



Environmental Appeal Board

Citation: *Millers Outdoors Ltd. v. Director of Fish and Wildlife*, 2023 BCEAB 5

Decision No. EAB-WIL-22-A023(a)

Decision Date: 2023-02-27

Method of Hearing: Conducted by way of written submissions concluding on November 28, 2022

Decision Type: Summary Dismissal Decision

Panel: Cynthia Lu, Panel Chair

Appealed Under: *Wildlife Act*, R.S.B.C. 1996, c. 488

Between:

Millers Outdoors Ltd.

Appellant

And:

Director of Fish and Wildlife, Ministry of Forests

Respondent

Appearing on behalf of the parties:

For the Appellant: Kevin Church, Counsel for Appellant

For the Respondent: Geneva Grande-McNeill, Counsel for Respondent

SUMMARY DISMISSAL DECISION

INTRODUCTION

[1] Miller Outdoors Ltd. (the “Appellant”) appeals the conditions of Guide Outfitter Licence #100001718 (the “Licence”) within Guide Territory Certificate area 601113 (the “Certificate Area”) in the Skeena Region.

[2] The Licence was issued on March 27, 2020, by the Director of Fish & Wildlife, Ministry of Forests (the “Respondent”) for a period of five years, expiring March 31, 2025. The conditions of the Licence are that “all game species may be taken in accordance with the *Wildlife Act* and its regulations subject to the restrictions and quotas set out in the annual quota attachment that applies to the licence year specified.” According to the Licence, quotas “are determined annually and only applied to the licence year specified.” The Licence was amended on June 15, 2021, and again on July 4, 2022. In the Licence for each year, including the most recent amendment dated July 4, 2022, the annual quota attachment is blank.

[3] Upon accessing and reviewing the 2022–23 Licence amendment, the Appellant filed an appeal with the Board. The Appellant argues that the Respondent should have set an allocation and quota for Stone’s Sheep for the 2022–23 hunting season, but did not.

[4] After reviewing the notice of appeal and subsequent additional information requested of the Appellant, the Board asked the parties to provide submissions on the preliminary issues of whether there was a decision made under the *Wildlife Act*, RSBC 1996, c. 488, (the “Act”) that can be appealed to the Board, and whether the notice of appeal was filed within the 30-day appeal period imposed in the *Act*.

[5] The hearing of these preliminary issues was conducted by way of written submissions.

BACKGROUND

[6] The Board received the Appellant’s notice of appeal by email on August 10, 2022. On August 18, 2022, the Board requested additional information from the Appellant on preliminary issues, to be submitted by no later than September 2, 2022. The Appellant responded on September 9, 2022, in a letter that did not address the preliminary questions from the Board and erred by referencing moose instead of sheep. On September 12, 2022, the Board emailed the Appellant requesting a response to the specific points it raised in the August 18, 2022 letter. On September 12, 2022, the Appellant responded via email to provide additional information on the initial points raised by the Board.

[7] On September 16, 2022, the Board requested the Respondent's submissions on the preliminary issues to be submitted no later than October 7, 2022. On October 7, 2022, the Respondent provided a letter addressing its position on the preliminary issues. Subsequently, the Board requested the Appellant's reply submissions on why the Board should not dismiss the appeal, which were due no later than November 25, 2022. A final submission was provided by the Appellant on November 28, 2022.

[8] Despite the Appellant's repeated late submissions, this Panel will address the preliminary questions raised with the benefit of the Appellant's submissions, as if they had been filed on time. The Board has the authority to do this as it is the master of its own process and may alter or amend this process to in circumstances that are appropriate. In this instance, I find it is appropriate to accept and consider the late submissions of the Appellant, as an assessment of the issues before me is enhanced by these submissions. However, this outcome may not always be the one reached by a panel of the Board, as these determinations are, necessarily, factually specific. It is equally open to a panel of the Board to not consider submissions received after the final day of the submission period, or, indeed, to initiate a process to dismiss the appeal for failure to comply with an order of the Board.

