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DECISION NO. EAB-EMA-21-A003(a)

In the matter of an appeal under section 100 of the *Environmental Management Act,* S.B.C. 2003, c. 53

BETWEEN:	Norman Tapp	**APPELLANT**
AND:	Director, *Environmental Management Act*	**RESPONDENT**
BEFORE:	A Panel of the Environmental Appeal Board Darrell Le Houillier, Chair	
DATE:	Conducted by way of written submissions concluding on July 30, 2021	
APPEARING:	For the Appellant: For the Respondent:	Self-represented Chris Rolfe, Counsel

PRELIMINARY DECISION

[1] Norman Tapp appealed a decision made by Daniel P. Bings (the "Director"), a Director under the *Environmental Management Act* who works in the Ministry of Environment and Climate Change Strategy (the "Ministry"). In the decision, the Director determined that the Appellant had contravened section 13 of the *Open Burning Smoke Control Regulation*, B.C. Reg. 152/2019(the "*Regulation*"). The Director imposed an administrative penalty of $10,000 on the Appellant for the contravention.

[2] One of the Appellant's grounds of appeal alleges that the Director considered evidence that was obtained by a conservation officer entering a reserve of the Cowichan Tribes First Nation (the "Cowichan First Nation") without permission or notice.

[3] This preliminary decision addresses that ground of appeal, and whether the evidence in question is admissible in the appeal process conducted by the Board.

BACKGROUND

[4] On September 15, 2019, a new version of the *Regulation* came into effect. Under section 13(1) of the *Regulation*, open burning must be carried out at least 500 metres from neighbouring residences unless the requirements in section 13(2) are met.

[5] On several days in December 2019 and January 2020, the Appellant was burning vegetation debris after clearing two parcels of land (the "Property") that he owns. The Property is located immediately south of Theik Indian Reserve #2 ("Theik Reserve #2"), a reserve of the Cowichan First Nation. Jack Road is located on the southern perimeter of Theik Reserve #2. Parts of Cowichan Bay Road cross Theik Reserve #2. The parties agree the Appellant's open burning on the Property occurred within 500 metres of neighbouring residences.

[6] During the course of their duties, Conservation Officer Sergeant Scott Norris and another Conservation Officer observed, from various locations, evidence of the open burning on the Property. According to an affidavit sworn by Sgt. Norris on May 6, 2020, on several days, he and his colleague made those observations from portions of Jack Road or Cowichan Bay Road on Theik Reserve #2. On some other days, they made their observations from locations that were not on Theik Reserve #2, such as on Highway 1 or on the Property.

[7] On December 19, 2019, the Ministry issued a warning notice to the Appellant for non-compliance with the *Regulation*.

[8] On February 3, 2020, the Appellant was served with a notice that he had contravened section 13 of the *Regulation* and the Director intended to impose an administrative penalty. The notice was revised and re-issued September 23, 2020. The notice included information from the investigation, the proposed penalty, and offered the Appellant an opportunity to be heard before the Director made his decision.

[9] The Appellant provided written submissions to the Director on October 19, 2020. He did not deny that the open burning occurred, but he submitted that it had a low potential to result in an adverse effect. He also submitted that his goal was to create farmland on the Property. He stated that if there was another economical way to deal with the vegetation debris, he would have chosen that option. He also stated that, in the end, he ceased burning and, at a cost of $60,000, hauled all remaining material to the back of the Property, which otherwise could have been used as farmland.

[10] On January 18, 2021, the Director issued his decision containing the determination of contravention and imposing the $10,000 penalty, pursuant to section 115 of the *Environmental Management Act* (the "*Act*") and the *Administrative Penalties (Environmental Management Act) Regulation*, B.C. Reg. 133/2014.

Appeal

[11] On February 5, 2021, the Appellant appealed the Director's decision. The Appellant's Notice of Appeal provides several grounds of appeal, which I have summarized as follows:

- the government changed the regulations without considering projects in progress and committed to under contract price;
- a member of the Cowichan First Nation informed the Appellant that a conservation officer entered the First Nation's land without permission or notice when investigating the Appellant; and

- the Appellant's income has been affected by COVID-19.

[12] The Appellant requested that the Board reduce the administrative penalty to $5,000.

