would be served and the purposes of the *Act* would be furthered.

[29] The Appellant further notes that animals cannot bring appeals themselves, and there is no defined entity enabled to appeal permits where the permit-holder is given what they want (and hence, where they have no reason to appeal). The Appellant argues that, if other parties are not given standing, the government will not be held to account and will effectively be above the law, as neither the Board nor any other judicial body will be able to review its decisions.

[30] In arguing how these principles should be applied in this case, the Appellant says he has standing on three grounds: on his own account as an affected person, as a representative advocate of local residents, and as a representative of the public interest.

[31] First, the Appellant says that, following the decision in *Leggett*, the *Act* allows standing to exist where people can show they are "persons affected" by the decision under appeal, "… by way of their proven interest in conservation or management of wildlife, residency in proximity to the wildlife or habitat[,] history of engagement with the wildlife or habitat, history of advocacy, and other relevant factors …". The Appellant says he has demonstrated an "immediate and vested interest in the conservation of peregrine falcons and their nesting site at issue in this appeal …." The Appellant notes all the factors in *Leggett* are present here, and more:

1. He has expertise in biology, conservation, wildlife management and the operation of the *Act*;
2. he holds various hunting and angling licences, and has done so for years;
3. he lives close to the falcon nests, values the falcons, and regularly visits to observe them, and has interacted with other enthusiasts who have done so; and
4. he has a history of advocacy for conservation of the site[3].

[32] The Appellant says that this analysis applies whether he is granted standing as an affected person directly, or as a representative appellant of those who live in the area and are also affected persons.

[33] Alternatively, the Appellant says that he should be granted public interest standing. He notes that local residents and various organizations support him in his appeal. He says there are various legitimate public interest concerns implicated by the granting of the Permit, and his sophistication, experience, and resources make him an appropriate person to raise the issue.

[34] The Appellant argues that refusing to grant him public interest standing would be contrary to the purposes of the *Act* and would undermine the rule of law. This would be an absurd result and would not fulfill the Board's requirements to construe the *Act* in a manner that is "fair, large and liberal" and that "best ensures the attainment of its objects".

[35] The Appellant argues that, should I apply the public interest standing test used by the courts, he satisfies its requirements. He argues: there is a serious, justiciable issue involved; that he is directly affected or has a genuine interest in the issue; and the appeal is a reasonable and effective means to raise the issue, with the Appellant as the only person available to advance it.

The Respondent's Position

[36] The Respondent does not dispute that the Permit is an appealable decision but says the Appellant does not have standing to appeal the Permit. The Respondent says the Board should dismiss the Appellant's appeal under section 31(1)(a) of the *ATA*.

[37] The Respondent argues for a narrow interpretation of "affected person" under section 101.1 of the *Act*. The Respondent says that defining "affected person" broadly, as the Appellant suggests, would require the director or regional manager to provide reasons to an undefined class of other persons who may be affected by or choose to take a particular interest in a permit. This would be ambiguous, uncertain, and impossible. Accordingly, the Respondent argues that reading the relevant provision in its plain and ordinary sense requires "affected person" to be interpreted as the holder of or applicant for a permit.

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[3] In support, the Appellant provided an affidavit sworn by him on March 2, 2021. The exhibits attached to his affidavit include, among other things, copies of his current angling and hunting licences, copies of his correspondence with the Ministry expressing concerns about destroying the falcon nesting site, and numerous letters of support for his appeal.

[38] In support of this position, the Respondent references two earlier decisions of the Board: *Jesse Zeman v. Regional Manager*, Decision No. 2012-WIL-010(a), August 17, 2012 [*Zeman*] and *Michael Langegger et al v. Deputy Regional Manager et al*, Decision No. 2012-WIL-004(a), 005(a) and 006(a) [*Langegger*].

