



Environmental Appeal Board

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DECISION NO. EAB-WIL-21-A012(b)

In the matter of an appeal under the *Wildlife Act*, RSBC 1996, c. 488

BETWEEN:	James (Jim) Munroe	APPELLANT
AND:	Deputy Regional Manager, Recreational Fisheries & Wildlife Program	RESPONDENT
AND:	Keyohwhudachun (Chief) Petra A’Huille	THIRD PARTY
BEFORE:	A Panel of the Environmental Appeal Board David Bird, Vice-Chair	
DATE:	Conducted by way of written submissions concluding on September 2, 2022	
APPEARING:	For the Appellant: Courtenay Jacklin, Counsel Christopher Devlin, Counsel	
	For the Respondent: Sonja Sun, Counsel	

PRELIMINARY DECISION RE: APPLICATION TO PARTICIPATE

BACKGROUND

[1] I am deciding an application by the British Columbia Trappers Association (the “BCTA”) to participate in an appeal filed by Mr. Munroe of a decision by a Deputy Regional Manager denying the transfer of part ownership in a trapline. This application is being heard through written submissions and all the parties were granted the opportunity to respond to the application.

[2] The November 2, 2021 decision (the “Decision”) of Leslie McKinley, Deputy Regional Manager, Recreational Fisheries & Wildlife Programs, Omineca Region is the subject of this appeal. The Decision denied an application submitted by the Appellant, in his role as executor of the estate of the late Chief Sally Sam A’Huille (“Chief Sally”). The Appellant applied to transfer Chief Sally’s estate interest in trapline¹ TR0725T008 (the “Trapline interest”) to her daughter Keyohwhudachun (Chief) Petra A’Huille, the Third Party.

[3] Mr. Prince has an interest in this trapline but is not a party to this appeal.

¹ A “trapline” is defined in the *Act* to mean an area for which registration is granted to one or more licensed trappers for the trapping of fur bearing animals.

[4] A detailed background to the appeal is provided in decision EAB-WIL-21-A012(a)². I will not repeat all the same background which is already available in the decision noted; however, the following paragraphs from this earlier decision provide a factual background relevant to this application to participate by BCTA:

[8] As noted above, the Appellant made his application for registration of the transfer of the trapline interest to the Third Party under section 42(1) of the Act as executor of the estate of the late Chief Sally.

[9] At the time of her passing on August 20, 2020, Chief Sally was a registered holder of trapline TR0725T008, together with her nephew, Richard Prince. Mr. Prince does not agree to the transfer of Chief Sally's interest in the trapline to the Appellant and has not co-signed the transfer application submitted by the Appellant.

[10] Chief Sally was hereditary chief of the Maiyoo Keyoh, an Indigenous group of peoples whose ancestral lands include the area associated with trapline TR0725T008. The Maiyoo Keyoh provided notice of their Aboriginal title to their ancestral territory to British Columbia in 2002.

...

[13] In denying the Appellant's application, the Respondent concluded that, because the Appellant had not come to an agreement with the remaining living registered trapline holder to transfer part of the trapline, it would not be appropriate to approve the transfer. Further, without agreement with the current registered holder, the issue of proper furbearer management on this trapline with multiple parties would be of concern. It is for these reasons together that the Respondent denied the transfer application.

ISSUES

[5] I must decide whether to grant BCTA participant status, and if so, to what extent should I permit BCTA to participate?

[6] In deciding this application, I will consider the following questions:

1. Does the BCTA have a valid interest in participating in the appeal?
2. Can the BCTA assist the Board in deciding the appeal?

DISCUSSION AND ANALYSIS

Legislative Framework

[7] The Environmental Appeal Board (the "Board") is governed by the legislative requirements set out in the *Environmental Management Act*, SBC 2003, c. 53, (the "EMA"), the *Environmental Appeal Board Procedure Regulation* (the "Regulation"), certain sections of the *Administrative Tribunals Act*, SBC 2004, c. 45 (the "ATA"), as well as common law principles of procedural fairness.

² EAB-WIL-21-A012 Munroe v Deputy Regional Manager (Third Party - Keyohwhudachun (Chief) Petra A'Huille) is publicly viewable at bceab.ca/decision/

[8] Section 11 of the *ATA* allows the Board to establish rules respecting practice and procedure to facilitate the just and timely resolution of matters before it. The Board has established its rules pursuant to this authority (the "Rules").