Preliminary Issue – Ground of Appeal Alleging Improperly Obtained Evidence

[13] During a case management teleconference held on March 25, 2021, the Board's Vice-Chair, Service Delivery, advised the parties that the Board would address the evidentiary issue raised in the Notice of Appeal as a preliminary matter based on written submissions. In a follow-up letter dated April 6, 2021, the Board asked the parties for comments on the following wording of the preliminary questions to be considered:

1. Did the conservation officer, Mr. Norris, trespass or otherwise unlawfully enter on First Nation's land in gathering evidence which was relied upon in determining that the Appellant contravened section 13 of the *Regulation*?
2. If the answer to question 1 is 'yes', what is the effect given that section 40 of the *Administrative Tribunals Act* applies to the Board? Section 40 states as follows:

   40 (1) The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

   (2) Despite subsection (1), the tribunal may exclude anything unduly repetitious.

   (3) Nothing is admissible before the tribunal that is inadmissible in a court because of a privilege under the law of evidence.

   (4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence.

[14] In a letter dated April 16, 2021, the Director advised that he agreed with the wording of the two questions. The Appellant provided no comments. Consequently, in a letter dated April 20, 2021, the Board asked the parties to provide written submissions on those two preliminary questions.

[15] The Board received the Director's submissions on May 11, 2021. The Appellant was supposed to provide his submissions by June 1, 2021. The only correspondence that the Board received from the Appellant was an email on May 14, 2021, stating:

> I have talk[ed] to a Jack road First Nations Band Member and was informed that there is a protocol in place that even if other Cowichan Tribes Members wish to come on there [sic] lands they must be informed and this protocol is in place for everyone. I will be working on getting a copy of this with Polly Jack and if required have Mrs. Jack speak to the appeals board please let me know if you have any questions.

[16] The Board arranged another case management teleconference with the parties on June 15, 2021, to determine whether the Appellant planned to provide submissions addressing the two preliminary questions posed by the Board, and if so, whether he needed an extension of time to do so.

[17] During the case management teleconference held on June 15, 2021, the Appellant advised that he was unable to speak to the Cowichan First Nation member who he anticipated would provide evidence in support of his submissions, as the First Nation's office was closed to visitors due to the COVID-19 pandemic. He requested an extension of 90 days to provide his submissions. The Director opposed the Appellant's request for an extension of time.

[18] In an email dated July 5, 2021, the Appellant stated he was having difficulties getting the information he needed. He added, "I appreciate the extra time but I will withdraw my request for more time and ask that you consider this matter".

[19] By a letter dated July 6, 2021, the Vice Chair, Service Delivery, ordered the Appellant to provide his written submissions on the preliminary questions by 11:59 pm on July 30, 2021. The Vice Chair held that this was a reasonable extension of time given that the Province was moving forward with reopening plans, and restrictions related to the pandemic were being lifted. The Vice Chair also stated that if the Appellant's submissions were not received by the new deadline, the Board would decide the preliminary questions based on the submissions it had received.

[20] On August 3, 2021, the Board sent a letter to the parties stating that it had received no submissions from the Appellant by the July 30, 2021 deadline, and the preliminary questions would be decided based on the submissions received.

[21] That same day, the Appellant replied to the Board's August 3, 2021 letter with an email stating "Thanks". Based on that reply, I find that the Appellant received the Board's August 3, 2021 letter, and was aware that the Board had received no further submissions from him and would decide the preliminary questions based on the submissions it had received.

ISSUES

[22] I have considered the preliminary questions posed in the Vice Chair's letters dated April 6 and 20, 2021:

1. Did the conservation officer, Mr. Norris, trespass or otherwise unlawfully enter on First Nation's land in gathering evidence which was relied upon in determining that the Appellant contravened section 13 of the *Regulation*?
2. If the answer to question 1 is 'yes', what is the effect given that section 40 of the *Administrative Tribunals Act* applies to the Board?

[23] I note that the first question arose directly from the Appellant's ground of appeal alleging that a conservation officer (Sgt. Norris) entered the Cowichan First Nation's land without permission or notice when investigating the Appellant. The first question is essentially the Vice Chair's summary or re-statement of that ground of appeal.

[24] The Vice Chair contemplated that if the answer to the first question is 'yes', then the next logical question was the second question. I would add that the second question could be expanded upon, to include whether the conservation officer's evidence may be considered by the Board in deciding the appeal, given the Board's powers to receive and accept information under section 40 of the *Administrative Tribunals Act* (the "*ATA*").