[39] In *Langegger*, several resident hunters appealed whether Stone's Sheep should be designated as "Category A" animals, which has implications for the division of hunting quotas between resident hunters and guide outfitters. The Board denied standing to the appellants, concluding that an "affected person" meant someone who had a permit or permit application directly affected by the decision to be appealed. Otherwise, a regional manager or director would be required to provide written reasons to an undefined class of unidentifiable people.

[40] In *Zeman*, Mr. Zeman was denied standing to appeal a yearly hunting quota issued to local guide outfitters because his hunting licence was not affected. The Board in *Zeman* applied the reasoning from *Langegger* and stated that the standing requirements in the *Act* contemplate decisions made in respect of a particular licence or application for a licence, and that specifically affect that licence or application.

[41] The Respondent argues that the test for standing is clear, following the analysis in *Zeman*. The relevant provisions of the legislation are neither broad nor vague. They do not allow the Board to substitute or add to the test for standing enshrined in the *Act* with a test based on public interest standing. The Board may not ignore the standing test defined in the statute, or substitute another of its choosing.

[42] Addressing, *Delta*, the Respondent notes that, unlike the Board, the Agency has a broad discretion to decide who has standing and which complaints it will inquire into. The Agency's discretion is granted under section 37 of the *Canada Transportation Act*, S.C. 1996, c. 10:

> The [Canadian Transportation Agency] may inquire into, hear and determine a complaint concerning any act, matter or thing prohibited, sanctioned or required to be done under any Act of Parliament that is administered in whole or in part by the Agency.

[43] The Respondent says the present circumstances are, accordingly, distinguishable from those in *Delta*. Similarly, the Respondent argues that the portion of *Vavilov* relied upon by the Appellant is inapplicable; it refers to situations where "broad, open-ended or highly qualitative language" describes a tribunal's jurisdiction. Here, the *Act* provides clear and limiting direction as to the test for standing that the Board is to apply.

[44] The Respondent argues that the Appellant is not an "affected person" based on a proper interpretation of section 101 of the *Act*, and as such, he does not have standing. The Appellant is not the permit-holder in this case, nor did he apply for the Permit.

[45] With respect to *Leggett*, the Respondent argues that it was wrongly decided and that I should follow the rationale in *Langegger* and *Zeman*, which properly interpret the relevant portions of the *Act*.

[46] Lastly, the Respondent notes that the Board is not the only review mechanism for decision-making under the *Act*. Those who lack standing under section 101 may seek judicial reviews of statutory decisions. Such reviews are conducted in court, where public interest standing is available, the Respondent notes.

The Appellant's Reply

[47] The Appellant replies that the narrow reading of the standing test proposed by the Respondent is not in keeping with the requirements of section 8 of the *Interpretation Act*. The Appellant argues that the legislature's use of the word "affected person" has a broad meaning. The Appellant summarizes the definition of "affect" from *Black's Law Dictionary, Fourth Edition*, as:

> To act upon: influence; change; enlarge or abridge; often used in the sense of acting injuriously upon person and things. [citations omitted] Does not mean to impair. [citations omitted]. To lay hold of or attack (as a disease does); to act, or produce an effect upon; to impress or influence (the mind or feelings); to touch. [citations omitted] Acted upon, influenced, concerned. [citations omitted] Implies an indirect relation. [citations omitted]

[48] The Appellant argues that the use of the terms "a permit … held by a person" and "an application by a person" in section 101(1) of the *Act* means the notice requirements in that section are triggered when a decision is made that affects any existing permit or any application for a permit held by any person. The Appellant emphasizes it is the effect on the permit or the application that is important, not the effect on the person.

[49] The Appellant argues that this interpretation is consistent with the purposes of the *Act*, for conservation and the sustainable management of wildlife. It ensures written reasons for decisions that may impact protected wildlife, helps assure the sustainable supply of wildlife for hunters or fishers, and creates a public record that can be scrutinized and held to account.

[50] The Appellant adds that the *Act* distinguishes between written reasons, under section 101(1), and notice under section 101(2). There is no stipulation as to how notice is achieved, but the term "affected person" appears in section 101(2), not section 101(1). There is no reason to suppose that an "affected" person entitled to notice is the same as those entitled to written reasons under section 101(1), particularly given that the latter describes the effect on permits and applications, and the former describes people.