[9] The Board has a Practice and Procedure Manual (the "Manual") containing information about the Board itself, the legislated procedures that the Board is required to follow, the Rules, and the policies the Board has adopted to control its own process to ensure the fair, effective and timely resolution of appeals.

[10] Starting at page 18 the Manual explains that appeals always have at least two parties: an appellant and a respondent. The Manual states the Board can add other parties to an appeal under certain circumstances who may be directly affected by the decision and the Board may also invite other persons to participate even if not directly affected but they may have a specific interest or involvement in the subject matter of the appeal.

[11] This discretion is provided for under section 94(1)(a) of the *EMA* which says the Board can invite any person to be heard in the appeal, either at the Board's own initiative or as a result of an application. The Board can also limit the extent a person is allowed to participate in an appeal to address concerns related to the potential for the appeal process to cost more and take more time which may be prejudicial to the parties.

[12] The role of a participant under section 94(1)(a) of the *EMA* is distinct from the role of an intervener for appeals under the *Mines Act*. Under the *Mines Act* a person must meet the test set out under section 33 of the *ATA* in an application to intervene in the appeal. Section 93.1(1)(d)(iii) specifically provides that section 33 of the *ATA* does not apply to appeals to the Board, except for under the *Mines Act*.

[13] As required by the Manual, the BCTA applied to be added as a participant under Rules 9(2) and 6. At page 19 of the Manual, the Board may consider the following when deciding whether to add a person as either a party or a participant to an appeal:

- the degree to which the person may be impacted or affected by the Board's decision on the appeal;
- whether the person is likely to make a relevant contribution to the Board's understanding of the issues in the appeal;
- the timeliness of the application;
- the prejudice, if any, to the other parties;
- whether the interests of the person can be adequately represented by another party and/or will be duplicative or repetitive;
- the person's desired level of participation in the appeal;
- whether allowing the person's participation in the appeal will delay or unduly lengthen the proceedings; and
- any other factors that are relevant in the circumstances.

[14] A "person" is not defined in the *EMA*. However, the *Interpretation Act [RSBC 1996] c. 238* defines "person" as including a corporation, partnership, or party, and the personal or other legal representatives of a person to whom the context can apply according to law. Section 2(1) of the *Interpretation Act* provides that "every provision of this Act applies to every enactment, whether enacted before or after

the commencement of this Act, unless a contrary intention appears in this Act or in the enactment.”

[15] There were no arguments in this application to suggest the BCTA is not a “person” within the meaning of section 94(1) of the *EMA*. I find the BCTA is a “person” at law and can be invited by the Board to participate in this appeal.

[16] As referenced in the submissions to the Board on this application, the Board has consistently applied a test when considering an application for participation status as outlined in para [30] in *Chief Richard Harry in his own right and on behalf of the Xwemalhkwa First Nation v Assistant Water Manager and Bear River Contracting and the Environmental Law Centre*, Decision No. 2011-WAT-005(b) and 006(b), dated October 27, 2011 [*Chief Harry*]:

[30] In *Houston Forest Products Co. et al. v. Assistant Regional Manager*, (Decision No. 99WAS-06(b), 08(b), and 11-13(b), January 21, 2000), the Board considered an application for participant status by the British Columbia Lung Association in an appeal of three air emission permits. In that case, the Board adopted the following test in considering an application for participant status:

1. Whether the applicant had a valid interest in participating, and
2. Whether the applicant can be of assistance in the proceedings.

BCTA’s Application to Participate

[17] The BCTA is an association that represents provincial trappers. It advocates for the trapping industry in British Columbia.

[18] BCTA seeks to participate because, it says, the Board’s decision on the issues in this appeal could have severe financial consequences for all trapline owners in the province and set a negative precedent with trapline transfers in the province. BCTA seeks to make submissions and provide evidence on the trapline system in the province, and the process of trapline transfers and how this decision may impact future trapline management. BCTA seeks full participation status including the ability to cross examine the respondent, submit evidence and make full submissions.

Respondent’s Response to BCTA’s Application to Participate

[19] In its August 26, 2022 written submission, the Respondent submits that BCTA’s application to participate should be denied because the application:

- does not provide the information required by Board Rule’s 9(2) and 16,
- fails to provide adequate reasons in support of BCTA’s participation and the application addresses substantive issues on the appeal, and
- materials demonstrate BCTA’s participation will have limited value or relevance to the issues in this appeal.