[25] I would also add that if the answer to the first question is 'no', then not only is it unnecessary to answer the second question as a preliminary matter, but the Appellant's ground of appeal reflected in the first question may be dismissed, as discussed later in this decision.

DISCUSSION AND ANALYSIS

Summary of Appellant's Submissions

[26] The only correspondence that the Board received from the Appellant in response to the Board's request for submissions on the two preliminary questions was his May 14, 2021 email, which is reproduced above in the 'Background' of this decision.

Summary of the Director's Submissions

[27] The Director submits that:

a. The evidence shows that Sgt. Norris received an implied or verbal permission from a Cowichan Tribes official authorized to provide such permission.

b. The common law clearly establishes that peace officers or other law enforcement officials travelling on roads an Indian Reserve are not in trespass when they do so pursuant to their duties.

c. Even if Sgt. Norris had been in trespass, it would be appropriate to accept the evidence obtained while on Theik Reserve #2 because it was not obtained through an unreasonable search and seizure.

a. Authorization from Cowichan First Nation

[28] The Director submits that, for many years before the open burning that led to this appeal, Sgt. Norris had developed a collaborative relationship with the Cowichan First Nation and their Director of Lands and Governance, Larry George. The Cowichan First Nation had worked with the Conservation Officer Service, and a working understanding was formed that the Cowichan First Nation did not object to the Conservation Officer Service entering Cowichan First Nation reserves for the purpose of carrying out their duties.

[29] In terms of the legal aspects of this arrangement, the Director notes that the *First Nations Land Management Act*, SC 1999, c 24, applies to the Cowichan First Nation. Under section 18(1) of that Act, First Nations that have a land code are empowered to exercise the powers, rights and privileges of an owner in relation to reserve land or lands to which the land code applies. This power is exercised by the First Nation's council or that person to whom they delegate that power in accordance with the First Nation's land code.

[30] The Director notes that the Cowichan First Nation has adopted a land code, the *Quw'utsun Tumuhw*. Section 5 of the *Quw'utsun Tumuhw* provides that it applies to all lands described in Annex G of the Individual Agreement between Canada and the Cowichan First Nation (the "Individual Agreement"). The Individual Agreement published on Cowichan First Nation's website lists Theik Reserve #2 in Annex G. Upon the coming into force of *the Quw'utsun Tumuhw* in relation to Theik Reserve #2, section 30 of the *Indian Act* [prohibition against trespass] ceases to apply to Theik Reserve #2.

[31] Section 5.2 of the *Quw'utsun Tumuhw* contemplates exclusions from the application of the *Quw'utsun Tumuhw*, as indicated on land descriptions that are available for viewing at the Cowichan First Nation's Land Management Office. The Director has not confirmed whether these exclusions include Jack Road, but submits that the onus is on the Appellant to prove the non-application of the *Quw'utsun Tumuhw* to Jack Road. In the absence of such evidence, the Director says it is appropriate to assume that *Quw'utsun Tumuhw* applies to Jack Road[1].

[32] Section 3.5 of the *Quw'utsun Tumuhw* authorizes the council of the Cowichan First Nation to delegate administrative authority to individuals, and delegated authority may be subdelegated under section 3.6. Section 2.1 of the *Quw'utsun Tumuhw* defines the Lands and Governance Director as the person appointed to oversee the administration of the *Quw'utsun Tumuhw*. The Director submits that the appointment of Larry George as the Lands and Governance Director effectively delegates to him the council's right to verbally authorize persons to enter the lands to which the *Quw'utsun Tumuhw* applies. This includes Theik Reserve #2. Furthermore, the Director submits that interactions between Sgt. Norris and Larry George provided an implied or express licence for Sgt. Norris to enter Cowichan First Nation reserves for the purposes of carrying out his duties as a conservation officer. The Director says this licence was confirmed by Larry George.

