



Environmental Appeal Board

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APPEAL NO. 2002-WIL-011(d)

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

BETWEEN:	Carmen Nyuli	APPELLANT
AND:	Regional Manager	RESPONDENT
AND:	Thomas Fox and Fox Lake Outfitters Ltd.	THIRD PARTIES
BEFORE:	A Panel of the Environmental Appeal Board Lorraine Shore, Panel Chair	
DATE:	Conducted by way of oral submissions concluding on May 15, 2003	
APPEARING:	For the Appellant: Thomas Buri, Q.C., Counsel For the Respondent: Joe McBride, Counsel For the Third Party: Bruce Kaun, Counsel Thomas Fox	

JURISDICTION

In a letter dated May 15, 2003, the Third Parties advised the Board that if the Appellant "vacates his position," then the Third Party will "move to the Appellant position."

During a teleconference on May 15th, 2003, all parties had an opportunity to make submissions on this matter.

On May 16, 2003, the Appellant notified the Board, in writing, that he was withdrawing his appeal. The Panel issued an interim decision on the Third Parties' motion (Appeal No. 2002-WIL-011(b), May 16, 2003), given that there was some urgency to having this motion addressed before the scheduled hearing date.

In its decision, the Panel found that it had no jurisdiction to grant the Third Parties' motion to move into the Appellant's position. The Panel advised the parties that full written reasons for this decision would follow.

The following decision contains the full reasons for the decision.

BACKGROUND

The Appellant is a guide outfitter who operated in the Omineca area of British Columbia. According to the Third Parties' documents, Mr. Nyuli was employed by the Third Party, Fox Lake Outfitters Ltd., between 1998 and 2000.

Pursuant to the *Wildlife Act*, guides are required to be licensed as guide outfitters or assistant guides. In order to receive either of these licenses, the applicant must be a Canadian citizen or permanent resident of Canada. In addition, guide outfitters may apply for certificates, which entitle them to exclusive guiding privileges for a particular area for a period not exceeding 10 years.

Mr. Nyuli held both a guide outfitter's licence as well as a guide outfitter's certificate. As part of a private arrangement, Mr. Nyuli held the certificate in trust for Fox Lake Outfitters Ltd. This is because under the *Act*, only a natural person, not a corporate entity, can be licensed or hold a certificate.

The president of Fox Lake Outfitters Ltd., Thomas Fox, also a Third Party, is from Pennsylvania, USA, and is not a Canadian citizen or resident. Therefore, he could not hold a licence or certificate due to the requirement that an applicant for a licence must be a Canadian citizen or a permanent resident of Canada.

On August 16, 2000, John Metcalfe, Regional Manager with the Omineca Regional Office of the Wildlife Branch, Ministry of Water, Land and Air Protection (the "Regional Manager"), was advised by the Conservation Officer Service that it was conducting an investigation into the activities of Fox Lake Outfitters Ltd. and Carmen Nyuli for alleged breaches of the *Wildlife Act*.

On the basis of the allegations, the Regional Manager decided on August 16, 2000, to hold a hearing pursuant to section 61 of the *Act*. After various adjournments, the hearing was held on June 12, 2002. At the hearing, counsel appearing on behalf of the Province of British Columbia, Mr. Nyuli, and Mr. Fox and Fox Lake Outfitters Ltd. presented the Regional Manager with an Agreed Statement of Facts and a Joint Submission on Penalty.

In an October 22, 2002 decision, the Regional Manager accepted the facts and penalty as jointly agreed. The penalty portion states as follows:

1. that Mr. Nyuli be ineligible to obtain or hold a Guide Outfitter Licence until April 1, 2009;
2. that Mr. Nyuli be ineligible to obtain or hold an Assistant Guide Outfitter Licence until April 1, 2005;
3. that Mr. Nyuli's Guide Outfitter Certificate number 700655 (Region 7 Omineca) be suspended until April 1, 2005;
4. that the Certificate be cancelled on April 1, 2006 unless it has been transferred prior to that date, with the authorization of the Regional

Manager, to an arms length transferee who is qualified to hold a Guide Outfitter Certificate;

5. that no transfer of the certificate may be authorized if the effect of the proposed transfer would be to terminate the suspension of the Certificate prior to April 1, 2005; and,
6. that for the purposes of paragraph 4 above, "arms length" means that the transfer must be for good and valuable consideration and must not be to any person, friend, relative, corporation, nominee, trustee or other person or entity which, in any way, is related to Carmen Nyuli, Tom Fox or Fox Lake Outfitters Ltd.

