BRITISH COLUMBIA

Environmental Appeal Board

Fourth Floor, 747 Fort Street
Victoria BC V8W 3E9
Telephone: (250) 387-3464
Facsimile: (250) 356-9923

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9V1

Website: www.eab.gov.bc.ca
Email: eabinfo@gov.bc.ca

DECISION NO. 2018-WIL-001(a)

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

BETWEEN:	Li Zhu Liu	**APPELLANT**
AND:	Deputy Director, Fish and Wildlife Branch	**RESPONDENT**
BEFORE:	A Panel of the Environmental Appeal Board Gabriella Lang, Panel Chair	
DATE:	Conducted by way of written submissions concluding on October 11, 2018	
APPEARING:	For the Appellant: Daniel Henderson, Counsel For the Respondent: Meghan Butler, Counsel	

APPEAL

[1] The Appellant, Li Zhu Liu, appeals the penalties imposed on him in the January 10, 2018 decision ("Decision") of the Respondent, Cole Winegarden, Deputy Director, Fish and Wildlife Branch, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the "Ministry"). Pursuant to section 24 of the *Wildlife Act* (the "*Act*"), and after considering submissions from the Appellant, the Respondent imposed the following conditions and restrictions with respect to the Appellant's hunting licences:

1. The Appellant's hunting licence privileges are suspended for the 10-year period from February 1, 2018 until, but not including February 2, 2028.
2. Every hunting licence the Appellant holds is cancelled as of February 1, 2018.
3. As of February 1, 2018 and until, but not including, February 2, 2028, the Appellant is:
    - ineligible to obtain or renew a hunting licence;
    - ineligible to apply for a Limited Entry Hunting authorization; and
    - prohibited from hunting.

4. In addition, after the expiry of the 10-year hunting licence privilege suspension, the Appellant's hunting licence privileges remain suspended until he successfully re-completes the full Conservation and Outdoor Recreation Education ("CORE") program (not just challenges the exam), and provides proof to the Ministry of having done so.

[2] The Environmental Appeal Board has the authority to hear this appeal under section 101.1 of the *Act*. Section 101.1(5) provides:

> (5) On an appeal, the appeal board may
>
> (a) send the matter back to the regional manager or director, with directions,
>
> (b) confirm, reverse or vary the decision being appealed, or
>
> (c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

[3] The Appellant submits that the penalty is excessive. He asks the Board to allow him to hunt with a licensed guide outfitter during the hunting licence suspension period. Alternatively, the Appellant asks that the period of prohibition be reduced to two years, with the exception of allowing him to hunt during that prohibition period with a licensed guide outfitter. The Appellant does not object to re-taking the CORE course before resuming any hunting activities.

[4] The Respondent asks that the appeal be dismissed with costs.

BACKGROUND

[5] The licensing action at issue in this case relates to the Appellant's involvement in several hunting-related violations of the *Act* and the regulations under the *Act*, over a four-year period.

[6] Between 2013 and 2016, the Appellant participated in hunting trips with other individuals in different areas of the province. During this time, the Appellant was a resident of the province and held resident hunting licences.

[7] From 2013 to 2016, the Conservation Officer Service ("COS") investigated several incidents of violations under the *Act* involving the Appellant. The incidents involved the killing of two cow moose, a black bear, a grizzly bear and deer.

[8] During the course of the investigations, the Appellant was arrested, had property seized, and was charged with offences under the *Act*. The Appellant ultimately pled guilty to some of the charges in BC Provincial Court. The details of the Provincial Court sentencing are discussed later in this decision.

[9] In June of 2017, the COS Major Investigations Unit provided the Ministry with its 10 page "Recommendation to the Director of Wildlife", in which the COS investigators recommended that the Director take "significant" licensing action against the Appellant (the "COS Recommendation").

[10] In a letter dated June 12, 2017, the Respondent notified the Appellant that, under his authority as Deputy Director, he was considering taking action concerning the Appellant's angling, hunting and firearm carrying privileges pursuant to section 24 of the *Act*, which states, in part:

> (2) After providing an opportunity for the person to be heard, the director may, for any cause considered sufficient by the director, do any of the following:
>
> (a) prohibit, for a period within prescribed limits, the person from hunting, angling or carrying a firearm;
>
> (b) cancel or suspend, for a period within prescribed limits, any limited entry hunting authorization or licence that is issued to the person under this Act.

[11] In the Respondent's letter to the Appellant, he states:

> I enclose written materials that make allegations against you. I have been asked to consider those materials and exercise my authority under section 24 of … [the *Act*] to remove your privileges as a result.

[12] The written materials provided to the Appellant consisted of 30 documents, the majority of which were provided by the COS's Major Investigations Unit. The documents included the COS Recommendation, transcribed witness statements of the Appellant and other individuals, photographs, a forensic firearm report, Ministry policies, and information from two Ministry wildlife biologists (Mike Bridger and Alicia Woods).

[13] The Respondent provided the Appellant with an opportunity to provide a response. The Appellant, through his counsel, provided a written reply dated August 8, 2017.

The Decision

[14] In his Decision, the Respondent set out his findings of fact on the details of each incident and his findings on whether the Appellant committed an offence or violated the legislation on a balance of probabilities. The Panel has summarized these findings as follows:

1. Cow Moose killed and left on cultivated land near Fort Nelson, BC.

   On October 29, 2013, a COS officer investigated a complaint of gunshots and a cow moose being shot in a cultivated field. The COS officer discovered a dead cow moose in the field adjacent to the road. There was no open season for cow moose in that area at that time. The COS officer recovered empty rifle casings from the area.

   Two days later, during the investigation of the incident described under #2 (below), the COS officer found two rifles owned by the Appellant in the Appellant's vehicle. One of the rifles matched the empty casings found in the cultivated field (per forensic report).

The Appellant admitted to hunting in the area but stated that he did not think that his party had "hit" anything.

In the Decision, the Respondent found that the Appellant:

- hunted and killed wildlife at a time not within the open season contrary to section 26(1)(c) of the *Act*;
- hunted wildlife and failed to make every reasonable effort to retrieve the wildlife, kill it, and include it in his bag limit contrary to section 35(2)(a) of the *Act*;
- hunted on cultivated land without the consent of the owner, lessee or occupier of the land contrary to section 39(1) of the *Act*; and
- failed to cancel a species licence in accordance with the instructions on the licence contrary to section 7(1) of the *Hunting Licensing Regulation,* B.C. Reg. 8/99.

2. Cow Moose killed and left on West Gundy Road near Pink Mountain, BC.

On October 31, 2013, a witness observed the Appellant and two hunting companions standing over a recently shot cow moose. The cow moose had been shot outside of open season and was left at the roadside. The Appellant and the two companions were arrested later that day. The Appellant admitted to shooting the cow moose, but stated that he was mistaken about the gender of the moose. He referred to his and his groups' lack of hunting experience.