[20] The Respondent accepts BCTA has an overall interest in the issues and matters that affect its members in the province. The Respondent does not dispute issues related to holding a trapline “in common” may be of general interest to the BCTA. However, the Respondent submits that the issues in this appeal between the

Appellant and Third Party “cannot be broadly applied to other trappers or trapline registration decisions”.

[21] The Respondent submits that there is limited evidence supporting that the BCTA’s participation would assist the Board in deciding this appeal. The Respondent submits the BCTA is not “well positioned to make any meaningful submissions or provide useful evidence” and BCTA’s application to participate does not contradict this submission [based on the information related to past trapline transfers submitted with the application to participate].

[22] The Respondent notes the BCTA has not identified how it can assist the Board. The Respondent submits that the BCTA has not demonstrated how it can assist with the specific issues in the appeal involving Aboriginal Rights and Title under s. 35 of the *Constitution Act*. The Respondent submits that while BCTA has indicated it can provide submissions or evidence on trapline values and previous transfer applications, this evidence is not relevant to this appeal in the Respondent’s submission.

[23] The Respondent also submits that the BCTA intends to provide evidence about trapline values and transfer applications; however, this is not relevant to the issues in this appeal. The Respondent submits all transfer applications and decisions are unique and BCTA has not identified how the outcome of this appeal will impact future decisions or how previous decisions will assist the Board in deciding this appeal.

[24] The Respondent submits that while BCTA may have a general interest in the legal issue of traplines held in “tenancy in common”, the BCTA “does not have any additional or unique legal or general expertise that would assist in this appeal.” The Respondent submits that BCTA is unlikely to be able to provide the Board any assistance in addressing the legal concepts related to holding tenancy in common on traplines and any argument or evidence would duplicate the arguments and evidence of the parties to the appeal.

[25] Given these submissions, the Respondent submits that allowing BCTA to participate “will also result in potential duplication, repetition, unnecessary delay and increased cost for all the parties”.

[26] However, the Respondent submits that if the Board allows BCTA to participate, BCTA should be limited to written submissions on the sole issue regarding holding tenancy in common on a trap line.

Appellant’s Response to BCTA’s Application to Participate

[27] In his August 26, 2022 submission, the Appellant supports BCTA’s participation in the appeal. The Appellant submits BCTA should be limited to only addressing statutory interpretation questions as it relates to the issues under appeal.

[28] The Appellant submits that it recognizes that the BCTA has an interest in the statutory interpretation of the *Wildlife Act* and agrees with the BCTA’s submission that “the decision under appeal could potentially have some financial consequences for registered trapline holders across British Columbia”.

[29] The Appellant submits the Board has the discretion to add participants which is distinct to an intervener. Yet, the BCTA is best characterized as an intervener because the "BCTA may be able to provide the Board with important perspectives on both the active registered trapline holders interests in traplines and past transfers".

[30] The Appellant submits BCTA should only be granted limited participation involving making a written submission on the issues of statutory interpretation under the *Wildlife Act* related to the appeal issues.

BCTA's Submissions in Reply

[31] BCTA clarifies that Director's failure to approve the transfer of the trapline in this appeal, if confirmed, could be detrimental across the trapping industry. The effect of the Director's decision is to give the full value of the trapline to one part owner in favour of the other.

[32] The BCTA submits that the trapline system is a fundamental part of the structure used in the province to manage "fur bearers". The BCTA can provide evidence and context of fur bearer management and how traplines are valued. The BCTA submits, "In simple terms our assertion is by failing to recognize the succession rights of one owner, has increased the value of the remaining owner's stake in the trapline."

[33] The BCTA submits that a global understanding of the trapline management scheme in the province and can assist the Board's understanding of this scheme as it relates to the specific facts and circumstances of this appeal. The BCTA also submits that it can offer another mechanism for resolving the appeal through exercising powers in the statute to subdivide or create separate traplines.

[34] The BCTA recognizes the concerns raised by the parties regarding the potential for delay and increase costs to having the appeal heard. While the BCTA maintains it should be granted full party status, it would compromise by providing a written submission following having observed the oral evidence and cross-examination. The BCTA agrees with the arguments of the parties that issues related to aboriginal law, natural justice and procedural fairness are outside its area of concern in the appeal.

Panel's Findings

1. Does BCTA have a valid interest in participating in the appeal?

[35] It is BCTA's position that the "[the Respondent] has improperly considered the relevant factors in making the decision to approve or deny the trapline transfer." The BCTA submits that traplines can have significant value and decisions regarding trapline transfers are important to overall management of trapping in the province.