ISSUES

- [9] This decision addresses the two preliminary issues identified by the Board:
- a. Was the appeal filed in time, and
 - b. Is there a decision which can be appealed to the Board under the *Act*?

DISCUSSION AND ANALYSIS

Was the notice of appeal filed in time?

Summary of the Parties' Submissions

[10] The Appellant submits that the system used to notify guide outfitters is fundamentally flawed. The Appellant argues notices submitted in July or August cannot be expected to be accessed by guide outfitters who have likely begun their guide seasons and are in remote locations with limited internet access. While notice was given electronically on July 4, 2022, through the Appellant's BC Wildlife Information and Licensing Data system ("WILD") account, the Appellant submits that notice was received on August 5, 2022, when he accessed his BC WILD account. The notice of appeal was received by the Board on August 10, 2022. The Appellant submits that in the absence of clear legislative definitions on how notice is given and when it is considered to be received, there is no purpose or benefit in calculating the 30 days of the appeal period since no start date for that period can be established.

[11] The Respondent submits the notice of appeal was not filed within the 30 day time limit established in the *Act*, and that as a consequence the Board has no jurisdiction to accept the appeal. Notice of the decision was given on July 4, 2022, and in accordance with the *Interpretation Act*, RSBC 1996, c. 238, the expiry of the 30 day time limit for this appeal fell on August 3, 2022. The Respondent submits that the provisions in the *Wildlife Act General Regulation* (the "*Regulation*") for notices deemed to have been received within a certain timeframe does not apply to the issuance of a guide outfitter licence or of an amendment to the licence. Therefore, the Respondent submits, the period to file an appeal is 30 days after notice is given and that the appeal filed on August 10 was filed out of time.

Panel's Findings

[12] While the Appellant submits there is no definition for how notice is given and therefore there can be no "yardstick" to calculate when 30 days has elapsed, Division 22 of the *Regulation* clearly describes how notice must be given in relation to Section 101(2) of the *Act*.

[13] Section 22.02 of the *Regulation* states:

How to give notice

22.02 A notice to which this Division applies must be given to a person in one of the following methods:

...

(f) by sending a copy to an online account held by the person on a website that

(i) is maintained by or on behalf of the minister, and

(ii) immediately sends an email notification to an email address provided by that person.

[14] Section 22.02 of the *Regulation* applies to specifically enumerated provisions of the *Act*, listed in section 22.01 of the *Regulation*. Section 22.01(1)(h) incorporates section 101(2) of the *Act*: reasons for and notice of decisions. As discussed below when addressing the second preliminary issue identified by the Board, I have found that the actions of the Respondent are a decision under the *Act*.

[15] The Licence amendment was posted on July 4, 2022, to the Appellant's BC WILD account, a website and database maintained on behalf of the minister. The system generated an email notification of the update which was also sent to the Appellant's email address on the same day. I find that notice was given in a manner consistent with section 22.02 the *Regulation*.

[16] The *Regulation* also outlines when notice given in accordance with section 22.02 is deemed to be received. Section 22.03 of the *Regulation* states:

When notice must be considered received

22.03 A notice given in accordance with section 22.02 is deemed to be received as follows:

...

(e)if given by sending a copy to an online account on a website that also sends an email notification, the 3rd day after it is sent to the account.

[17] When the legislative scheme explicitly sets out a deeming provision, an individual affected by a change to their licence does not need to have seen, read, or understood that change before it begins to take effect. This is not a matter that is within the purview of the parties or the Board: it is a matter within the jurisdiction of the BC legislature. Section 101.1(2) of the *Act* states that the time limit for commencing an appeal “is 30 days after notice is given” to the affected person. Additionally, in accordance with the *Regulation*, notice given on July 4 must be considered received the 3rd day after it is sent: July 7, 2022. An appeal time period that began on July 7, 2022, expired on August 6, 2022: a Saturday and not a regular business day for the Board. According to the *Interpretation Act*, if a time period ends on a day that is not a regular business day, then that time period is extended until the next regular business day. The next day of regular business hours for the Board was August 8, 2022.