Subsequently, in his August 8, 2017 reply to the Respondent, the Appellant stated that he took personal responsibility for the illegal harvest of this cow moose.

In the Decision, the Respondent found that the Appellant:

- hunted and killed wildlife at a time not within the open season contrary to section 26(1)(c) of the *Act*; and,
- failed to cancel a species licence in accordance with the instructions on the licence contrary to section 7(1) of the *Hunting Licensing Regulation.*

3. Failure to cancel species licence and leave evidence of sex.

On September 13, 2014, the Appellant shot a white tailed deer near Pink Mountain, BC. The Respondent found that the Appellant improperly cancelled his licence for the wrong species, a mule deer, and incompletely cancelled the species licence by failing to identify the sex of the animal, contrary to section 7(1) of the *Hunting Licensing Regulation*. The Respondent also found that the Appellant processed the white tailed deer in a way that removed evidence of the species and sex, contrary to section 36 of the *Act* and section 15(2.1) of the *Hunting Regulation,* B.C. Reg. 190/84.

4. Failure to remove edible portions from a black bear carcass.

   On September 13, 2014, the Appellant and two other individuals were hunting near Pink Mountain, BC. On Lily Lake Road, the Appellant and one of those individuals shot at a black bear and killed it. Both had species licences for black bear: the other individual cancelled his species licence for the bear. The hunting group were unable to find the bear carcass for harvesting.

   The Respondent concluded that the other individual fired the shot that killed the bear and was responsible for ensuring that the edible portions of the black bear were removed.

5. Grizzly bear mistaken for black bear.

   On October 2, 2014, the Appellant was hunting with another individual near Pink Mountain, BC when they spotted a bear. The other individual shot it and cancelled his black bear species licence. They brought the bear to their hunting camp where a COS investigator identified the bear as a grizzly, not a black bear. The other individual took full responsibility for the illegal harvest of the grizzly bear.

6. Exceeding species licence limit for deer during the 2014/15 Hunting Season.

   The Appellant obtained 16 deer species licences for the 2014/15 licence year. A COS investigator photographed the Appellant's hunting licence booklet documenting these 16 licences.

   The Respondent concluded that the Appellant obtained more than 15 species licences for deer contrary to section 17 of the *Hunting Licensing Regulation.*

7. Harvest of mule deer outside of open season.

   On October 6, 2016, the Appellant was hunting deer on Gundy Road near Pink Mountain, BC. Based on a complaint of an illegal harvest, a COS officer inspected a deer that the Appellant harvested and determined that the Appellant had shot and killed a 3 point mule deer; however, there was only an open season for 4 point mule deer or better.

   The Respondent determined that the Appellant hunted and killed wildlife - the 3 point mule deer - at a time not within an open season contrary to section 26(1)(c) of the *Act*.

Reasons for the Penalty

[15] The penalty assessed by the Respondent is set out on pages 1-2 of the Panel's decision. He provided detailed reasons for that penalty as follows.

[16] The Respondent first explained his authority to suspend the Appellant's hunting, angling and firearm carrying privileges for up to 30 years, and to order the Appellant to retake the CORE course. The Respondent then stated that he

considered the seriousness of the Appellant's offences and that the penalty must be an effective deterrent for the Appellant and others.

[17] In his reasons for imposing the penalty, especially the length of the hunting licence suspension, the Respondent reviewed penalties previously imposed on others for offences under the same sections of the *Act* and the regulations:

- For single offences under section 26(1)(c) of the *Act*, the average hunting prohibition was approximately one and a half years, with penalties ranging from suspensions until the CORE is complete, to five-year prohibitions.
- For an offence under section 35(2)(a) of the *Act,* a one and a half year hunting prohibition was imposed.
- For offences under section 39(1) of the *Act*, the average hunting prohibition was for approximately one year. Other penalties ranged from a six month to a three-year hunting prohibition.
- Offences under section 7(1) of the *Hunting Licensing Regulation* have not occurred in isolation. Grouped with other offences, penalties ranged from a one-year to a 25-year hunting prohibition.
- No previous hearings were found in relation to section 17 of the *Hunting Licensing Regulation*.
- An offence under section 15(2.1) of the *Hunting Regulation* was considered in conjunction with a violation of section 39(1) of the *Act*. A two-year hunting prohibition was imposed.

[18] The Respondent then considered the following aggravating and mitigating factors, and information specific to the Appellant's circumstances:

- The Appellant argued that he should not have been issued licences that exceeded the provincial limit of deer species licences. The Respondent disagreed, noting that the *Hunting Licensing Regulation* places the obligation to ensure that the number of deer licences does not exceed 15 on the person obtaining the licences, not the issuer of the licences.
- The COS requested a significant licence cancellation.
- As an aggravating factor, the Appellant took inexperienced individuals hunting, and those individuals also committed a number of violations while in his company. The Respondent stated that a knowledgeable and ethical hunter would do their best to ensure that members of their hunting party are hunting in compliance with the *Act.*
- An aggravating factor is the number of offences that the Appellant has been found to have committed.
- An aggravating factor is the span of time over which these offences occurred. The Respondent found that this demonstrates that the Appellant did not change his behaviour despite repeated incidents of non-compliance.

- The Respondent considered an impact statement from Mike Bridger, the Ministry's Regional Wildlife Biologist, regarding the illegal harvest of the two cow moose in 2013. He noted Mr. Bridger's view that this illegal harvest was of particular concern as follows:

  > Cow moose are critical to the well-being of local moose populations, as they are the limiting factor for reproductive success. The illegal harvest of two cow moose during October (the moose rutting season) leads directly to the loss of the reproductive contribution these cows would have made to the population. Moose are declining in many areas within the Peace Region, including the locations where the illegal harvest occurred in this case. Moose are of particular concern to First Nations and Stakeholders.

  The Respondent agreed with Mr. Bridger's assessment and found it to be very persuasive in determining an appropriate length of prohibition.

- Although the Respondent did not find that the Appellant committed any offences related to the grizzly bear that was illegally harvested on October 2, 2014, the Respondent found that the Appellant's failure to correctly identify the species of bear demonstrated a lack of knowledge that is required to hunt lawfully in the province. The Respondent found that, if the Appellant was more knowledgeable about wildlife in the province, he could have correctly identified the species of bear and prevented the illegal harvest. The Respondent also considered the following statement from Alicia Woods, a Ministry wildlife biologist, to be an aggravating factor:

  > The illegal harvest of this grizzly bear will further restrict licenced [sic] hunting opportunities within this GBPU [Grizzly Bear Population Unit] and Wildlife Management Unit for the next several years ….
  >
  > [email from Ms. Woods dated February 20, 2015]

- The Respondent did not find that the Appellant committed any offences related to the black bear that was harvested on September 13, 2014. However, in his view, the fact that the group was hunting without the tools necessary to process the bear, and that they failed to locate the bear after retrieving the tools, demonstrated a lack of hunting ethics.

