



# Environmental Appeal Board

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**APPEAL NO. 92/23      WILDLIFE**

In the matter of appeal under s103 Wildlife Act, SBC Chap. 57 Index Chap. 433.1, 1982

<b>BETWEEN</b>	Byron Dalziel	<b>APPELLANT</b>
<b>AND</b>	Deputy Director of Wildlife	<b>RESPONDENT</b>
<b>BEFORE</b>	A Panel of the Environmental Appeal Board Mrs. L. Michaluk, Chairman	
<b>DATE</b>	April 26, June 4, 1993	
<b>PLACE</b>	Delta River Inn, Vancouver	
<b>APPEARING</b>	For Appellant Spokesperson      Mr. B. Williams, Counsel	
	For Respondent Spokesperson      Mr. D. Doyle, Counsel	

This was an appeal against the decision of Deputy Director Munro suspending Mr. Dalziel's guide outfitter licence and cancelling his guide outfitter certificate.

**EXHIBITS**

- A- Appellant's Submission
- A-2 Appellant's Book of Authorities
- A-3 Appellant's Supplementary Submission
- A-4 Transcript of Section 62 *Wildlife Act* Hearing in the matter of Byron Ford Dalziel before Deputy Director Munro
- R-1 Respondent's Preliminary Submissions

Material submitted in writing following adjournment of the oral hearing consisted of the Supreme Court of Canada case Universite du Quebec a Trois-Rivieres v. Syndicate des employes professionnels de l'universite de Quebec a Trois-Rivieres (Appellant, June 4), Respondent submission (June 9) and Appellant rebuttal (June 9).

**APPEAL**

The authority for the Panel of the Environmental Appeal Board to hear this appeal is found in the *Environment Management Act*, and in Section 103 of the *Wildlife Act* (Act).

The grounds for appeal as presented at the Hearing included that the Deputy Director erred in applying the law and policy of the *Act*:

and breached the rules of natural justice by denying Turnagain Holdings Ltd. interested party status or full intervenor status;

and breached the rules of natural justice in failing to give Turnagain Holdings Ltd. the opportunity to fully participate in the original hearing;

by failing to consider, in holding Mr. Dalziel's Guide Outfitter Certificate should be cancelled and his Guide Licence suspended, whether the objectives of the Act could be achieved without resulting in a devastating financial impact on Turnagain Holdings Ltd;

by failing to consider the effect of a penalty against the Appellant would have on Turnagain Holdings Ltd; and,

by failing to consider in holding that the Appellant's Guide Outfitter's Certificate should be cancelled and that upon the expiry of 5 years only the granting of an assistant guide licence to the Appellant could be considered, that Mr. Dalziel was neither charged with nor convicted of any offenses under the *Act*.

The orders sought are:

1. A declaration that the Deputy Director erred in law and policy under the *Wildlife Act* and breached the rules of natural justice by:

- a) denying Turnagain Holdings Ltd. standing at the hearing including the opportunity to cross-examine witnesses, make submissions, particularly in regard to, the effect cancellation would have on its interests;
- b) failing to apply the proper principles in determining an appropriate penalty including failing to consider the devastating effect the penalty assessed would have on the interests of other aggrieved parties; and,
- c) failing to consider the severity of the Appellant's infractions in assessing the severest of penalties.

2. An order that the decision of the Deputy Director be set aside or that the matter be remitted to the Director with the following directions:

the Appellant's Guide Outfitter's Certificate 700478 be reinstated;

that the Appellant's Guide Outfitter's Certificate 700478 be suspended for an appropriate period immediately upon reinstatement;

that the Appellant be permitted to transfer his Licence and/or Certificate to another person with the Director's consent at any time during the period of suspension;

that in considering an application to transfer the Appellant's Licence and/or Certificate to another person, the Director shall ignore the offenses or alleged offenses of the Appellant and the Director shall not withhold his consent unreasonably;

that upon the transfer being concluded and when the other person has acquired all of the Appellant's interest in such Licence and/or Certificate, the suspensions under these conditions shall immediately cease;