[18] The 30 day appeal period ended on August 8, 2022. As the notice of appeal was filed on August 10, 2022, I find that the appeal was filed out of time and the Board does not have the jurisdiction to hear this appeal. In arriving at this conclusion, I considered the appeal period of 30 days, the method by which notice can be given, and the applicable deeming provision, all of which are set out in the relevant legislation.

Is there a decision which can be appealed to the Board under the Act?

[19] Despite the fact that I have found that the Appeal was filed out of time and the Board has no jurisdiction to hear this appeal, I have nevertheless turned my mind to the matter of whether there is a decision that can be appealed to the Board.

Summary of the Parties’ Submissions

[20] The Appellant submits that there is a decision to be appealed: that no allocation or quota for Stone’s Sheep was included in the July 4, 2022 Licence amendment. The Appellant submits that the allocation/quota was not zero but did not specifically mention Stone’s Sheep as a species the Appellant is entitled to harvest. The Appellant submits that Stone’s Sheep are a species where allocation or quota is required and that the Regional Manager previously informed him that he cannot hunt/guide for Stone’s Sheep in the area without allocation or quota. The Appellant submits no additional evidence on this point.

[21] The Respondent submits there is no appealable decision because the only change was in the licence year, and no decision was made that affected the Licence in any substantive way. The licence amendment, made on July 4, 2022, was only an amendment to update the licence year. The Respondent submits that although notice was provided, it was not required under Section 101(1) of the *Act* because the Appellant is not affected by the change in the licence year.

[22] The Respondent provided previous Licence documents from 2020–21 and 2021–22, where the annual quota page is also blank. The Respondent submits that since the annual quota attachment is blank, there are no quota restrictions on the Licence within the guide certificate area. Therefore, the Appellant may guide for all species in the certificate area, including Stone’s Sheep, in accordance with the *Act* and its regulations.

[23] To the point above, the Appellant submits in his reply submission that “if that is the position that the Respondent adopts, then we agree that the appeal does not need to proceed, and the Appellant will guide for Stone’s Sheep in the area in the future without allocation/quota. I suspect that will not be the position of the Respondent should this matter proceed to a full appeal.”

Panel’s Findings

[24] In determining whether there is a decision that can be appealed to the Board, I must consider two factors: what decision is made in the licence amendment, and, given that decision, whether the Appellant was affected by the decision.

[25] The term “decision” is not explicitly defined in the *Act*. However, previous Board decisions have contemplated what constitutes a “decision” under the *Act*. While I am not bound to follow these previous decisions of the Board, I find them helpful in describing the Board’s jurisdiction in this matter.

[26] A previous panel of the Board¹ defined the term “decision” as following:

Although the word “decision” is not defined in the Act, I find that the word “decision” in section 101 of the Act refers to decisions that result from the exercise of the powers given to regional managers and directors in the Act and its regulations.

[27] Section 60 of the *Act* provides for the ability of the regional manager to attach a quota as a condition of a licence and to vary the quota from year to year. This section says, in part:

¹ *Oscar’s Source for Adventure, Bear Claw Lodge Ltd. Partnership, Billy Labonte, Gordon Wadley, Dave Evans and Melissa Moure v. Trevor Rhodes, Associate Director, Fish and Aquatic Habitat Branch, EAB-WIL-A007a et al*, at para. 48.

60(1) If a regional manager issues a guide outfitter licence, the regional manager may attach a quota as a condition of the licence and may vary the quota for a subsequent licence year.