- While the Appellant explained that the offences occurred, in large part, because he was a first time hunter with a significant language barrier, the Respondent found that this was not a mitigating factor due to the seriousness of the offences and the fact that the offences occurred over a four-year period.

- As a mitigating factor, the Appellant took personal responsibility for a number of the offences. However, the Respondent found that the

Appellant illegally killed a cow moose on October 29, 2013, and did not take responsibility for that offence.

- As a further mitigating factor, the Respondent notes that the Appellant undertook remedial actions on his own initiative. Specifically, he retook the CORE program in a classroom setting, acquired a translated copy of the Hunting and Trapping Synopsis, and donated $8,000 to the BC Wildlife Federation.

[19] The Respondent also found that both specific and general deterrence was required in this case. Specific deterrence was required as the Appellant "has established a troubling pattern of significant non-compliance" with the *Act*. General deterrence is required as first time hunters must be held to a baseline standard of behaviour. He also stated that ignorance of the law is not an excuse for significant non-compliance.

[20] After considering the penalties previously imposed on other hunters for similar violations and the factors and the information before him, the Respondent concluded that a 10-year licence suspension was appropriate, as well as a requirement that the Appellant successfully re-complete the full CORE program at the end of his suspension period in order to have his hunting licence privileges reinstated.

The Appeal

[21] The Appellant states that he now takes full responsibility for all the offences that the Respondent found that he committed. The Appellant appeals only the administrative penalty imposed in the Decision on the following grounds:

1. The Respondent's Decision was excessive and unnecessary to achieve the objective of environmental protection and restitution of the Appellant's past conduct.
2. The Respondent failed to give appropriate weight to a number of factors concerning the Appellant, specifically that:
    - he recognizes that his shortcomings and failures to abide by the hunting regulations are a result of his inexperience and language difficulties;
    - he voluntarily took a number of steps toward healing the harm that he has caused and to prevent future incidents;
    - he donated $8,000 to the BC Wildlife Federation to aid conservation efforts;
    - he procured a full translation of the Hunting and Trapping Synopsis so that he may review it regularly; and
    - he has retaken the CORE course in his own language to refresh his memory.

3. The Appellant's circumstances have changed since the Decision was issued, and these additional factors should be considered. He is relocating and will no longer be a resident of Canada.
4. The sentence imposed by the Provincial Court for the October 29, 2013 incidents should be considered. The Appellant was charged with multiple offences and he pled guilty to the following two counts under the *Act*:
    1. Killing wildlife not within open season contrary to section 26(1)(c) of the *Act*.
    2. Hunting on cultivated land without permission contrary to section 39(1)(a) of the *Act.*

[22] The Appellant explains that, on June 25, 2018, he was sentenced and fined $500 on each count for a total of $1,000. Also, pursuant to section 84.1(1)(a) of the *Act*, the Court prohibited him from hunting for a period of two years, unless he is hunting with a licensed guide outfitter. In addition, the Appellant was ordered to pay $1,500 on each count (for a total of $3,000) to the Habitat Conservation Trust Foundation pursuant to section 84.1(1)(e)(ii) of the *Act*.

[23] The Appellant also explains that he has taken further steps to address his shortcomings. The Court-ordered requirement that he may only hunt during the two year court-imposed prohibition with a licensed guide outfitter was something that he expressly agreed to. He advises that he has begun to retain the services of a licensed outdoor guide.

[24] The Appellant further advises that he soon will become a non-resident Canadian, in which case the *Act* requires that he must always be accompanied by a licensed guide outfitter.

[25] The Appellant asks the Board to vary the penalty so that he may participate in hunting activities under the limited circumstances of taking part in a hunt guided by a licensed guide outfitter. Alternatively, the Appellant asks that the period of hunting prohibition be reduced to two years, with the exception of allowing him to hunt during that prohibition period with a licensed guide outfitter. He submits that this will satisfy the purposes of specific deterrence and that his non-resident status will effectively preserve the requirement that he be accompanied by a qualified individual should he wish to participle in hunting activities in the future. The Appellant will also retake the CORE course before resuming any hunting activities.

[26] The Appellant also asks the Board to substitute the penalty imposed, not send the matter back to the Respondent for reconsideration.

The Respondent's position

[27] The Respondent submits that the Decision was reasonable, that he gave due consideration to all material facts, and that it was procedurally fair and in accordance with Ministry policy and the *Act*. He swore an affidavit on September 28, 2018 in support of his position. Attached to the affidavit are the following exhibits:

1. a copy of all the materials provided to the Appellant with the Respondent's June 12, 2017 letter to the Appellant regarding potential licence action;
2. the Appellant's August 8, 2017 written reply to the Respondent's June 12, 2017 letter (the opportunity to be heard submissions);
3. a copy of Ministry Policy 4-1-02.01 titled "Cancellation/ Suspension/Prohibition Decisions Respecting Hunting, Angling or Carrying Firearms in British Columbia", effective April 23, 1998 (the "Ministry Policy");
4. the February 2015 "Provincial Framework for Moose Management in British Columbia", prepared by the Fish and Wildlife Branch of the Ministry; and
5. the Decision.

[28] The Respondent also submits that the appeal should be disposed of on the basis of a "no-evidence motion". The Respondent argues that the Appellant appended two documents to his initial submissions on the appeal, which are not evidence supporting a lesser penalty. Those documents are a copy of the Provincial Court's sentence and the Agreed Statement of Facts which accompanied the Appellant's guilty plea in Provincial Court. The Panel will consider this motion under its discussion of the issues.

[29] For all of these reasons, the Respondent submits that the appeal should be dismissed, with costs payable to the Respondent.

Appellant's Additional Ground of Appeal

[30] In his reply submission in this appeal, the Appellant added a ground of appeal; that is, that the Respondent's Decision must be set aside on the basis of procedural unfairness. The Appellant submitted this additional ground of appeal in response to the Respondent's affidavit.

ISSUES

[31] The issues in this appeal are:

1. Whether the appeal ought to be dismissed on the basis of "no evidence"?
2. Whether the Respondent's affidavit evidence submitted in this appeal constitutes a breach of procedural fairness?
3. What is the appropriate administrative penalty in the circumstances of this case?
3. Should an order for costs should be awarded to the Respondent in this case?

RELEVANT LEGISLATION

[32] The following sections of the *Act* are relevant to this appeal:

Suspension and cancellation of licences

24 (1) …

(2) After providing an opportunity for the person to be heard, the director may, for any cause considered sufficient by the director, do any of the following:

(a) prohibit, for a period within prescribed limits, the person from hunting, angling or carrying a firearm;

(b) cancel or suspend, for a period within prescribed limits, any limited entry hunting authorization or licence that is issued to the person under this Act.