For clarity:

1. although the Certificate is suspended and the area not operable until April 1, 2005, I will entertain an application to transfer the area to another qualified guide outfitter, but not before April 1, 2004. This would have the affect of limiting impacts on Fox Lake Outfitting Ltd. by allowing them 2 years to effect sale or transfer of the area, while still ensuring the area is rested from guided hunting until April 1, 2005, to allow recovery from any harm to wildlife populations that may have been caused by Carmen Nyuli's actions.
2. the requirements of section 58 of the *Wildlife Act* (non use of area) shall be waived until April 1, 2005, and the guide outfitter area is once again available for use.

This decision was sent by registered mail to counsel for the Appellant, the Province, and the Third Parties. The government documents show that the decision was sent to them on October 23, 2002.

On December 2, 2002, Mr. Nyuli filed an appeal stating "I hereby appeal the decision [of John WR Metcalfe, Regional Manager, made on October 22, 2002 under section 61 of the *Wildlife Act*]." The letter was signed "Yours Truly, Carmen Nyuli."

The Board scheduled an oral hearing of Mr. Nyuli's appeal commencing May 21, 2003.

On April 8, 2003, Mr. Fox wrote to the Board asking for full party status for himself and Fox Lake Outfitters Ltd. in Mr. Nyuli's appeal. On April 10, 2003, the Board responded by offering them full party status as Third Parties, which would permit them to present evidence, cross-examine witnesses, be cross-examined and close with a summary statement.

At the request of counsel for the Regional Manager, a pre-hearing conference was conducted by telephone on May 14, 2003. During this conference call, counsel for the Appellant advised that he wished to bring a motion that the Regional Manager did not have the jurisdiction to impose an ineligibility period during which Mr. Nyuli

could not hold a guide outfitter or assistant guide outfitter licence. A second conference call was scheduled for May 15, 2003, to hear submissions on this matter.

During the May 15, 2003 teleconference, Mr. Nyuli advised that if the Panel found that it was beyond the jurisdiction of the Regional Manager to impose the ineligibility periods, the Appellant would not be seeking any other relief in his appeal and he would withdraw all other claims.

Concerned about the effect that this course of action would have on their case, the Third Parties sent a letter on May 15, 2003, prior to the conference call, asking the Panel to consider an additional motion; specifically, if the Appellant vacates his position, can the Third Parties "move to the Appellant position." The Panel heard submissions on this issue during the May 15, 2003 teleconference.

On May 16, 2003, the Panel issued its interim decision on the Regional Manager's jurisdiction (see Appeal No. 2002-WIL-011(a)). Its full reasons for decision on this issue were released on June 6, 2003 (see Appeal No. 2002-WIL-011(c)).

By a fax dated May 16, 2003, the Appellant withdrew his appeal. Consequently, the Panel issued an interim decision on the Third Parties' motion, and the full reasons for the decision are as follows.

ISSUES

Whether the Third Parties can continue with the appeal of the Regional Manager's decision of October 22, 2002, by "stepping into the shoes" of the Appellant and taking over conduct of the appeal.

RELEVANT LEGISLATION

The *Wildlife Act* sets out who may file an appeal to the Board (i.e., those with standing to appeal), the decisions that may be appealed and the time limit for filing an appeal with the Board. The relevant sections of the *Wildlife Act* are as follows:

Definitions and interpretation

1 (1) In this Act:

"person", for the purpose of issuing a licence, limited entry hunting authorization or a registration of a trapline, means a natural person;

Reasons for and notice of decisions

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 guide outfitter's certificate held by a person, or

(b) an application by a person for anything referred to in paragraph (a).

- (2) Notice of a decision referred to in subsection (1) must be given to the affected person.
- (3) Notice required by subsection (2) may be by registered mail sent to the last known address of the person, in which case, the notice is conclusively deemed to be served on the person to whom it is addressed on
 - (a) the 14th day after the notice was deposited with Canada Post, or
 - (b) the date on which the notice was actually received by the person, whether by mail or otherwise,whichever is earlier.

Appeals to Environmental Appeal Board

- 101.1** (1) The affected person referred to in section 101 (2) may appeal the decision to the Environmental Appeal Board established under the *Environment Management Act*.
- (2) The time limit for commencing an appeal is 30 days after notice is given
 - (a) to the affected person under section 101 (2), or
 - (b) in accordance with the regulations.
- (3) An appeal under this section
 - (a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and
 - (b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

...