[36] I find that the BCTA promotes, educates, and advocates for fur trappers in the province and generally is interested in trapline management that might affect the interests of its members, including issues related to transfers of traplines.

[37] I am not persuaded by the Respondent's argument that the BCTA has not complied with Board Rules by failing to provide the required and necessary

information needed to hear its application to participate. I find that BCTA has provided sufficient information to decide its application. In particular, BCTA does not have to provide all information that it might if granted a participatory status in its application for that status.

[38] I note that the Respondent has acknowledged that the BCTA “has interest in issues and matters that affect trappers in the Province” and “does not dispute that the ground the Appellant identified as “tenancy in common” may be of general interest to the BCTA and the members it represents.”

[39] I give weight as well to the submission of the Appellant recognizing that:

the BCTA and its members have a particular interest in the statutory interpretation of *Wildlife Act* s. 42(3)

...

the Appellant agrees with the BCTA that the decision under appeal could potentially have severe financial consequences for registered trapline holders across British Columbia

[40] Given BCTA’s history, mission, and constitution, I find that it has a valid interest in trapline management and issues related to trapline transfers. While I acknowledge that the issues in this appeal have questions of fact specific to the parties, I am persuaded that the BCTA has a valid interest in the outcome of the appeal because of the potential impact related to the legal interpretation of the *Wildlife Act* and general policy approach taken by the Respondent may have on registered trapline management in the province.

[41] Having decided that BCTA has valid interest in the appeal, as described in *Chief Harry*, I turn to the second issue to decide the appropriate level of BCTA’s participation in the appeal.

2. Can the BCTA assist the Board in deciding the appeal?

[42] Assessing whether BCTA can assist the Board in deciding the appeal is the most difficult question to answer in this application because based on the information before the Board in this application it is difficult to weigh BCTA’s potential assistance against the potential prejudice to the appeal parties related to increased delay, complexity, and cost to hear the appeal.

[43] I accept that adding BCTA as a participant will have some impact on the complexity of the proceeding and add cost and length to the hearing (whether written or by oral hearing), especially if I grant BCTA’s request to have full party status with the right to present evidence and cross-examine witnesses.

[44] BCTA’s interest in this appeal is to assist the Board by providing additional background and understanding of the trapline management in the province and its position in how the *Wildlife Act* is interpreted related to the management of traplines. The Respondent submits that the specific issues in this appeal are not applicable, or BCTA has not shown how the issues are applicable to broader application in trapline management. However, I am persuaded by the submission of BCTA and the Appellant that there is some potential that the Board’s decision on the specific issues in this appeal may help clarify issues around managing shared trapline ownership.

[45] I find it is appropriate to grant BCTA's application to participate and any potential negative consequence of its participation can be mitigated by appropriately limiting BCTA's participation to reflect the narrow scope of its interests and ability to assist the Board.

[46] I am persuaded that BCTA's interest in the appeal and ability to assist the Board stems from the interpretation of the *Wildlife Act* on questions of trapline transfers or holding traplines in common. I am persuaded the BCTA may be able to provide relevant historical context and provide input on broader impacts relevant to how the Director interpreted the Act. This information may include evidence of past trapline transfers as part of the context of how the *Wildlife Act* ought to be interpreted. However, I am not persuaded that BCTA interest in the appeal and ability to assist the Board extends to cross examining witnesses or making legal arguments on potential questions related to application Aboriginal Rights.

[47] Therefore, I limit BCTA's participation in the appeal to a written submission and documentary evidence to the Board on the issues related to trapline transfers and/or holding traplines in common, including the statutory interpretation of the *Wildlife Act* as it relates to these issues, and/or (or similar to what) BCTA suggested as a "compromise" approach to resolving the appeal. The BCTA must ensure that its submissions and documentary evidence do not overly duplicate or repeat arguments already put forward by the parties to the appeal.

[48] At this time the method of hearing for this appeal has not been determined. The specifics and details of BCTA's limited participation will be confirmed at a later stage in the appeal process, based on how the Board decides it will hear this appeal.

DECISION

[49] For the reasons provided above, I find that BCTA's application to participate in the appeal is granted, subject to the limitations set out above.

[50] In making this decision, I considered all of the parties' submissions, whether specifically referenced or not in my decision.

"David Bird"

David Bird, Vice-Chair
Environmental Appeal Board

November 3, 2022