that the Appellant be permitted to apply for a Guide Outfitter's Certificate and Licence at the expiration of a five (5) year period or such lesser period as the Board determines running from the time the Appellant's Certificate is reinstated and suspended in accordance with the direction given in paragraphs (a) and (b) above;

or in the alternative, the following directions:

that the Director shall hold a hearing into this matter *de novo* giving all interested parties, including Turnagain Holdings Ltd. standing and full opportunity to be heard;

that the Director shall apply the proper law and policy under the *Wildlife Act* seeking to attain the objectives of the Act without causing devastating financial impact to other aggrieved parties such as Turnagain Holdings Ltd;

that the Director shall consider the severity of any infractions by the Appellant and the appropriate penalty therefore taking into account that the Appellant was neither charged nor convicted under the *Act*;

that pending the outcome of the hearing the Appellant's Guide Outfitter's Licence G0104376 and Guide Outfitter's Certificate 700478 shall be reinstated and the Appellant be free to transfer said Licence and/or Certificate to another person with the consent of the Director;

that the Director in considering an application to transfer the Appellant's Licence and/or Certificate to another person shall ignore the alleged offenses of the Appellant and the Director shall not withhold his consent unreasonably.

It was clarified that although Mr. Dalziel has recently been charged under the *Wildlife Act*, no charges had been laid at the time the Deputy Director made his decision.

## **BACKGROUND**

In 1988, Mr. Dalziel became a Guide Outfitter Certificate Holder operating under Certificate No 700478 and Licence No G0104376. At that time, he entered into a Trust Agreement and an Employment Contract with Turnagain Holdings Limited (Turnagain). The guiding area covered by Mr. Dalziel's certificate is located in the Kechika and comprises roughly 10,000 square miles.

In 1990, Mr. Dalziel and Turnagain had a falling out that ultimately resulted in court action which was ongoing in 1992.

In August 1992, Regional Manager Zirul was informed through the Conservation Officer Service that Mr. Dalziel had contravened Sections 49(3) and 55 of the *Wildlife Act* (Act). Mr. Zirul decided to convene a hearing under Section 62 of the Act and requested the hearing be undertaken by the Deputy Director so as to avoid any appearance of bias. A hearing was held in Prince George on November 4 and 5, 1992, before Deputy Director Munro.

At that hearing, Mr. Dalziel and Turnagain were represented by different spokespersons. Mr. Seyl, appearing for Turnagain, requested Turnagain be granted either party status or be called as a witness. Mr. Dalziel's spokesperson did not object to Turnagain making a statement, but did object to Turnagain having the opportunity to cross-examine witnesses due to an ongoing Supreme Court action between Turnagain and Mr. Dalziel. Deputy Director Munro offered Mr. Seyl the choice between: appearing with intervenor status, that is to make a statement at the beginning of the proceeding but not to cross-examine or sum up; or, to appear as a witness called by the Regional Manager. Mr. Seyl chose the latter although stated for the record he preferred to have the ability to cross-examine witnesses.

As a result of the hearing, Deputy Director Munro decided to cancel Mr. Dalziel's guide outfitter certificate and to suspend his guide outfitter licence. In addition, the Deputy Director considered Mr. Dalziel could apply for an assistant guide licence upon the expiry of five years. Mr. Dalziel appealed the Deputy Director's decision to the Environmental Appeal Board.

The Panel notes that although the notice of appeal, the amended notice of appeal and the outline of argument filed with the Environmental Appeal Board referred to Mr. Dalziel as the sole Appellant, Mr. William's oral presentation indicated he had been retained to represent the interests of both Mr. Dalziel and Turnagain before the Board.

## **ISSUES AND EVIDENCE**

During the presentation of evidence, several issues were identified and addressed. The major issues follow in no particular order.

### Issue 1. Party Status

The Appellant argued that as Turnagain stood to be affected by Deputy Director Munro's decision, the Deputy Director erred by not granting Turnagain party status.

The Respondent argued that Turnagain was not entitled to party status under the *Act*.