(3) and (4) [Repealed 2016-11-38.]

(5) If a licence or limited entry hunting authorization is cancelled, the director may order that the person is ineligible to obtain or renew a licence or limited entry hunting authorization for a period, within the prescribed limits, and the director must inform the person of the period of ineligibility.

…

(15) The sanctions provided for in this section apply in addition to any fines, penalties, additional fines, prohibitions, directions or requirements that may be imposed under section 84, 84.1, 84.2 or 84.3 [fines, penalties and sentencing by a court on conviction of an offence] and whether or not they are requested or ordered at the time of sentencing for an offence.

…

Hunting, trapping and firearm prohibitions

26 (1) A person commits an offence if the person hunts, takes, traps, wounds or kills wildlife

…

(c) at a time not within the open season,

…

Retrieval of wildlife killed

35 (1) …

(2) A person commits an offence if the person hunts wildlife and kills or injures that wildlife and fails to make every reasonable effort to

(a) retrieve the wildlife, and if it is alive to kill it and include it in his or her bag limit, and

…

unless exempted by regulation.

Possession of carcass

36 (1) A person who possesses the carcass of any wildlife, whether or not the carcass has been divided, without leaving attached the parts required by regulation to be left attached, commits an offence.

(2) Subsection (1) only applies until the earlier of the following:

(a) the carcass is given to a meatcutter or the owner or operator of a cold storage plant to be recorded in accordance with section 71,

(b) the carcass arrives at the person's normal dwelling place and is butchered and stored there for consumption on the premises, or

(c) the carcass is presented to an employee of the ministry for which the minister is responsible or other person specified by the Lieutenant Governor in Council for inspection.

Agricultural and cleared land

39 (1) A person commits an offence if the person, without the consent of the owner, lessee or occupier of land,

(a) hunts over or traps in or on cultivated land, or

(b) …

[33] The following sections of the *Hunting Licensing Regulation* apply to this appeal:

Licence must be cancelled

7 (1) If a person hunts and kills wildlife in respect of which the person is required to hold a species licence, the person commits an offence unless, immediately after killing the wildlife and before handling the wildlife killed, the person cancels the species licence in accordance with the instructions on that licence.

(2) Repealed. [B.C. Reg. 84/2001, s. 2.]

Number of licences limited to 15

17 If a person, during a licence year, obtains or holds more than 15 of any combination of

(a) mule deer species licences,

(b) Haida Gwaii deer species licences, and

(c) white-tailed deer species licences

he or she commits an offence.

[34] The following section of the *Hunting Regulation* applies to this appeal:

Possession of carcass

15(1) In subsection (2.1), "deer" means mule (black-tailed) deer, white-tailed deer and fallow deer.

...

(2.1) For the purpose of section 36 of the Act, a person who possesses the whole carcass or part of a carcass of a deer must leave naturally attached to the carcass, or one part of the carcass in the person's possession, the animal's unskinned tail and,

(a) if the animal was male, a testicle or part of the penis, or

(b) if the animal was female, a part of the udder or teats.

...

APPLICABLE MINISTRY POLICY

[35] In his affidavit, the Respondent states that he was guided by the Ministry Policy. The relevant portions of that policy are as follows:

4-1-02.01 Cancellation / Suspension / Prohibition Decisions Respecting Hunting, Angling or Carrying Firearms in British Columbia

- ***Effective Date*: April 23, 1998.**

POLICY STATEMENT:

It is the policy of the Director, Wildlife Branch, that where a decision is made concerning licence action and the privileges normally afforded by a licence as defined as defined under section 24 of the *Wildlife Act,* the decision will normally be made by the Deputy Director, Wildlife Branch, and the following are some factors that may be considered relevant in making the decision:

- seriousness of violations(s)*
- impact on the environment/wildlife resource
- deterrence (specific and general)*
- number of violations
- attitude of the person respecting the violations
- remorse shown by the person
- mitigating action(s) taken by the person
- recommendations of the court
- recommendations of the Conservation Officer
- recommendations of the person/or counsel
- experience level of the person related to hunting, angling, and firearm use

- previous history of violations
- impact on the person of removing licencing privileges
- ethics of the person
- impact of violations on other persons or private property
- *mens rea* of the person (i.e. intent to violate the law)

* these factors will carry the most weight.

DISCUSSION AND ANALYSIS

1. Whether the appeal ought to be dismissed on the basis of "no evidence"?

[36] As this was a written hearing, the Board established the submission schedule. Since it is the Appellant's appeal, he was required to present his case first by providing his written submissions and pertinent documentation to support his appeal. The Respondent is then given the opportunity to file his submissions and pertinent documentation in response to the Appellant's case. The Appellant is then given an opportunity to submit rebuttal comments on the Respondent's submissions.

[37] The Appellant filed his initial written submissions and attached two documents in support of his appeal: an Agreed Statement of Facts filed in the Provincial Court matter, and a copy of the Provincial Court's sentencing order.

[38] In the Respondent's reply submissions, he included a "no evidence motion". In it, the Respondent submits that the Appellant provided no evidence to support his position that the Respondent made an appealable error that ought to be varied or overturned by the Board, even with its *de novo* authority. The Respondent argues that, if the Appellant failed to adduce any evidence at the close of his case, then the Board can strike this appeal (or any ground of it) on a no-evidence motion.

[39] The Respondent further submits that the two documents appended to the Appellant's submissions are not evidence supporting a lesser sanction and, therefore, his appeal may be disposed of on the basis of a no-evidence motion.

[40] The Appellant replies by citing section 40 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, which allows the Board to accept any "information that it considers relevant, necessary and appropriate". The Appellant further replies that he is not required or expected to adduce evidence only in a manner that would be admissible in court, and that the Respondent has not provided a proper basis for the no-evidence motion.

[41] The Appellant argues that, in this case, the record constitutes sufficient evidence on appeal. Further, in his submissions to the Board he provided additional evidence updating his residential status, as well as informing the Board of the outcome of the Provincial Court proceedings.

[42] The Appellant maintains that evidence in this appeal may be introduced simply by submissions by counsel, as was done in the Respondent's review leading to his Decision. The decision-maker may still decide the weight to be given to such evidence.

[43] The Appellant also submits that the Board, conducting the appeal on a *de novo* basis, may reconsider all the evidence in the record. The Board may come to a different decision based only on the record and/or any new evidence that is submitted by an appellant without finding fault in the original decision. The Appellant submits that he does not have to show an error to be successful on his appeal. To require that an error be demonstrated, as argued by the Respondent, contradicts the Board's authority to conduct *de novo* hearings.

[44] In response to the Respondent's motion, the Appellant provided an affidavit from counsel for the purpose of submitting documents from the Provincial Court proceedings.