[51] The Appellant argues that the Respondent's concerns about ambiguity, uncertainty and impossibility in notice provisions would be addressed if a decision-maker was required, under section 101(2) of the *Act*, to "… provide reasons to persons that the regional manager or director knows or has reason to believe are persons affected by the decision." This interpretation would not be overly onerous or impractical, while respecting the legislature's intent that persons affected by the decision be provided notice of the decision, and written reasons for it. The Appellant says *Leggett* strikes the appropriate balance between practicality and public accountability.

[52] The Appellant adds that *Leggett* is not in conflict with *Langegger* and *Zeman*. *Langegger* involved appeals of a policy decision and not a statutory one, and it can be distinguished on that basis. In *Zeman*, Mr. Zeman was not affected in any way by the decision he sought to appeal, as his hunting rights were provided by a resident hunting permit and the decision he sought to appeal gave rights to guide outfitters. The circumstances of this case are much different: it is a statutory decision and not a policy one, and the Appellant is affected by the decision.

[53] The Appellant also disagrees that it is open to him to apply for judicial review of the Permit. This would bypass the appeal to the Board stipulated under the *Act*. Section 57 of the *ATA* applies to the Board through inclusion under Part 8 of the *Environmental Management Act*, S.B.C. 2003, c. 53. That section provides for judicial review of "a final decision" of tribunals to which that section applies, including the Board.

The Third Party's Position

[54] The Third Party takes no position on the jurisdictional questions, relying on the Board to decide the matter.

FINDINGS AND ANALYSIS

Is the Permit appealable to the Board?

[55] There is no dispute among the parties that the Permit is an appealable decision under the *Act*. I agree. It is a decision that affects an application for a permit (the granting of the permit application by the Third Party). Given that there is no dispute on this issue, I will not address it in further detail; I find that the Permit is appealable to the Board.

Does the Appellant have standing to appeal the Permit?

[56] As stated above, section 101.1 of the *Act* states that, "The affected person referred to in section 101 (2) may appeal the decision" to the Board.

[57] Given the importance of the legislation to this issue, I will recite the relevant portions of section 101 of the *Act* again[4]. They are:

> (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) …

[4] Although section 101(2) also refers to subsection (1.1), it is not relevant in this case because it does not relate to permits.

(2) Notice of a decision referred to in subsection (1) or (1.1) must be given to the affected person.

[58] As the Appellant notes, I am to interpret this legislation based on the principles of statutory interpretation as described in *Rizzo*, and with the direction from section 8 of the *Interpretation Act* in mind. As the Respondent notes, this is an exercise in statutory interpretation. I must adhere to the intentions of the Legislature in drafting the relevant provision.

[59] I must read the words of section 101 and 101.1 in their entire context and in their grammatical and ordinary sense. I must interpret the words fairly, broadly, and liberally, to be harmonious with the scheme of the *Act*, the object of the *Act* and the intention of the Legislature.

[60] As noted by the Appellant, some of the intentions of the *Act* are wildlife conservation, the protection of endangered wildlife, the preservation of wildlife habitat, and the regulation of consumptive use of wildlife. These are not absolutes, however, as illustrated by section 19, which allows individuals, in certain circumstances, to be exempted from the measures for the protection of wildlife and/or habitat, contained in the *Act*.

[61] With that context in mind, I turn my mind to the plain and ordinary meaning of the language in sections 101 and 101.1 of the *Act*. The key question is who "the affected person" is, in section 101(2). It is "the affected person" who has rights of appeal under section 101.1 of the *Act*.