[33] In support of those submissions, Sgt. Norris attests in his affidavit about his collaborative working relationship with the Cowichan First Nation and Larry George. He states that over the last ten years, it was well understood that he could enter Cowichan First Nation reserves to carry out his duties as a conservation officer. He notes that in July 2019, he attended a meeting with Larry George, Cowichan First Nation staff, and representatives of the RCMP, and the Cowichan First Nation staff indicated that the "Cowichan Tribes' Land Code" (i.e., the *Quw'utsun Tumuhw*) would not change the ability of the Conservation Officer Service to enter Cowichan First Nation's reserves. He also attests that in March 2021, "I spoke to Larry George and he confirmed that the Cowichan Tribes have no objection to me entering Cowichan Tribes reserves in the course of my duties as a conservation officer."

b. Law Enforcement Officials not trespassing when entering Reserve

[34] The Director notes that section 106(5) of the *Act* designates Conservation Officers as peace officers for the purpose of enforcing prescribed enactments

[1] In his affidavit, Sgt. Norris attests that the portion of Cowichan Bay Road which intersects Jack Road on Theik Reserve #2 is a public highway.

(section 107(1)(b) of the *Act*), including the *Act* (section 1(2)(a.3) of the *Conservation Officer Service Authority Regulation*).

[35] The Director submits that courts in British Columbia do not appear to have authoritatively dealt with whether peace officers or provincial law enforcement officials are in trespass when conducting law enforcement or compliance activities when on an Indian Reserve without authority from the band council or other band officials. However, in *Isaac v British Columbia (Workers' Compensation Board)*, [1994] BCJ No. 1615, the British Columbia Court of Appeal disagreed, based on the submissions provided to it, that Workers' Compensation Board officials trespassed when entering Indian Reserves without permission. The court noted the Workers' Compensation Board officials, in that case, were "engaged in a lawful purpose".[2]

[36] In addition, the Director submits that this issue has been addressed in other provinces. For example, in *R. v. Potts*, 2010 ABPC 59 [*R. v. Potts*], the Alberta Provincial Court found that wildlife officers under the Alberta *Wildlife Act* were not trespassing when entering onto First Nations land without authorization from the band council. The Court stated at paras. 208 to 210:

> The Saskatchewan Court of Queen's Bench in *R v Charles*, [1997] SJ No. 515 (Sask. QB) ("R v Charles"), considered whether or not wildlife officers in Saskatchewan acting under the Saskatchewan equivalent of the Alberta *Wildlife Act*, unlawfully entered a reservation to conduct their undercover operation. The Court held that the Saskatchewan *Wildlife Act* was not legislation in relation to Indians, but rather of general application and so applied everywhere in the province. Because Indians were subject to the Act, the wildlife officers were legally entitled to enter the reservation to conduct their investigation. A similar decision was reached by the Saskatchewan Provincial Court in *R v Couillonneur* (2002), 224 Sask R 50 (Sask Prov Ct) at paras 77-78.
>
> I agree with the reasoning adopted in these cases and also conclude that the wildlife officers in this case legally entered the Piikani First Nation lands. They were not required to consult or seek the permission of the Piikani Chief and Council.
>
> Counsel for the Crown points out that s 30 of the Indian Act makes it an offence to trespass on a reserve, but submits that a peace officer in the execution of his or her duty is not a trespasser. I agree with these submissions….

[37] The Director notes that *R. v. Potts*, *R. v. Couillonneur*, and *R. v. Charles* involved situations where provincial officials had specific statutory authorization to enter land, whereas the *Act* does not provide such authorization. However, the Director submits that these cases are still relevant because they indicate this authority is unnecessary; peace officers and provincial officials responsible for enforcing laws are not in trespass when entering Indian Reserves as part of their duties. The Director maintains that this conclusion is unchanged by the application of a land code (the *Quw'utsun Tumuhw*) and section 30 of the *Indian Act* ceasing to

[2] See paragraph 77.

apply to Theik Reserve #2. The only difference resulting from the land code being adopted and section 30 ceasing to apply is that the Cowichan First Nation has the authority to exercise the powers, rights and privileges of an owner in relation to the reserve land to which the land code applies.

Section 40 of the ATA

[38] The Director submits that even if the Board were to find that Sgt. Norris was in trespass, there is no basis for excluding any evidence he obtained in trespass. The Director says section 40 of the *ATA* provides the Board with a broad discretion to admit evidence that might be excluded by rules of evidence applicable to courts. The Director acknowledges that section 8 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") within the *Constitution Act, 1982*, protects Canadians from unreasonable search and seizure, and the courts have interpreted section 8 as protecting reasonable expectations of privacy: *R. v. Gomboc*, 2010 SCC 55, at paras. 17-18, 43. However, the Director maintains that there is no reasonable expectation of privacy for things that are in plain view from a road: *R. v. Boersma* [1994] SCJ No. 55. Thus, the Director submits that, by observing open burning from a road, Sgt. Norris was not conducting a search for the purposes of section 8 of the *Charter*, and there is no basis to exclude evidence obtained in that manner.