The Environmental Appeal Board is established pursuant to the *Environment Management Act*, R.S.B.C. 1996, c.118. The relevant sections of the *Environment Management Act* for the purposes of this matter are as follows:

Environmental Appeal Board

- 11** (1) The Lieutenant Governor in Council must establish an Environmental Appeal Board to hear appeals that under the provisions of any other enactment are to be heard by the board.
- (2) In relation to an appeal under another enactment the board has the powers given to it by that other enactment.

...

- (12) In an appeal, the board or a panel

(a) may hear any person, including a person the board or a panel invites to appear before it, and

(b) on request of

(i) the person,

(ii) a member of the body, or

(iii) a representative of the person or body,

whose decision is the subject of the appeal or review, must give that person or body full party status.

DISCUSSION AND ANALYSIS

As noted above, on April 8, 2003, Thomas Fox, president of Fox Lake Outfitters Ltd., wrote to the Board requesting "full party status" in the appeal of Mr. Nyuli. The Board replied on April 10, 2003 offering Mr. Fox and Fox Lake Outfitters Ltd. "full party status as Third Parties in this matter." The Board advised that this permitted the Third Parties to present evidence, cross-examine the Appellant, Respondent and any other party, be cross-examined, and close with a summary statement.

On May 14, 2003, in a teleconference to address preliminary matters, counsel for Mr. Nyuli advised that he wished to raise a preliminary question of law in regard to the jurisdiction of the regional manager to make two of the orders in his October 22, 2002 decision in which he imposed a period of ineligibility on Mr. Nyuli's ability to hold a guide outfitter or assistant guide outfitter licence. The Board was advised that if Mr. Nyuli succeeded in his application, he would withdraw his appeal.

The next day, on May 15, 2003, the Third Parties wrote to the Board advising that they wished to make a motion that if the Appellant vacates his position, the Third Parties would "move to the Appellant position."

In the teleconference of May 15, 2003, the Third Parties argued that they should be able to take over conduct of the appeal since the appeal was, in essence, filed on their behalf.

Both Mr. Kaun, counsel for the Third Parties on the teleconference, and Mr. Fox himself, noted the following in support of this position:

- When Mr. Nyuli filed his appeal, he was an officer of Fox Lake Outfitters Ltd., a B.C. registered company. At that time, Mr. Nyuli was secretary of the company.
- There are trust documents demonstrating that Mr. Nyuli holds the guide outfitter's certificate in trust for Fox Lake Outfitters Ltd.
- Mr. Nyuli is still under contract to Fox Lake Outfitters Ltd. and is an employee.

The Third Parties maintain that as an officer of the company, Mr. Nyuli filed his appeal for, or on behalf of, Mr. Fox and Fox Lake Outfitters Ltd. and, therefore, they should be legally entitled to assume conduct of the appeal.

Alternatively, counsel for the Third Parties' submits that, at all times, the parties truly "affected" by the proceedings before the Regional Manager, and now the Board, were Mr. Fox and Fox Lake Outfitters Ltd. Accordingly, as a registered, limited liability corporation, the company, and the president of the company, have the right to move into the status of the Appellant who is and was an officer and employee of that company.

The Respondent argues to the contrary. He notes that the Notice of Appeal filed with the Board on December 2, 2002 was in the name of Carmen Nyuli only. There is nothing in the Notice of Appeal referencing his position as an officer of Fox Lake Outfitter Ltd., nor any other indication that he was filing his appeal on behalf of Mr. Fox and/or Fox Lake Outfitters Ltd.

Counsel for the Respondent further argues that the Third Parties' participation in Mr. Nyuli's appeal cannot survive the dismissal or withdrawal of the proceedings between the Appellant and Respondent. There is no statutory authority for that to occur.

Regarding the Board's jurisdiction generally in this situation, the Respondent submits that section 101 of the *Wildlife Act* requires the Regional Manager to provide written reasons for a decision, and that notice of the decision be given to "the affected person". In this case, it was Mr. Nyuli who was clearly "*the* affected person"; it was his certificate and his licence which were impacted. The Regional Manager gave notice to Mr. Nyuli and he appealed within the time limit, as set out in section 101.1 of the *Wildlife Act*. As a result, he was the Appellant.

The Respondent states that it is debatable whether the words "the affected person" in section 101.1 of the *Wildlife Act* could include the Third Parties in this case. However, the Respondent states that, for purposes of his argument, he would "presume" that one or both of the Third Parties fit this description. As such, they would have been entitled to notice of the decision under section 101(2) of the *Act*. The Regional Manager sent them the decision on October 23, 2002 through their counsel.

