Environmental Appeal Board

Citation: *Michael Schneider v. Director of Fish and Wildlife,* 2023 BCEAB 13

Decision No.: EAB-WIL-22-A016(a)

Decision Date: 2023-05-04

Method of Hearing: Conducted by way of written submissions concluding on March 6, 2023

Decision Type: Method of Hearing Decision

Panel: Michael Tourigny, Panel Chair

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

Between:

Michael Schneider

Appellant

And:

Director of Fish and Wildlife, Ministry of Forests

Respondent

Appearing on Behalf of the Parties:

For the Appellant: Krista Sittler, Wildlife Biology Consultant

For the Respondent: Micah Weintraub, Counsel

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METHOD OF HEARING DECISION

INTRODUCTION

[1] This preliminary decision pertains to an appeal under the *Wildlife Act*, RSBC 1996, c. 488 (the "*Act*"). The appeal is from a July 7, 2022 decision under the *Act* (the "Decision"), by Logan Wenham, Acting Director, Fish & Wildlife Branch, Ministry of Forests (the "Delegated Decision Maker" or "DDM").

[2] The Decision issued an Amended Guide Outfitters Licence #100003665 (the "Licence") to Michael Schneider (the "Appellant") for the period July 7, 2022 until March 31, 2027, subject to an Annual Quota Attachment for the Licence year ending March 31, 2023, including under certificate number 601093. The Licence grants hunting rights in the Skeena Region (the "Quota Decision").

[3] In his Notice of Appeal to the Environmental Appeal Board (the "Board"), the Appellant challenges the allocation and annual quota of one bull moose granted to him under the Quota Decision as being illogical and not backed by science.

[4] Based on its initial review of the Appellant's Notice of Appeal, the Board indicated to the parties that it believed the appeal could fairly and most efficiently be heard by way of written submissions and documentary evidence. In response, the Appellant objected to the method of hearing proposed by the Board, seeking an in-person oral hearing instead, while the Respondent advocated for a written hearing.

[5] The Board requested written submissions from the parties on the appropriate method of hearing of this appeal. The last of those submissions was provided to the Board by the Appellant, in reply, on March 6, 2023.

[6] This decision determines the method of the appeal hearing.

BACKGROUND

[7] Under section 51(1) of the *Act,* an authorized decision maker may issue a guide outfitters licence to a person if that person meets specified qualifications. Section 51(2) states that a guide outfitter licence authorizes the holder to guide persons to hunt only for those species of game and only in the area described in the licence.

[8] Under section 60 of the *Act*, the authorized decision maker issuing a guide outfitters licence under section 51(1) may attach a quota as a condition of the licence and may vary the quota for a subsequent licence year.

[9] The *Act* defines "quota" to mean, in part:

> (a) the total number of a game species, or
>
> (b) the total number of a type of game species
>
> specified by the regional manager that the clients or a class of client of a guide outfitter may kill in the guide outfitter's guiding area, or part of it, during a licence year, or part of it.

[10] The Appellant's right to appeal to the Board in relation to the Quota Decision is set out in section 101.1 of the *Act.* On an appeal the Board may send the matter back to the decision maker, with directions; confirm, reverse or vary the Decision; or make any decision that the decision maker could have made, and that the Board considers appropriate in the circumstances.

ISSUE

[11] What is the appropriate method of hearing for the conduct of this appeal?

DISCUSSION AND ANALYSIS

[12] The Board's appeal process 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*")[1], as well as by the common law principles of procedural fairness and natural justice.

[13] 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").

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[1] Section 93.1 of the *EMA* indicates which portions of the *ATA* apply to the Board.

[14] The Board has also developed 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 fill in the procedural gaps left by the relevant legislation and the Rules.

[15] Rule 17 [Scheduling a hearing] provides that the Board will decide whether an appeal hearing will be conducted by way of an in-person (oral) hearing, written submissions (a written hearing), telephone or videoconferencing, or a combination thereof. The authority for Rule 17 derives from section 36 of the *ATA*, which provides that the Board may hold any combination of written, electronic, and oral hearings.

[16] Rule 2 [Applying the rules] requires all participants in an appeal to comply with the *Rules* unless the Board orders or directs otherwise under section 11(3) of the *ATA.*

[17] Accordingly, Rule 19 [Oral hearings] will apply if I direct that this appeal be conducted as an oral hearing and Rule 20 [Written hearings] will apply if I direct that this appeal be conducted in writing.

[18] Rule 19 (1) requires all parties, prior to an oral hearing, to provide the other parties and the Board with a written Statement of Points including a summary of their case to be presented at the hearing, together with witness, legal authority, and document disclosure.

[19] Rule 19 (3) and (4) state that if a party intends to produce affidavit evidence at the oral hearing, the party must provide the affidavit evidence with the Statement of Points, and if the other party wishes to cross-examine the affiant on the contents of the affidavit, that party must apply to the Board within a reasonable time after receiving the affidavit.