[62] It is significant that sections 101(2) and 101.1 of the *Act* refer to "the affected person" [emphasis added]. Even recognizing that, according to section 28(3) of the *Interpretation Act*, singular words in an enactment include the plural, I am left with the concept of "the affected person" or "the affected persons". The legislature did not say "an affected person" or "a person affected by the decision", even though language of that nature is used in other environmental legislation in British Columbia. For example, section 100(1) of the *Environmental Management Act* states that "A person aggrieved by a decision" may appeal the decision to the Board. Similarly, section 14(3) of the *Integrated Pest Management Act* states that "A person may appeal a decision under this Act" to the Board. I find, therefore, that the use of "the" in sections 101(2) and 101.1 of the *Act* indicates that the Legislature intended to narrow the identity of the affected person.

[63] Reading the phrase "the affected person" harmoniously with section 101(1) of the *Act*, it is apparent that the affected person(s) is/are the same as the person(s) to whom a written decision must be provided. The phrase "the affected person" in section 101(2) relates to a previous definition, provided in this case by the preceding subsection—the person to whom the written decision must be given.

[64] I find that the alternative interpretation, that "the affected person" means the same thing as "an affected person", creates the sort of ambiguity, uncertainty, and practical impossibility that the Respondent described (and that the Appellant conceded was a concern). I do not agree with the Appellant that a reasonable interpretation of section 101(2) is to "… provide reasons to persons that the regional manager or director knows or has reason to believe are persons affected by the decision." This is reading additional words into the legislation that

significantly affects its meaning. Instead, in interpreting the legislation, I must consider the words in place, and the intention the legislature expressed through them.

[65] Interpreting "affected person" broadly, as the Appellant suggests, is not harmonious with the requirements of section 101(2) because it creates a class of unidentified persons that a decision-maker must notify of a decision. Reading it narrowly, as the Respondent suggests, ensures that sections 101 and 101.1 work harmoniously, by recognizing the "person" in section 101(1) is the person who has been affected by that subsection; that is, the "affected person".

[66] The Appellant argues that this interpretation is inconsistent with the rule of law, as it stands in opposition to the principles underlying public interest standing; specifically, it makes decision-makers under the *Act* unaccountable when granting applications and denies access to justice.

[67] I disagree. As noted by the Respondent, the appeal provisions contained in the *Act* apply in certain circumstances. Judicial review is an avenue left open to members of the public who are not themselves the holders of or applicants for licences, permits, and certificates captured by section 101(1) of the *Act*.

[68] Section 2(2)(b) of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 (the "*Judicial Review Procedure Act*") allows the Supreme Court of British Columbia to grant injunctive relief "… in respect of the exercise, refusal to exercise, or purported exercise, of a statutory power." This includes enjoining a decision-maker from making an impugned decision. While judicial reviews of Board decisions may be filed (and section 57 of the *ATA* provides procedural requirements for filing a judicial review of a decision of the Board), an appeal to the Board is not a prerequisite to applying for judicial review, provided the applicant does not also have a right of appeal with the Board.

[69] It follows that, where a person lacks standing before the Board, they may rely on the *Judicial Review Procedure Act* to maintain the principle of legality and their access to justice. This addresses the Appellant's concerns about the rule of law. Indeed, this is illustrated by *The Association for the Protection of Fur-Bearing Animals*, a case cited by the Appellant that involved a judicial review of a matter under the *Act* that was not appealable to the Board. I also note that the petitioner in that case was granted public interest standing to bring the matter before the court.

[70] Given my finding that "the affected person" under sections 101(2) and 101.1 of the *Act* is one to whom section 101(1) applies in any given case, I conclude that public interest standing is not available in appeals to the Board under the *Act*. While the Board has a broad interpretive power with respect to the question of standing, it must conform to the legislative intent expressed in a "plain and ordinary" reading of the words of the relevant sections. I find, as a matter of statutory interpretation, that to appeal a decision under section 101.1, a person must be entitled to a written decision under section 100(1) or (1.1) of the *Act* and, by extension, notice of a decision under subsection 101(2).

[71] This is not a case like *Delta*. As the Respondent noted, the broad discretion conferred upon the Agency in that case was critical to the outcome of the case. In

this case, the test of standing is much more clearly defined and constrained. I also note that an alternative remedy is available by way of judicial review.

