



Environmental Appeal Board

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DECISION NO. 2016-WIL-003(a)

In the matter of an appeal under section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488

BETWEEN:	Darren DeLuca	APPELLANT
AND:	Deputy Regional Manager, Recreational Fisheries and Wildlife Programs	RESPONDENT
AND:	Wildlife Stewardship Council	PARTICIPANT
BEFORE:	A Panel of the Environmental Appeal Board Jeffrey Hand, Panel Chair	
DATE:	Conducted by way of written submissions concluding on August 31, 2016	
APPEARING:	For the Appellant: Jonathan Van Netten, Counsel For the Respondent: Pamela Manhas, Counsel For the Participant: John Henderson	

APPLICATION FOR EVIDENCE TO BE RECEIVED IN CONFIDENCE

[1] This application arises from an appeal by Darren Deluca (the "Appellant") against a decision issued on April 1, 2016, by Michael Stahlberg, Deputy Regional Manager (the "Respondent"), Ministry of Forests, Lands and Natural Resource Operations, regarding the Appellant's quota for Roosevelt elk for the 2016 guide outfitting season. The Appellant holds a guide territory certificate that covers certain areas on Vancouver Island. Each year, the Appellant is issued a guide outfitter licence that authorizes his clients to kill a specific number of game species within the area covered by his guiding territory certificate. In the appeal, the Appellant submits that the quota in his guide outfitter licence for the period from April 1, 2016 to March 31, 2017 was incorrectly determined.

[2] After the appeal was filed, the Wildlife Stewardship Council applied for Participant status in the appeal. The Wildlife Stewardship Council describes itself as a non-profit society with membership of First Nations and guide outfitters from across the Province. In a letter dated August 5, 2016, the Board granted the Wildlife Stewardship Council's application but limited its participation to providing submissions on "the impacts that the appeal may have on the Roosevelt elk

population on Vancouver Island and how that will affect the Council and its members.”

[3] The appeal was conducted by way of written submissions, which closed on August 23, 2016.

[4] On August 26, 2016, and following the close of submissions in this appeal, the Appellant brought an application before the Panel seeking an order that the Panel receive certain evidence in confidence pursuant to section 42 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the “Act”). Specifically, the Appellant requests an order in the following terms:

1. The Affidavit of Michael Stalberg dated July 29, 2016 (the “Stahlberg Affidavit”), or alternatively Exhibit “K” of that Affidavit, be sealed from public access and from access by the Wildlife Stewardship Council;
2. An order that John Henderson, on behalf of the Wildlife Stewardship Council delete any electronic copies of the Stalberg Affidavit and destroy the physical copies of the Stalberg Affidavit;
3. An order that John Henderson, on behalf of the Wildlife Stewardship Council, provide an Affidavit:
 - a. confirming that all copies of the Stalberg Affidavit in his possession or in possession of the Wildlife Stewardship Council have been deleted or destroyed; and
 - b. confirming that the Stalberg Affidavit has not been provided by him or the Wildlife Stewardship Council to any other individuals, members of the Wildlife Stewardship Council, businesses, or organizations, or alternatively if the Stalberg Affidavit has been provided to other individuals, members of the Wildlife Stewardship Council, businesses or organizations, a list of all of the individuals, members of the Wildlife Stewardship Council, businesses or organizations that have received the Stalberg Affidavit.

The Parties’ Submissions

[5] The Appellant submits that this order is necessary because Exhibit “K” of the Stalberg Affidavit consists of the Appellant’s completed Report and Declaration of Guide Outfitter forms from 2012-2015, and those forms list the names and addresses of the Appellant’s clients and the type of wildlife that was hunted by the clients. The Appellant says that the Wildlife Stewardship Council represents guide outfitters that are competitors of the Appellant, and that the disclosure of the names and addresses of the Appellant’s clients could cause irreparable harm to the Appellant’s business.

[6] The Respondent takes no position on the application. However, counsel for the Respondent says that they were advised by the Wildlife Stewardship Council that they never received the Stalberg Affidavit when it was delivered by email on August 15, 2016. After learning this, counsel for the Respondent provided it to

them on August 26, 2016, but without Exhibit "K", pending receipt of the Panel's determination on this application.

[7] The Wildlife Stewardship Council advises that initial delivery of the Stalberg Affidavit was never received because it was sent electronically and the file was too large to be transmitted successfully. They say they received the Stalberg Affidavit without Exhibit "K" on August 26, 2016, via four separate emails so as to make the transmission size manageable. This is consistent with the advice the Panel has received from the Respondent.

[8] The Wildlife Stewardship Council further submits that they have no interest in obtaining the personal client information found in Exhibit "K", but they say they are entitled to receive the balance of the Stalberg Affidavit.

[9] The Wildlife Stewardship Council made additional submissions which were not responsive to the application filed by the Appellant. These will not be considered by the Panel.

The Panel's Findings

[10] The Panel has discretion to receive evidence in confidence pursuant to section 42 of the *Act*, which states:

The tribunal may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any intervenors, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure proper administration of justice.

[11] The Panel is satisfied that there is the potential for damage to the Appellant's business if the client information contained an Exhibit "K" of the Stalberg Affidavit were available to the Wildlife Stewardship Council or to members of the public. Neither the Respondent nor the Wildlife Stewardship Council oppose the granting of an order sealing Exhibit "K".

[12] However, the Appellant seeks an order to seal the whole of Mr. Stalberg's Affidavit. There is no suggestion that the Stalberg Affidavit, beyond the contents of Exhibit "K", contains any client information that could potentially be harmful to the Appellant's business. The Panel finds that it is appropriate to seal only Exhibit "K" from public access and from access by the Wildlife Stewardship Council.

[13] The second and third clauses of the order sought by the Appellant were premised on the assumption that the Wildlife Stewardship Council had received the Stalberg Affidavit when it was first delivered by counsel for the Respondent on August 15, 2016. On the evidence submitted, the Wildlife Stewardship Council did not receive Exhibit "K", and thus it is unnecessary to make any order requiring that Exhibit "K" be deleted or destroyed, nor is it necessary to require Mr. Henderson to provide an Affidavit on the terms sought.

[14] Lastly, in his reply submissions dated August 31, 2016, counsel for the Appellant objects to those portions of the Wildlife Stewardship Council's

submissions which are not responsive to the issues on this application. As noted above, the Panel has disregarded those portions of the submissions.

[15] However, counsel for the Appellant goes further and submits that by filing its response, the Wildlife Stewardship Council has prejudiced the fair hearing of this appeal, and the Appellant seeks an order revoking the Participant status of the Wildlife Stewardship Council and asking that all of its submissions filed in this appeal be struck out. The Appellant does not say how his case has been prejudiced.

[16] The Panel finds that there is no basis on which to conclude that the Appellant's ability to argue this appeal has in any way been prejudiced. The Appellant and the Respondent have had a robust exchange of submissions on all the issues arising in this appeal. Previous submissions submitted by the Wildlife Stewardship Council were confined, as the Board had directed, to the impact that a successful appeal would have on the Wildlife Stewardship Council. The Appellant had full opportunity to respond to those submissions when he filed his reply on August 19, 2016. As noted above, the Panel will not be considering anything from the Wildlife Stewardship Council's submissions dated August 29, 2016 beyond those portions responding to this application.

ORDER

[17] Exhibit "K" of the Stalberg Affidavit is hereby sealed from public access and from access by the Wildlife Stewardship Council, pursuant to section 42 of the *Act*.

"Jeffrey Hand"

Jeffrey Hand, Panel Chair
Environmental Appeal Board

September 1, 2016