The Panel's findings

[45] The Panel agrees that the rules of evidence that apply to a hearing before the Board are less formal than the rules applied by the courts. That is clearly stated in section 12.2 of the Board's Practice and Procedure Manual, which also refers to section 40 of the *Administrative Tribunals Act.* Section 40 states that the Board "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".

[46] Also, in a *de novo* hearing before this Board, it is not unusual for parties to submit their evidence and arguments in the form of written statements with documents attached or in the form of an affidavit with documents attached. It is then up to the Panel to determine the relevance of such evidence and what weight should be given to it.

[47] Further, in a *de novo* hearing, the Board considers all the evidence before it. That means evidence that may have been before the original decision-maker, as well as any new evidence tendered during the hearing.

[48] The Panel finds that the Appellant did submit evidence in his appeal submissions: evidence of his guilty plea and sentence in Provincial Court, of his changing residency status and of his age. The Appellant also referred to the evidence that was before the Respondent when the Decision was made.

[49] The Panel further finds that all of the information that the Appellant provided is evidence that is relevant to the Panel's consideration of the appropriateness of the penalty imposed by the Respondent.

[50] The no evidence motion is denied.

2. Whether the Respondent's affidavit evidence submitted in this appeal constitutes a breach of procedural fairness?

[51] As noted above, the Appellant added a ground of appeal in his reply submissions. He states that the Respondent's affidavit contains evidence that

breaches a rule of procedural fairness; specifically, the rule that a decision-maker must be impartial or unbiased.

[52] The Appellant does not object to paragraphs 9-15 or 25 of the Respondent's affidavit, or to the attached exhibits because they fall within the scope of background and are contextual. However, he argues that the remainder of the affidavit offends the rule against bias and, therefore, the entire Decision must be set aside on the basis of procedural unfairness.

[53] The Appellant argues that, the Respondent, by submitting his affidavit for this appeal, went beyond tendering background and contextual information and put himself in an adversarial role. The Appellant also argues that the Respondent must not bolster or remedy his Decision by writing better reasons in the form of an affidavit. This amounts to providing supplementary reasons after an appeal has been filed and is procedurally unfair to the Appellant. The Appellant submits that the Respondent has become an advocate, tendering arguments in support of his Decision.

[54] The Appellant seeks the following remedy:

1. That the Respondent's Decision be set aside, and either;
    a. be sent back to be re-determined by a different Director's delegate with no prior involvement in this matter; or
    b. be decided afresh by the Board without considering the Respondent's reasons and affidavit.
2. In the alternative, that the Board proceed with this appeal and exclude the improper portions of the Respondent's affidavit from consideration.

[55] In reply, the Respondent submits that the purpose of the Board is to hear appeals from government decision-making under certain statutes in a quasi-judicial manner that accords with the rules of natural justice and procedural fairness. The Respondent's reply is summarized as follows:

a. The Board owes no deference to the statutory decision-maker whose decision has been appealed;

b. The record of proceeding is not prescribed. Section 102(2) of the *Environmental Management Act* [S.B.C. 2003] c. 53 states that the Board may conduct *de novo* hearings with fresh evidence not before the statutory decision-maker at first instance; and

c. Section 103(c) of the *Environmental Management Act* authorizes the Board to step into the shoes of the statutory decision-maker and substitute the decision appealed from with one that it considers appropriate.

[56] The Respondent submits that it is his obligation to explain to the Board the process that led him to the Decision that he made. He submits that there is nothing improper about doing so by way of affidavit. If this appeal had proceeded orally, the Respondent notes that he would have been called as a witness and, consistent with the principles of procedural fairness, the Appellant would have had

the opportunity to challenge his findings and/or the weight that he gave to certain factors that led him to impose the length of licence suspension that he did.

[57] The Respondent also submits that the Board is not bound to accept his evidence; rather, the Board must weigh all of the evidence before it in this appeal and decide whether the impugned Decision, including the process by which it was made, contains appealable errors in fact, or in law, that justify varying it or setting it aside.

[58] Finally, the Respondent argues that there is no evidence before the Board to suggest that he lacked impartiality when the Decision was made or lacks impartiality now. In his affidavit, he simply explained his decision-making process, supported by his written reasons dated January 10, 2018.

The Panel's Findings

[59] Section 101.1(4) of the *Act* states that "the appeal board may conduct an appeal by way of new hearing." In previous hunting licence suspension appeals under the *Act*, this Board has exercised such *de novo* jurisdiction over appeals from decisions of the Deputy Director (see for example, *Alan R. Steele v. Deputy Director, Fish, Wildlife and Habitat Management*, (2011-WIL-011(a), October 26, 2012) and *Derek Pitt v. Deputy Director Fish, Wildlife and Habitat Management*, (2016-WIL-004(a), October 28, 2016)).

[60] Consistent with that statutory authority and the practice of the Board in other licensing appeals under the *Act*, the Panel has conducted this appeal by way of a new hearing. This means that the Panel will consider all of the relevant evidence before it not just what the Respondent considered when making his Decision.

[61] The Panel also notes that section 101.1(5)(c) of the *Act* states that Board may make "any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances". The Board's jurisdiction to make "any" decision that the Respondent could have made, means that it does not defer to the Director.

[62] The Panel also agrees that, if the appeal had been conducted by way of an oral hearing, the decision-maker normally testifies and is subject to cross-examination. When doing so, the decision-maker may expand upon the basis for his decision and address the issues raised by the appeal. The decision-maker is not limited to reiterating the written reasons for decision, just as an appellant is not limited to repeating the evidence that was presented before the decision-maker.

[63] Hearings before the Board are "new hearings" and the Respondent, as a party to the appeal, may provide affidavit evidence. The fact that affidavit evidence may go beyond background and context does not, in and of itself, give rise to a breach of procedural fairness - that is, a claim of bias or a lack of impartiality - when that evidence is provided by way of an affidavit in an oral or written hearing. Rather, it is the content of the evidence that must be evaluated and assessed, as well as the decision-making process below in order to determine bias. The Panel will determine the weight to be given to all the evidence, including affidavit evidence.

[64] In the present case, there is no evidence of a reasonable apprehension of bias or actual bias on the part of the Respondent when he made the Decision. Further, the Panel has reviewed the contents of the affidavit and finds there is nothing to support the allegation of procedural unfairness in the context of this appeal.

[65] Therefore, because this is a *de novo* hearing, and in light of the Board's jurisdiction under section 101.1(5)(c) of the *Act*, this ground for appeal fails.

3. What is the appropriate administrative penalty in the circumstances of this case?

The Appellant's Case

[66] The Appellant submits that the penalty imposed by the Respondent was excessive in the circumstances and that the Director did not give sufficient weight to the mitigating factors cited by the Appellant.