[20] Rule 20 (4) provides that a party to a written hearing can apply to the Board to cross-examine an affiant on the content of an affidavit or to have a portion of the written hearing conducted orally.

Appellant's submissions:

[21] The Appellant is represented in this appeal by Krista Sittler, a wildlife biology consultant. In this application, the Appellant seeks a direction under Rule 17 that the appeal be conducted orally and in-person.

[22] In his Notice of Appeal, the Appellant sets out that his Skeena Region bull moose allocation for 2017-2021 was sixteen and his annual quota for 2021 was six. The Appellant submits the reduction in the Quota Decision to an allocation for 2022-2027 and annual quota for 2022-2023 of one bull moose is not backed by science. Further, if the Quota Decision stands it will cause undue harm to a guide outfitting territory by essentially putting the Appellant out of business. The Appellant states that the moose population has not declined and there has not been an overharvest. Through multiple sources of evidence, the Appellant plans to show that the Quota Decision was not based on the "best

available" information. The remedy sought by the Appellant is an allocation of twenty-five and an annual quota of seven bull moose.

[23] The Appellant relies on the Board's method of hearing decision in *James (Jim) Monroe v Deputy Regional Manager,* Decision No. EAB-WIL-21-A012(a) ("*Monroe*") where, at paragraph 25, the Board discussed the guidance provided by the *Manual* at pages 23 and 24 which states that when considering the type of hearing to be held the Board:

> … will give careful consideration to balancing the process to be followed with the nature and complexity of the appeal, any views expressed by the parties, the likelihood that there will be **conflicting evidence** and/or **credibility issues** that will need to be assessed, the number of parties involved in the appeal, whether there are any **language or literacy barriers** to a particular type of hearing, and the potential for **community interest in the appeal**. If there are issues of credibility, complex issues that require oral evidence or other circumstances that warrant having the parties, participants and the panel to be in the same room, the Board will schedule an oral hearing. [Emphasis added by Appellant]

[24] Under the heading "Conflicting Evidence", the Appellant submits that the information used to inform the Quota Decision was based on extrapolation from areas that are not similar in ecological characteristics resulting in the decision being made from poorly informed metrics. While the Appellant does not expressly say so in his submissions, I imply from this submission that the Appellant intends to challenge the information upon which the Quota Decision was based either by cross-examination and/or by leading contrary evidence.

[25] Under the heading "Credibility", the Appellant submits there is a need to question the DDM in person. This submission is based on the assertion that in the context of an appeal of a previous quota decision involving the same Guide Territory Certificate 601093, [Decision No. 2017-WIL-013(a)], the Appellant understands that there was a commitment by the decision maker to put the northern half of WMU 6-07 on general open season and that this commitment was not acted upon.

[26] Under the heading "Community Interests", the Appellant submits that the impacts of this Quota Decision will have lasting impacts on the hunting community, essentially closing the moose hunt in WMU 6-07 (negative allocation). The Appellant submits that resident hunters should be able to attend the oral proceedings and be active participants in the appeal process and provide their perspective.

[27] Addressing "language or literacy barriers" faced by the Appellant, the Appellant submits English is his second language as he grew up in Germany and immigrated to Canada and does not understand complex or legal English that would be used in written submissions. Accordingly, he would benefit from an oral hearing.

Respondent's submissions:

[28] The Respondent submits that none of the Appellant's stated reasons for an oral hearing withstand scrutiny.

[29] The Respondent relies on the Board decisions in *Peace River Coal Inc. v. Director, Environmental Management Act,* Decision No. EAB-EMA-21-A008(a) ("*Peace River*"), and *Donald Pharland v. Director, Environmental Management Act*, 2007-EMA-014(a) ("*Pharland*"), for the proposition that three relevant factors that should be applied by the Board when deciding the method of hearing are whether:

- the parties require an oral hearing to fully and fairly present their cases,
- the Board requires an oral hearing to make a fair and informed decision on the appeal, and
- the public can view proceedings that impact it, in a fair and accessible manner.

(the "Three Factors")

[30] The Respondent addressed the Three Factors in the context of each of the reasons advanced by the Appellant in support of an oral hearing as follows.

[31] The Respondent states that the fact that the Appellant disagrees with the extrapolation and metrics used to inform the Quota Decision and may intend to introduce "conflicting evidence" is not a basis for an oral hearing in the context of the Three Factors.

[32] The Respondent references that the Appellant requested the detailed data and calculations that informed the Quota Decision, and was provided with this information in January 2023. If there are errors in the data or how it was employed in making the Decision, then the Appellant should be able to identify them in the documents provided and communicate these to the Board in writing.