Section 62 of the Act provides:

- (1) Where a person who holds a guide outfitter's licence ... does not comply with the conditions contained in his licence or certificate or for another cause that the regional manager considers reasonable, the regional manager may conduct a hearing to determine whether the person should continue to enjoy the privileges afforded him by the licence or certificate...
- (3) A hearing... shall be held in public....

Section 103 of the *Act* provides:

- (1) Where the regional manager makes a decision that affects
  - (a) a licence ... or guide outfitter's certificate held by a person...  
that person may appeal the decision of the regional manager to the director.
- (3) Where the director
  - (a) exercises the powers of a regional manager respecting the matters referred to in subsection (1) ...  
  
the person aggrieved by a decision may appeal the decision of the director to the Environmental Appeal Board.

The *Act* defines "person" as a natural person for the purpose of issuing a licence.

The *Act*, then, allows the (Deputy) Director to, after holding a hearing in public, take action against a natural person who is the holder of a licence or certificate; that person is then allowed to appeal the Deputy Director's decision to the Environmental Appeal Board. The Panel notes that while the hearing is to take place in public, there is no requirement for public participation in the hearing.

The Appellant's argument centred primarily around the legal rights of a person or party "aggrieved". The Panel notes that in the case law presented and largely relied on by the Appellant, specifically A.G. of the Gambia v. N'Jie, [1961] 2 All E.R. 504 (P.C.), the statute in question used the words "any person aggrieved" (emphasis added) as conferring a right to appeal.

In the *Wildlife Act* the expression used is "the person aggrieved" (emphasis added). Further, this phrase appears only in relation to the right of appeal to the Board under s.103(3) of the *Act*, but not in relation to participation in s.62 hearings, nor in s.103(1).

As regards the majority of the case law presented by the Appellant, the Panel is of the opinion that it addresses primarily issues of public interest, while the matter at hand is one of private rights associated with a discipline hearing.

The evidence before the Panel shows that prior to making his decision regarding participation in the appeal before him, Deputy Director Munro ascertained that neither Mr. Seyl nor Turnagain were holders of a licence or certificate.

It is, therefore, the opinion of the Panel that according to the wording of s.62 Turnagain did not have standing as of right to participate as a party in the hearing before the Deputy Director.

## **Issue 2. Hearing Procedure**

The Appellant argued that as Turnagain was not allowed to cross-examine witnesses during the hearing before the Deputy Director, his decision was made by considering one-sided information. The Appellant alleged this resulted in the Deputy Director violating the rules of natural justice. .

The Respondent argued that Mr. Dalziel, having taken the position during the hearing before the Deputy Director that Turnagain not be allowed the opportunity to cross-examine witnesses as he would be unfairly prejudiced, is now estopped from claiming that the Deputy Director's upholding of that objection constituted a breach of the rules of natural justice.

As discussed previously, the Panel considers the only party with standing as of right in a s.62 hearing is the person actually holding the licence or certificate; in this case, Mr. Dalziel.

The Panel accepts that while the statute may define who is entitled to be part of the process, it does not necessarily preclude the presence of other parties. The Panel also accepts, however, that because the s.62 hearing was to consider Mr. Dalziel's legal rights, the Deputy Director was required to ensure the hearing proceed without undue interference from those who did not have a legal right to be part of the discipline hearing.

The Panel, therefore, accepts the Deputy Director had the discretion, as master of the procedure to be followed at the hearing, to grant Turnagain special status to participate and to impose rules as to the nature of that participation.

Deputy Director Munro offered Turnagain what amounted to limited intervenor status or the opportunity to appear as a witness. Turnagain chose to appear as a witness and was called by the Regional Manager. The transcript of the hearing

before the Deputy Director shows he allowed Turnagain to clarify statements when Turnagain requested the opportunity.

The Panel must also consider that at the first hearing, Mr. Dalziel specifically objected to Turnagain being afforded the opportunity to cross-examine witnesses. Even though the dispute which led to Mr. Dalziel taking this position has now been resolved, the Panel must consider whether it would be fair for Mr. Dalziel to, in effect, be allowed to change his mind and reverse his position from that taken at the previous hearing.