[67] The Appellant submits that, in his August 8, 2017 reply to the Respondent, he readily acknowledged, and took personal responsibility for all of the offences that he was found to have committed, except for the October 29, 2013 incident. In his August 8, 2017 reply to the Respondent, he said little about the October 29, 2013 incident, stating only that he did not see whether any of the shots hit an animal.

[68] Subsequently, after reviewing further disclosure materials and refreshing his memory during the Provincial Court proceeding, the Appellant recognized that his hunting party did shoot and kill a moose. Therefore, he now takes personal responsibility for that incident as well. The Appellant notes that the Respondent considered the lack of acknowledgement of this incident when considering the penalty to impose.

[69] The Appellant states that his acknowledgement of responsibility for the October 29, 2013 incident is evidenced by his guilty plea to the two charges that he faced in Provincial Court. The Appellant also maintains that his Provincial Court sentence is a recognition that his offences arose from poor knowledge and training. Further, based on the sentence imposed by the Court, the Appellant submits that he poses little risk to the environment with proper training and supervision.

[70] The Appellant also submits that the Provincial Court outcome is relevant in this appeal because it provides the Board with the full factual context in this matter. In particular, the Appellant is now required to hunt with a licensed guide outfitter under that Court order. The Appellant notes that the Respondent indicated that the Appellant would benefit from the supervision of a guide, and should have had one long ago. Therefore, the Appellant submits that this is a relevant consideration for the Board for purposes of the *Act.*

[71] The Appellant recognizes that the administrative/regulatory decision in this appeal is a distinct process from the prosecution of offences in Provincial Court. The Appellant says that the Provincial Court prosecution is aimed at denunciation and punishment of the Appellant's past conduct, whereas the Respondent's

prohibition is aimed at prospective protection of the environment. Therefore, according to the Appellant, the appropriate question for the Respondent was what would satisfy the need to protect wildlife in the future.

[72] The Appellant argues that it is not the Respondent's role to augment the punishment handed down by the Provincial Court. He submits that a 10-year hunting ban does not offer any additional protections when it has been acknowledged by the Respondent that supervision will greatly benefit the Appellant.

[73] Moreover, the Appellant states that he no longer resides in Canada. He intends to return only for brief holidays, and he would like to partake in recreational hunting when he returns. As a non-resident, he will need to be accompanied by a licensed guide outfitter if hunting big game, which is what he hunts. Therefore, he submits that, as a non-resident, the risk of him hunting unaccompanied is significantly reduced, and a long-term blanket prohibition from hunting is unnecessary to achieve the objectives of the *Act*.

[74] As further evidence of accepting responsibility for the offences cited, the Appellant submits that he voluntarily made efforts to mend the damage that he has done by contributing $8,000 to the BC Wildlife Federation. Also, he is taking steps to better inform himself of the rules and practices to which he is required to live up to. He states that he voluntarily re-took the CORE program and obtained a translation of the full Hunting and Trapping Synopsis for study and reference. The Appellant maintains that the Respondent failed to give proper weight to all of these mitigating factors.

[75] Instead, the Appellant argues that the Respondent gave too much weight to the Appellant's ignorance and inexperience. For example, the Appellant notes the Respondent's emphasis on ignorance of the law, the failure to have tools to process a bear that was shot, and the failure to correctly identify a grizzly bear.

[76] The Appellant notes that, in his submission to the Board, the Respondent cites previous Board decisions in support of his Decision and, specifically, the length of the licence suspension. The Appellant submits that the Board is not bound by its past decisions and must decide each case on its own specific circumstances and merits. The same argument applies to the Respondent's Decision, in which previous Deputy Directors' penalty decisions were cited.

[77] The Appellant admits that past decisions may be informative. However, he submits that the decision-maker is also entitled to make decisions that do not follow precedence where the circumstances of a particular case have atypical factors that would be appropriate for a different decision.

[78] The Appellant also maintains that precedence is wholly irrelevant to the Respondent's Decision if it tends to modify, by increasing or decreasing, the appropriate response to protection of wildlife. The Appellant submits that, if the Board orders a lesser penalty in his appeal, it can still achieve the same purpose as the penalty in the Decision. He argues that barring him, long-term, from participating in supervised hunting activities does not meet the objective of prospective protection of wildlife; rather, it appears to be punitive in effect, and erroneously justified by precedence.

[79] In his submissions, the Appellant also provided information about his current age. He submits that a 10-year hunting prohibition, given his age, likely amounts to a lifetime prohibition and is disproportionate in the circumstances.

[80] The Appellant argues that the mitigating factors that were before the Respondent, as well as the additional mitigating factors submitted for this appeal, justify a variation of the penalty imposed. The Appellant states that his actions demonstrate an earnest attempt to make himself sufficiently knowledgeable and to address the central underlying causes of his past violations. Therefore, the Appellant asks the Board to vary the penalty so that, during the period of prohibition, he may participate in hunting activities under the limited circumstances of taking part in a hunt guided by a licensed guide outfitter.

[81] Alternatively, the Appellant asks that the period of prohibition be reduced to two years and that during that period he be allowed to hunt with a qualified licensed guide. He submits that this period of prohibition will satisfy the purposes of specific deterrence and, given his non-resident status, it will effectively preserve the requirement that he be accompanied by a qualified individual in the future.

The Respondent's Case

[82] The Respondent submits that his Decision was reasonable and ought to be confirmed. He duly considered all material facts, employed a fair decision-making process and made his decision in accordance with the Ministry Policy and the *Act.*

[83] In his affidavit, the Respondent describes his professional background, qualifications, and his appointment as Deputy Director. He explains that, when he made the Decision, he considered all of the following:

1. the investigation materials and COS Recommendation;
2. the Appellant's August 8, 2017 written response in his opportunity to be heard;
3. the Ministry Policy;
4 section 24 of the *Act*; and
5. all hunting and angling licences held by the Appellant.

[84] The Respondent found the Appellant's conduct as an inexperienced hunter to be very concerning and worthy of significant licence action. He was particularly concerned with the Appellant's illegal killing of two cow moose within three days in October 2017 for the following reasons.

[85] First, differentiating between a male and female moose is foundational knowledge for any person wishing to engage in moose hunting. Second, moose populations are carefully managed in British Columbia.

[86] The Ministry's "Provincial Framework for Moose Management in British Columbia" describes the guiding principles for moose management and, at Appendix 5, describes the Ministry's review respecting bull:cow ratios. According to this document, it is important to maintain a minimum bull to cow ratio of 30:100 to ensure that there are enough cows to become impregnated. In his impact

statement dated June 6, 2017 regarding the Appellant's illegal harvest of wildlife, Mr. Bridger, Regional Wildlife Biologist, notes that the well-being of moose populations depends on the cows. He states that, in the Peace Region where the two cow moose were illegally killed, the moose populations are noted to be in decline.

[87] The Respondent submits that the events of October 2013 were further exacerbated by the Appellant and his companion leaving the moose carcasses by the roadside to waste and attract other wildlife.