Despite being given notice of the decision, neither Mr. Fox nor Fox Lake Outfitters Ltd. appealed the decision within the 30-day time period. Only Mr. Nyuli appealed. In fact, the Respondent points out that the first that anyone heard from the Third Parties following the release of that decision in October 2002, was in their April 8, 2003 letter to the Board requesting full party status. The Respondent argues that this April 8th letter does not constitute a Notice of Appeal.

Accordingly, the Respondent argues that the Third Parties' motion to now become the Appellant must fail.

In response, the Third Parties submit that their status does not need to be spelled out in Mr. Nyuli's Notice of Appeal and that "it is accepted that Fox Lake is being

punished into seven figures". The Third Parties state that they have a strong case against the Regional Manager and the appeal hearing is necessary for them to make that case.

The Panel's Findings

The *Environment Management Act*, which governs the procedure for appeals under the *Wildlife Act*, deals with the matter of status in section 11(12). Section 11(12)(a) provides that the Board may hear any person, and that is what the Board offered Mr. Fox and Fox Lake Outfitters Ltd. with its April 10, 2003 letter.

The Third Parties argue that Mr. Nyuli was filing an appeal on behalf of Mr. Fox and Fox Lake Outfitters Ltd. However, the Panel finds that there is nothing within Mr. Nyuli's Notice of Appeal to support that contention.

Mr. Nyuli's Notice of Appeal, dated December 2, 2002, is on Mr. Nyuli's own letterhead. The first sentence in the letter states: "I hereby appeal the decision referred to above." Nowhere in the letter is there any reference to his position as secretary of Fox Lake Outfitters Ltd. nor is there any indication that the appeal is to include Mr. Fox or Fox Lake Outfitters Ltd. Mr. Nyuli was present during the teleconference and did not assert that he had intended the Notice of Appeal to include the Third Parties.

The Third Parties also noted that there are trust documents demonstrating that Mr. Nyuli holds the guide outfitter's certificate in trust for Fox Lake Outfitters Ltd., and that Mr. Nyuli is still under contract to Fox Lake Outfitters Ltd. and is an employee. These facts do not, in and of themselves, establish that Mr. Nyuli was filing his appeal on behalf of the Third Parties. To the contrary, the contents of his Notice of Appeal and other correspondence filed with the Board indicate that Mr. Nyuli's interest in appealing the decision was personal. This is understandable since he was losing his ability to earn a livelihood as a guide outfitter and assistant guide outfitter for a lengthy period of time.

Further, the Third Parties have not explained why they sought full party status on April 8, 2003 if they truly believed that they were already Appellants.

The Panel does not accept the Third Parties' argument that they filed an appeal through Mr. Nyuli. The Panel also finds that neither Mr. Fox nor Fox Lake Outfitters Ltd. filed a Notice of Appeal with the Board.

Further, as there is no authority for the Board to extend the time limit for filing an appeal under the *Wildlife Act* or the *Environment Management Act*, the Board cannot consider accepting a new appeal from the Third Parties at this time since the 30-day statutory limitation period for commencing an appeal has expired.

Despite the Panel's finding that the Third Parties did not appeal, either on their own behalf, or through Mr. Nyuli, this does not answer the question of whether they can now step into the shoes of the Appellant when the Appellant withdraws.

The fundamental question before the Panel is what happens to the appeal when the Appellant decides to withdraw or abandon his appeal. In the Panel's view, a withdrawal of an appeal by the Appellant ends the proceeding.

The Third Parties cite no authority in support of their application to be placed in the Appellant's position, nor did they refer to any authority that would allow the Board to extend the time limits to appeal the Regional Manager's decision in the absence of an express statutory provision authorizing an extension. The Board is bound by its governing statutes and those statutes simply do not give the Board the jurisdiction to do what the Third Parties request. While the law recognizes that tribunals such as the Board are "masters of their own procedure", this only relates to process or procedure. The effect of this motion is more fundamental or substantive than procedural. There must be some legal basis for the Panel to substitute one party into the position of an appellant. The Panel can find no basis in its enabling legislation to do this; therefore it is without jurisdiction to grant this request.

Accordingly, the Panel denies the Third Parties' application to become the Appellant.

DECISION

In making this decision the Panel has considered all of the evidence, documents and arguments before it, whether or not they have been specifically reiterated here.

The Panel finds that it has no jurisdiction to grant the Third Parties' application. The Third Parties' application is therefore denied.

As stated in the Panel's interim decision, the hearing is cancelled, and the appeal file will be closed.

Lorraine Shore, Panel Chair
Environmental Appeal Board

June 6, 2003