While the Panel finds it odd that the Deputy Director was not prepared to allow Turnagain to sum up at the end of the hearing, the Panel is of the opinion that it was within the Deputy Director's jurisdiction to limit Turnagain's participation and that in so doing, the rules of natural justice were not violated. In addition, the Panel finds it unfair and somewhat surprising that Mr. Dalziel would now protest this issue.

### **Issue 3. Dalziel Penalty**

The Appellant argued that in cancelling Mr. Dalziel's guiding certificate, the Deputy Director destroyed Mr. Dalziel's career and Turnagain's entire investment. The Appellant argued there was no precedent for a penalty of this nature considering Mr. Dalziel had not been charged nor convicted of an offence under the Act when the Deputy Director made his decision. Evidence was presented to show that guides who had been charged under the *Act* had not suffered as great a penalty as Mr. Dalziel. In addition, the Appellant argued the Deputy Director could meet all of the objectives of the *Act* and Regulation by suspending Mr. Dalziel's certificate for a lengthy period and requiring it not be reinstated until and unless Turnagain sells to an approved buyer.

The Respondent argued that the situation concerning Mr. Dalziel was different than in the examples presented involving other guides and their penalties.

The Panel notes s.62(1) does not require a holder of a licence or certificate to be convicted prior to the holding of a hearing. The *Act* provides authority for the regional manager (Deputy Director) to convene a hearing for a cause s/he considers reasonable.

The Deputy Director's decision shows he considered, among other things that: Mr. Dalziel admitted to contravening s.49 and 55 of the Act; Mr. Dalziel was not present in his guide area for the bulk of 1990 and 1991 when his assistant guides were guiding for game; Mr. Dalziel signed blank guide declaration forms during 1990 and 1991; many of the 1991 forms were falsified, not complete or were simply not submitted, and; Branch personnel consider the guide declaration forms from this area to be essential for wildlife management purposes due to the remoteness of the area and limited Branch staff resources.

The Deputy Director found, in part, that Mr. Dalziel deliberately chose to violate the Act and that resulted in a number of illegal activities occurring on the guide territory that would likely have serious consequences for wildlife management. He also found Mr. Dalziel abused his position of trust.

The Panel accepts that the circumstances surrounding the penalties awarded to other guides differed substantially from those of Mr. Dalziel's.

The Panel is of the opinion that the Deputy Director's duty in a s.62 hearing is to make an order that is in the best interests of wildlife management and is fair to the affected licensee or certificate holder, and that he is not required to consider the financial implications of his order to third parties who have no standing as of right at the hearing. The Panel is of the opinion that there was no evidence presented to show that the Deputy Director erred in the exercise of his discretion in considering the factors presented in his decision, and in deciding to suspend Mr. Dalziel's licence and cancel his certificate.

## **DECISION**

In making this Decision, the Panel of the Environmental Appeal Board has carefully considered all of the evidence and comments made during the Hearing, whether or not specifically reiterated here.

As addressed in the hearing, Honourable Madam Justice Huddart of the Supreme Court of British Columbia, considers the Environmental Appeal Board's (and thus this Panel's) duty on appeal is to determine whether the Director properly exercised discretion, that is to say bona fide uninfluenced by irrelevant considerations and not arbitrarily or illegally (Fred Olsen vs James Walker and others, Supreme Court of BC, Duncan Registry No. 2286).

A s.62 hearing is a discipline hearing which enables the regional manager (Deputy Director), after hearing from the holder of a licence/certificate, to make a decision as to the status of the licence/certificate.

It is the decision of this Panel that the Deputy Director:

did not err in law in finding Turnagain was not entitled to party status in the s.62 hearing of Mr. Dalziel;

did not contravene the rules of natural justice in setting the hearing procedure; and,

did not act unreasonably in deciding to cancel Mr. Dalziel's certificate and suspend his licence.

The appeal is, therefore, dismissed.



**COMMENTS**

The Appellant argued that if the Panel found the matter was to be returned for reconsideration, the matter should be returned to the Director of Wildlife. As the Panel has found against the Appellant, the Panel did not consider who the matter would have been returned to if that had been the decision of the Panel.

Linda Michaluk, R.P. Bio. Chairman  
Environmental Appeal Board

July 9, 1993