[88] Also, when he made his Decision, the Respondent states that he was concerned that the Appellant did not accept responsibility for the two separate incidents in October 2013. When assessing the Appellant's responsibility, the Respondent states that he was persuaded by the evidence obtained during the COS's investigation, particularly the forensic ballistics report linking the bullets retrieved from the moose killed on October 29, 2013 to the Appellant's rifle, information that a vehicle matching the Appellant's was seen in the location where that first moose was killed, and the GPS data retrieved from the Appellant's vehicle indicating that his vehicle was in the area when the first moose was killed. The Respondent notes that now, for this appeal, the Appellant admits responsibility for all offences which occurred in October 2013.

[89] To support the hunting licence suspension, the Respondent cites these additional aggravating circumstances:

- the number of offences, 10 in total, that the Appellant was found to have committed and now admits to;
- the seriousness of the offences committed by the Appellant, particularly the illegal harvesting of two cow moose within three days in the Peace Region where the moose population is in decline;
- the span of time over which the offences were committed, which demonstrates that the Appellant had not changed his behaviour despite repeated instances of non-compliance about which he was aware;
- the Appellant's demonstrated lack of hunting knowledge, such as his failure to correctly identify the species of deer harvested and his inability to differentiate between species, or between the sexes of a species, that should be obvious to any hunter with a basic level of knowledge (for example, a grizzly bear vs. black bear, a cow moose vs. a bull moose at a time of year when bulls have not lost their antlers);
- the Appellant's lack of hunting ethics, including his failure to correct his behaviour over four years despite numerous offences;
- taking other inexperienced persons hunting, who also committed a number of offences under the *Act* while in the Appellant's company; and

- the Appellant, in his August 8, 2017 reply, admitting to all but two of the allegations against him, which were excluded from the Decision.

[90] With respect to the Appellant's convictions by the Provincial Court, the Respondent argues that the regulatory scheme of the *Act*, as administered by the Director, and any prosecutions under the *Act*, are distinct processes. The outcome in one does not dictate a result in the other. The Respondent submits that, importantly, the sanctions provided for in section 24(2) of the *Act* apply in addition to any fines, penalties or prohibitions that may be imposed following convictions under section 24(15) of the *Act*.

[91] The Respondent states that he considered the fact that the Appellant took personal responsibility for most of the offences that he committed. However, in response to the Appellant's arguments for leniency, the Respondent notes that:

- The Appellant successfully re-challenged the CORE examination; however, his score indicates a poor understanding.
- English language limitations may have been a factor, but the Appellant reasonably could have obtained and familiarized himself with a translated copy of the Hunting and Trapping synopsis before he began hunting in the province.
- The licence suspension imposed was lenient in the circumstances. The Appellant potentially faced a much longer suspension based on the seriousness of the offences and the Appellant's demonstrated pattern of disregard for the rules and regulations that govern hunting activities in the province.
- The voluntary donation to the BCWF does not absolve him of the 10 offences he has admitted to.

[92] Regarding the Appellant's suggestion that his relocation outside of the province and, thus, his need to hunt under the supervision of a guide is a mitigating factor, the Respondent provides these responses. First, as a resident of the province and as an inexperienced hunter he could have, and should have, enlisted the services of a licensed guide. Second, the ability to hunt in this province is a privilege that he has lost because of the manner in which he conducted himself over the course of four years.

[93] Based on all of these factors, the Respondent maintains that he had sufficient reasons to impose the licence actions that he did. Further, the Respondent submits that the 10-year hunting licence suspension was appropriate in the circumstances, if not lenient, given the number of serious offences committed by the Appellant and the potentially much greater suspension that he faced. He maintains that any new information provided by the Appellant does not change the appropriateness of the administrative penalty. Therefore, the Respondent submits that penalty he imposed, including the 10-year hunting licence prohibition, should stand and the appeal should be dismissed.

The Panel's Findings

[94] The Panel has considered all of the evidence that the Appellant describes as mitigating factors and all of the evidence that the Respondent describes as aggravating factors.

[95] The Panel finds the information from the COS investigations and the COS Recommendation particularly helpful in assessing the seriousness of the offences committed by the Appellant and his early responses to those offences. The Panel also finds the information in the Appellant's August 8, 2017 reply useful in assessing the weight to be given to the mitigating factors cited by the Appellant.

[96] The Appellant submits that he now takes responsibility for all of the offences at issue. However, the Panel finds that the Appellant did not initially take responsibility for the October 29, 2013 incident. It was only after being presented with further disclosure materials and dealing with the Provincial Court matter that the Appellant decided that his memory was "refreshed", and he accepted responsibility.

[97] The Appellant also claims that all the offences are attributable to his inexperience and ignorance. This claim may have had some weight if the Appellant took steps to remedy his inexperience and ignorance soon after the October, 2013 incidents. The Appellant and his hunting companions were investigated by COS officers at that time and were aware of the seriousness of their hunting actions.

[98] Instead, the Appellant did not take any remedial steps until sometime in 2017, when faced with Provincial Court charges and the suspension of his hunting licences. Only then, according to his August 8, 2017 reply, did he "voluntarily" retake the CORE program and the exam in June 2017, obtain a fully translated copy of the Hunting and Trapping Synopsis 2016-2018, and make the $8,000 contribution to the BC Wildlife Federation on January 8, 2017.

[99] The Appellant could have retaken the CORE program and obtained the translated version of the Hunting and Trapping Synopsis before his first hunting trip or certainly after October 2013, but he did not. Accordingly, the Panel places little weight on these mitigating factors cited by the Appellant.

[100] The Appellant submits that, because he now admits that he was inexperienced, he intends to hunt under the supervision of a licensed guide. The Panel wonders why the Appellant, knowing that he was inexperienced, did not engage a guide when he first started hunting or why he did not engage a guide after the October 2013 incidents. This promise by the Appellant comes only after facing severe consequences for his numerous offences over several years.

[101] The Appellant submits that the purpose of administrative licensing suspensions under the *Act* is prospective in nature - the long-term protection of wildlife – as opposed to the purpose of the sentencing by the Provincial Court which is punitive in nature. He submits that, because he will no longer be a resident of Canada, he will be required to hire a licensed guide outfitter to hunt. Therefore, the 10-year licence suspension is not required to achieve what, he submits, is the *Act's* intended purpose of protecting wildlife.

[102] The Panel finds that, even if the purpose of a licensing action is "prospective", the Appellant provided no evidence of whether his move is temporary or permanent. He only states that he intends to return to the province to visit periodically. Therefore, absent the licence suspension, he may be able to hunt wildlife during visits. The Panel is of the view that, when it comes to protection of the province's wildlife, a cautious approach is required.

[103] The Panel also finds that the Appellant's residency and his age have little bearing on the penalty imposed.