The Panel's Findings

1. *Did the conservation officer trespass or otherwise unlawfully enter on First Nation's land in gathering evidence which was relied upon in determining that the Appellant contravened section 13 of the Regulation?*

[39] At the outset, I note that the Appellant has the burden of proof. The Board has decided to address one of the Appellant's grounds of appeal in this preliminary decision, but that does not change that the Appellant is responsible for providing evidence to prove the facts he is arguing are, more likely than not, true.

[40] In addition, to the extent that he alleges that Sgt. Norris' evidence was wrongfully obtained, the Appellant must provide some legal argument that could support such a finding.

[41] In this case, the Appellant has provided no legal arguments and very little information regarding the preliminary questions posed by the Board, despite the questions arising from one of his grounds of appeal. The only correspondence from the Appellant in response to the Board's request for submissions on the preliminary questions was his May 14, 2021 email, reproduced above. Essentially, his email says a member of the Cowichan First Nation informed him that they have a "protocol" in place for people entering their lands, he intended to get a copy of that protocol, and he could have a member of the Cowichan First Nation provide a statement to the Board. Despite the Board giving the Appellant a reasonable amount of time, including granting him an extension of time, to obtain that information and any other information to address the Board's preliminary questions, and support his ground of appeal, he provided no further information. He also stated he did not want more time to gather information, but asked the Board to make a decision.

[42] I also note that the Appellant would have received a copy of the Director's submissions and documents on or about May 11, 2021 (when the Board received a copy of those submissions). The "protocol" that the Appellant referenced in his email appears to be the *Quw'utsun Tumuhw*, a copy of which was included in the Director's documents, and on which the Director made submissions. Despite the Appellant having received the Director's submissions and documents, and being given ample time to respond to them, he provided no submissions in response, including no comments on the *Quw'utsun Tumuhw*.

[43] In these circumstances, I find it appropriate to consider whether to summarily dismiss the ground of appeal alleging that a Conservation Officer entered the Cowichan First Nation's land without permission when investigating the Appellant. Section 31(1)(f) of the *ATA*[3] provides the Board with the power to summarily dismiss all or part of an appeal, at any time after the appeal is filed, if the Board determines that there is no reasonable prospect the appeal, or part of the appeal, will succeed. The Board may exercise this power after receiving an application from one of the parties or on its own initiative. The Board has previously used its powers under section 31 to summarily dismiss individual grounds of appeal (e.g., see: *Stannus v. British Columbia (Ministry of Environment)*, [2018] BCEA No. 11, 18 CELR (4th) 281, 2018 CarswellBC 1683 [*Stannus*]).

[44] In *Stannus*, at para. 123, the Board stated the test for applying section 31(1)(f) of the *ATA* in a preliminary decision to dismiss a ground of appeal:

> … the question is whether the evidence takes the impugned ground for appeal "out of the realm of conjecture", such that the evidence justifies allowing that ground to be heard at a full hearing of the merits. …

[45] In adopting that test in *Stannus*, the Board cited *Berezoutskaia v. British Columbia (Human Rights Tribunal)*, 2006 BCCA 95, at paras. 22 - 26 [*Berezoutskaia*], and *Chiang v. British Columbia (Human Rights Tribunal)*, 2014 BCSC 1859 [*Chiang*]. Those court decisions involved the power of the Human Rights Tribunal under section 27(1)(c) of the Human Rights Code to dismiss all or part of the complaint at any time if "there is no reasonable prospect that the complaint will succeed". This is similar to the Board's power under section 31(1)(f) of the *ATA*. In para. 121 of *Stannus*, the Board noted that in *Berezoutskaia*, the Court agreed with the Human Rights Tribunal's approach, which involved a preliminary assessment of the evidence "in order to determine whether that evidence warrants going forward to the hearing stage". In paras. 24 – 26 of *Berezoutskaia*, the Court confirmed that the evidentiary threshold in such circumstances is "whether the evidence takes the case 'out of the realm of conjecture'".

[46] I agree with the Board's approach in *Stannus*. I find that for the purposes of deciding to summarily dismiss a ground of appeal under section 31(1)(f) in a preliminary proceeding, the question is whether the Appellant's evidence and arguments take the ground of appeal 'out of the realm of conjecture', such that it should be fully heard by the Board.