[72] For these reasons, there is no public interest standing available in appeals to the Board, from decisions under the *Act*. Standing to appeal requires that a person be entitled to a written decision under section 100(1) or (1.1) of the *Act* and, by extension, to notice of that decision under subsection 100(2).

[73] The question remains, does any affected permit, licence, or certificate as defined in section 100(1) of the *Act* give rise to standing, or must the authorization in question be the specific target of the impugned decision? There are two interpretations of what permits, licences, or certificates meet the requirements of section 100(1), both of which the Board has previously considered.

[74] In *Leggett*, the Board concluded that the holder of an angling licence had standing to appeal a permit that authorized stocking a lake with kokanee salmon, given the level of interest he had in the circumstances of that case, as summarized above. In *Leggett*, the circumstances were such that Mr. Leggett's angling licence entitled him to fish for trout, he fished for trout in Chimney Lake, and he had tried to protect that trout fishery by opposing the introduction of kokanee salmon into Chimney Lake—the essence of the permit under appeal in that case. Mr. Leggett asserted that stocking the lake with kokanee would harm the trout population in the lake, thereby harming the fishery he accessed through his angling licence.

[75] I do not agree with the Appellant that *Leggett* stands for the proposition that any of the factors considered by the Board in that case may give rise to standing. The Board relied on the unique factors in that case to conclude that Mr. Leggett's licence was affected by the decision to grant a permit for the release of kokanee salmon into Chimney Lake. Absent that permit, even with all other factors present, Mr. Leggett could not have been granted standing. As the Appellant notes in his submissions, the crucial requirement of section 100(1) of the *Act* is the affect of the appealed decision on the permit, not on the person.

[76] The Respondent argues that section 100(1) of the *Act* applies only to the licence, permit, or certificate that is the specific subject of a decision. *Langegger* supports that position, as the Board states, at paragraph 57, that section 100(1) of the *Act* "… targets decisions made in respect to a particular licence or application thereof, and that specifically affects that licence or application." The Board only added, in case it was wrong, that the outcome of the appeal would have been the same because the appellants' licences in that case were unaffected by the impugned decision. The Board in *Zemen* references that excerpt and emphasizes it in support of its conclusion as well.

[77] In contrast to the appellant in *Leggett*, although the Appellant in this case holds hunting and angling licences, he has not asserted or provided sufficient evidence to conclude that those licences were, or will be, affected by the issuance of the Permit. As such, even if I were to take the permissive view to standing described in *Leggett*, the Appellant would still not qualify as one of "the affected persons" because his evidence and submissions do not establish that his licences were affected by the issuance of the Permit in this case.

[78] Similarly, with respect to the representative standing the Appellant seeks, it has not been suggested that any of the other local residents or groups that have

identified an interest in the outcome of this appeal hold licences, permits, or certificates that were affected by the issuance of the Permit. Even if they did, they have not appealed the Permit, and there is no evidence that the Appellant filed his appeal on behalf of another affected person who would have standing as an appellant. Accordingly, the Appellant lacks standing as a representative appellant.

[79] For the reasons above, I conclude that the Appellant lacks standing to appeal.

Should the Board dismiss the appeal due to a lack of jurisdiction, pursuant to section 31(1)(a) of the ATA?

[80] Section 31(1)(a) of the *ATA* allows the Board to dismiss an appeal that is not within its jurisdiction, after providing notice to the appellant and affording them the opportunity to make submissions.

[81] The Board identified this issue and obtained submissions from all parties. I have concluded that the Appellant lacks the standing required to appeal the Permit and, as such, the Board lacks the jurisdiction to hear his appeal.

[82] Accordingly, I am exercising my discretion pursuant to section 31(1)(a) of the *ATA*. I find that the Board should dismiss the appeal due to a lack of jurisdiction.

[83] The appeal is dismissed.

"Darrell LeHouillier"

Darrell LeHouillier, Panel Chair
Environmental Appeal Board

April 16, 2021