[104] The Panel disagrees with the Appellant that the Respondent placed too much weight on the aggravating circumstances in this case. The Panel finds that the evidence demonstrates several very serious aggravating factors. For instance, the Appellant not only hunted when inexperienced, he hunted with inexperienced companions. During the October 31, 2013 COS investigation of the cow moose that he shot and abandoned, the Appellant referred to himself and his group as lacking hunting experience. Further, the Appellant hunted with a companion who abandoned the carcass of a black bear and they both failed to correctly identify a grizzly bear.

[105] The Appellant and his companions also killed wildlife that are of specific concern to wildlife officials in this province, and aggravated those offences by abandoning the cow moose. The impact assessments from the two BC wildlife biologists about the loss of two cow moose and the grizzly bear (as quoted in the Decision), further show just how serious the Appellant's offences are and how unethically the Appellant and his companions behaved as hunters.

[106] The Panel finds that the offences committed by the Appellant, individually and cumulatively, are very serious in nature: shooting game out of season, failing to correctly identify species, and abandoning wildlife that were shot. As a further aggravating factor, these offences were committed over several years, without any evidence that the Appellant tried to mend his ways when investigated on October 31, 2013. The Panel agrees with the Respondent that this is evidence of a troubling pattern of significant non-compliance.

[107] The Appellant submits that his guilty plea and the sentence imposed on him by the Provincial Court should also be considered, not just the monetary penalty, but also the hunting restrictions. The Appellant states that he now must hunt with a guide and that he contributed to the Habitat Conservation Trust Foundation. He also states that his guilty plea is evidence of how he has accepted responsibility for his actions. Regarding the latter, the Panel finds that this responsibility was accepted rather late. The Provincial Court charges relate to the October 29, 2013 incident for which the Appellant did not accept responsibility until faced with these charges.

[108] The Appellant also argues that, by imposing the lengthy hunting licence suspension, the Respondent tried to augment the penalty from the Provincial Court. The Panel finds that there is no evidence to support this argument.

[109] First, the Provincial Court convictions were entered on June 25, 2018 and the Decision was issued on January 10, 2018. Therefore, the Respondent did not have the Court's verdict when making the Decision. Also, there is nothing in the

evidence, or in any of the Respondent's findings, that he gave any consideration to a potential court sentence.

[110] Second, as noted by both parties, provincial court proceedings and regulatory proceedings are separate and distinct, with different objectives. This appeal hearing is concerned only with the appropriateness of the penalty imposed under the regulatory proceedings.

[111] The Respondent refers to the Ministry Policy as a guide to the factors to be considered for the penalty. For example, he cites the need for specific deterrence because the Appellant "established a troubling pattern of significant non-compliance with the *Wildlife Act",* for which neither ignorance of the law nor a language barrier is an excuse, particularly when the offences were serious and occurred over a four-year period. The Respondent also refers to the need for general deterrence because inexperienced hunters must be held to certain minimum expectations.

[112] Based on the evidence in this case, the Panel finds that these and the other factors that the Respondent considered when deciding on the penalty, are appropriate in the circumstances. Also, the Respondent's review of previous Deputy Directors' decisions was appropriate to establish the range of hunting licence suspensions that have been applied to similar violations of the legislation. However, it is clear from the Respondent's detailed explanation of his decision-making that the previous decisions were only a guide. The Panel has also found those decisions to be a useful guide in determining an appropriate penalty for the violations in this case.

[113] Finally, the Panel finds that there was clearly a pattern of poor and unethical hunting practices by the Appellant over several years without any acceptance of responsibility until faced with serious consequences. In the Appellant's case, the Panel finds that the aggravating factors far outweigh any mitigating ones.

[114] In conclusion, the Panel finds that the appropriate administrative penalty in the Appellant's circumstances is the penalty imposed by the Respondent in the Decision.

4. Should an order for costs be awarded to the Respondent in this case?

[115] The Respondent asks the Panel to make an order for costs against the Appellant pursuant to section 93.1 of the *Environmental Management Act* and section 47(1)(a) of the *Administrative Tribunals Act*. The Respondent submits that the Appellant's appeal was frivolous in that it raised no real justiciable question, had little prospect of success and was lacking in substance.

[116] The Respondent's position is that the Appellant simply argued for a lesser penalty because, in effect, he has learned his lesson.

[117] In response, the Appellant maintains that he filed his appeal in good faith, and there is sufficient factual and legal basis for this appeal. He believes that the circumstances justify a lesser hunting prohibition. The Appellant further submits that just because an appellant is unsuccessful does not mean that the appeal was brought in bad faith or is frivolous or vexatious.

The Panel's Findings

[118] Section 47(1)(c) of the *Administrative Tribunals Act* provides that "the [Board] may make orders for payment ... if the [Board] considers the conduct of a party has been improper, vexatious, frivolous or abusive, requiring the party to pay all or part of the actual costs and expenses of the tribunal in connection with the application [the appeal]."

[119] The Board's policy on costs, as set out in section 13.0 of its 2016 Practice and Procedure Manual, is instructive. The policy states, in part:

> The Board has not adopted a policy that follows the civil court practice of "loser pays the winner's costs." The objectives of the Board's costs policy are to encourage responsible conduct throughout the appeal process and to discourage unreasonable and/or abusive conduct. Thus, the Board's policy is to award costs in special circumstances. Those circumstances include:
>
> (a) where, having regard to all of the circumstances, an appeal is brought for improper reasons or is frivolous or vexatious in its nature …
>
> …

[120] The Panel finds that, just because the Appellant appealed the Decision on the basis that the penalty was excessive in the circumstances, does not mean that his appeal was brought for improper reasons, that there was no justiciable question, that it had little prospect of success or was lacking in substance. To the contrary, this is a common ground for appeal in licence suspension cases, especially cases involving lengthy suspensions. Further, in this particular case, the Appellant offered new information to support his appeal.

[121] Although the Panel has concluded that the administrative penalty imposed in the Decision was and is appropriate in the circumstances, the Panel finds that the appeal was not frivolous. The Panel also finds that the appeal raised a justiciable question and did not lack in substance.

[122] Finally, the Panel finds that there are no special circumstances in this appeal to justify an award of costs. To find otherwise in this case would create a chilling effect, which this Board has made clear it does not want to do. This position was clearly articulated by the Board in *Derek Pitt v. Deputy Director Fish, Wildlife and Habitat Management*, supra.

[123] Therefore, the application for costs is denied.

DECISION

[124] In making this decision, the Panel has carefully considered all relevant documents and evidence before it, whether or not specifically reiterated here.

[125] The Panel confirms the Decision of the Respondent.

[126] The Respondent's request for costs is denied.

[127] The appeal is dismissed.

“Gabriella Lang”

Gabriella Lang, Panel Chair
Environmental Appeal Board

December 27, 2018