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[3] Section 31 of the *ATA* applies to the Board pursuant to section 93.1 of the *Act*.

[47] I note that section 31(2) of the *ATA* requires that the Board give an appellant the opportunity to make written submissions or otherwise to be heard. In this case, the parties agreed with the two questions the Board would decide on a preliminary basis. The Appellant was given the chance to make submissions on those questions, and he provided a written statement. He was given more time and, after communicating that he did not want any more time, he was given another several weeks. The Board was clear that this issue would be addressed in a preliminary decision. While the Board did not expressly inform the Appellant that the issue might be dismissed, the communications and submissions make clear that the issue would be determinatively answered in the preliminary decision. This includes in dismissing that particular ground of appeal.

[48] In this case, I find that the Appellant has failed to take the ground of appeal out of the realm of conjecture. He has provided insufficient evidence and no legal argument to support his allegation that the Conservation Officer entered the Cowichan First Nation's reserve land without permission when investigating him. Because the Appellant bears the burden of proof, the Respondent could have provided no response and the outcome of this decision would have been the same.

[49] Because the Director provided evidence and submissions, however, I will address them. I find that the Cowichan First Nation, through its adoption of the *Quw'utsun Tumuhw*, has the authority to grant permission for people to enter its reserve lands. Further, based on the Director's evidence, I find that the Cowichan First Nation's Council has delegated that authority under the *Quw'utsun Tumuhw* to their Director of Lands and Governance, Larry George, and he has authorized Conservation Officers to enter the Cowichan First Nation's reserves for the purpose of carrying out their duties, including enforcing the *Act*.

[50] Even if such permission had not been granted, I further find that the court decisions provided by the Director establish that there is no reasonable expectation of privacy for things that are in plain view from a road, such as open burning and the associated smoke. I find that, by observing open burning on the Property from various roads, both on and off the Reserve lands, the Conservation Officers were not conducting an unlawful search of the Appellant. Thus, the allegation in the Appellant's ground of appeal does not provide a basis for excluding that evidence. Given that finding, and the Board's broad power to receive evidence under section 40 of the *ATA*, the evidence would still be admissible, as long as the panel of the Board that hears the merits of the appeal finds that the evidence is relevant, necessary and appropriate.

[51] In summary, I find that the answer to the first question is 'no'; Mr. Norris did not trespass or otherwise unlawfully enter on First Nation's land in gathering evidence which was relied upon in determining that the Appellant contravened section 13 of the *Regulation*.

[52] As a result, I do not need to address the second question. Even if I did, however, I would find that there would be no effect on the evidence. Based on the submissions made in this case, I agree with the Respondent that, even in courts of law, there would be no basis under *Charter* to exclude the evidence. Section 40 of the *ATA* gives the Board the discretion to consider evidence, even if the courts would not do so. Absent any legal argument from the Appellant, I conclude that, as

long as the panel finds the evidence from the Conservation Officers relevant, necessary, and appropriate, it has the ability to consider that evidence.

[53] In addition, I find that the Appellant's ground of appeal alleging that a Conservation Officer entered the Cowichan First Nation's land without permission when investigating the Appellant should be dismissed under section 31(1)(f) of the *ATA* because it has no reasonable prospect of success for the reasons provided above.

[54] As a final comment, I note that even if the answer to both questions had been 'no' and the evidence in question was not admissible in the appeal process, it would only result in the exclusion of some, not all, of the Conservation Officer's observations that the Appellant contravened the *Regulation*. While some of the Conservation Officer's observations were made from roads on Theik Reserve #2, the Director's evidence shows that many of their observations were made from locations outside of the Cowichan First Nation's reserve lands, including from Highway 1 and the Appellant's Property.

DECISION

[55] In making this decision, I considered all of the relevant and admissible evidence and the submissions of the parties, whether or not specifically reiterated in this decision.

[56] For the reasons provided above, I find that there is no basis to exclude the Conservation Officer's evidence. In addition, I summarily dismiss the Appellant's ground of appeal alleging that a Conservation Officer entered the Cowichan First Nation's land without permission when investigating the Appellant, as this ground of appeal has no reasonable prospect of success.

"Darrell Le Houillier"

Darrell Le Houillier, Chair
Environmental Appeal Board

August 13, 2021