[28] It is common ground between the parties that there was no quota attachment to the Licence when it was issued, or with any of the subsequent yearly amendments of the Licence. The imposition of a quota to a licence which previously had none would clearly be an exercise of discretion and would constitute a decision under the *Act*. Other changes to a licence also constitute a decision insofar as they affect the licence holder. However, not all decisions affect a licence holder equally.

[29] The BC Court of Appeal, in *Unifor Local 2301 v. Rio Tinto Alcan Inc.*, 2017 BCCA 300, held that:

An appeal of a decision does not lay an existing permit open to attacks at large. The appeal must be narrowly focussed on the particular impugned decision. (Paragraph 40)

[30] In other words, what can be appealed is what has changed in the current amendment of the licence. When considering that amendment, one must bear in mind that section 101.1(1) of the *Act* grants appeal rights only to “affected persons”, as referred to in section 101(2), with respect “the decision”. An “affected person” from section 101(2) is one to whom notice of a decision that qualifies under sections 101(1) or 101(1.1) must be given. These are the decisions that qualify as “the decision” for which appeal rights are granted under section 101.1(1). Such a decision is either one that affects “licence, permit, registration of a trapline or guiding territory certificate”, or an application for any of those things, or a prohibition on guiding or assistant guiding made under sections 66(1.1)(a) or (b) of the *Wildlife Act*.

[31] In the example of the Licence, it is structured to persist over multiple years, and if a quota was attached to the Licence at any time after it was issued, this would be a decision affecting the Licence, and so be appealable. It would similarly be an appealable decision if there was a quota attached to the Licence when it was issued, but that quota was either removed or altered after that issuance.

[32] As such, while the determination to attach, or vary, a quota on a licence is a reviewable one, there has been no decision affecting the quota of Stone’s sheep under this Licence since it was issued. Given the guidance from the BC Court of Appeal on this matter, it is clear to me that the appealable decision pertaining to the Stone’s sheep quota occurred when the Licence was first issued. For me to determine that the decision to not alter the Licence to add a quota in this instance was within the Board’s jurisdiction would cause the very situation that the BC Court of Appeal warned against.

[33] As the only aspect of the Licence that has changed in this instance is the year in which the Licence is operative, that is the sole issue that lies before the Board on appeal. This is not the issue the Appellant seeks to appeal.

[34] The Appellant submits that the Regional Manager has specifically informed him he cannot hunt Stone's Sheep without allocation/quota, and the decision not to award him the ability to hunt Stone's Sheep is the one under appeal. This restriction is not noted in the Licence and the Appellant provided no further evidence to support this claim. The Respondent submits there are no restrictions on the Appellant's ability to guide for sheep in accordance with the Act and its regulations. The parties' submissions do not indicate in any way that the Appellant is prohibited from hunting or guiding for Stone's Sheep under his Licence in accordance with the Act and its regulations.

[35] In this case, there is no decision to be appealed to the Board because the only appealable issue is the change in the Licence's operative dates, and furthermore, the outcome the Appellant seeks in the appeal is already in place.

DECISION

[36] This appeal is summarily dismissed because it was not filed within the timeline set in the Act and its regulations, therefore the Board has no jurisdiction to hear this appeal. In reviewing the submissions provided by both parties, it is clear that both parties agree on the central matter, that is, the ability for the Appellant to guide for Stone's Sheep under his Licence. While I cannot direct parties to do so, I am of the view that these types of matters, regarding the mutual understanding of restrictions imposed by a licence, would be more efficiently resolved if parties communicate directly with one another outside of an appeal process. In my opinion, this would be a more effective use of public resources and the Parties' time and effort.

[37] In making my decision, I have carefully considered all the relevant documents and the parties' submissions, whether or not they are specifically referenced in the reasons above.

[38] For the reasons above, I summarily dismiss the appeal under sections 31(1)(a), and (b) of the *Administrative Tribunals Act*.

"Cynthia Lu"

Cynthia Lu, Panel Chair
Environmental Appeal Board