[33] The Respondent further refers to the Appellant's intention, stated during pre-hearing conferences, to lead expert evidence on the subject of moose allocation process and calculations, likely in the form of a written report. If the parties submit and rely on expert evidence, then it may later be appropriate for the Board to permit cross-examination of the experts on their qualification and opinions. But even this would not necessitate a full oral hearing. The Board retains jurisdiction to address issues of sufficiency or quality of evidence and cross-examination, if and when they arise, through application of the *Rules.*

[34] The Respondent submits that the Appellant fails to state why the presence of "conflicting evidence" makes him unable to fully and fairly present his case in writing or why the Board will be unable to resolve any potential conflicts in the evidence if the appeal proceeds in writing under Rule 20.

[35] The Respondent relies on the following Board comments in *Norton v Acting Director of Wildlife,* Decision No. EAB-WIL-22-A008(a) dated December 8, 2022, at paragraph 36 ("*Norton*"):

> [36] I note the fact that the Board has heard many appeals addressing decisions regarding quota allocations for guide outfitters by written submissions. I do not find that the subject matter is novel or complex such that there [are] issues of conflicting evidence which may be better heard by an oral hearing. A written submission process provides the parties with time to consider evidence or arguments and time to respond thoughtfully and fully. Oral hearing proceedings can be procedurally complex and rule driven and take significantly more time and cost to coordinate and schedule.

[36] In response to the alleged "credibility" issue raised by the Appellant, the Respondent submits no real or relevant issue of credibility has been raised which necessitates an oral hearing to be fairly adjudicated.

[37] The Respondent submits that the previous appeal in Decision No. 2017-WIL-013(a) involving Guide Territory Certificate 601093 referenced by the Appellant was resolved by a consent order. The consent order was entered into by a decision maker other than the DDM and confirmed a specified allocation and annual quota to be in effect until March 31, 2021, in "full resolution of Reginald Collingwood's appeal in this matter". The consent order made no reference to the alleged commitment by the decision maker to put the northern half of WMU 6-07 on General open season. If there was a commitment by a decision maker as part of the resolution of the previous appeal, it would be recorded in the consent order.

[38] The Respondent characterizes the Appellant's "credibility" submission as a collateral attack on the consent order. In any event, the Respondent submits that any alleged commitment by a different decision maker in 2017 concerning a quota for a period ending in 2021 could not fetter the DDM's statutory authority in making his Quota Decision under section 60 of the *Act* for the 2022/2023 Licence year.

[39] In response to the Appellant's submission that "community interest in the outcome of the appeal" supports an oral hearing, the Respondent submits that the Appellant overstates the breadth of the appeal, and thereby the community interest in it. The Appeal only addresses the Quota Decision and does not affect resident hunters in the Skeena Region. The Quota Decision does not "essentially close the moose hunt in WMU 6-7" as alleged by the Appellant. While there may in fact be fewer moose hunting opportunities than either resident or guided hunters might like in the Skeena Region, this is not a basis for an oral hearing.

[40] The Respondent submits that the Board has provided a mechanism for resident hunter interests within the Appellant's licence area to be considered in this appeal, which can be accomplished through a written hearing process. By letter dated December 22, 2022, the Board granted limited participant status to BC Wildlife Federation

("BCWF") to provide "additional evidence limited to the Provincial Allocation Policy and Procedures and potential impacts of guide outfitter quotas on resident hunters." The Board indicated that the BCWF's participation right "will include the right to provide either a written or oral statement, depending on the method of hearing." The Respondent submits that a written hearing will fully and fairly enable BCWF to review the calculations and policies which informed licenced harvest decisions and make submissions within the scope of its limited participant status.

[41] The Respondent relies on the Board decision in *Bowden et al. v Director of Fish and Wildlife,* Decision No. EAB-WIL-22-G004(a), dated February 17, 2023 ("*Bowden*") where the Board considered the potential for community interest in the outcome of the appeal and where the BCWF was also granted participant status. At paragraphs 41 and 42, the Board in *Bowden* stated:

> [41] It is important in this appeal for participants to be given a fair process, and that process must be understandable and accessible to other members of our society. However, this principle does not restrict this fair process to a single method of procedure; a fair and transparent process may be accomplished in more than one way. This is demonstrated through the *Rules* and procedures that the Board has established; they contemplate a variety of methods of hearing, including both written and oral hearings.
>
> [42] The Appellants submit that public interest is demonstrated by the request of the BC Wildlife Federation to have intervenor status. I agree. However, this example also demonstrates that this process is open to interested and potentially affected community members, as evidenced by the fact that three parties have been granted participant status in this appeal. I find that the broad availability of the appeal decision, when released, and the opportunity to request appeal records are both appropriate measures to allow for the engagement of the community in this appeal, and to have the community informed of both the issues under appeal and the disposition of the appeal after a hearing on the merits of the case.

[42] The Respondent submits there is no material difference between *Bowden* and the present appeal on this point. The relevant community (and broader public) will be able to view proceedings conducted in writing in a fair and accessible manner.

[43] Addressing "language or literacy barriers" raised by the Appellant in support of an oral hearing, the Respondent submits there is no indication from his participation, thus far, that his English proficiency is an impediment to his participation in a written hearing process. He has attended and participated in pre-hearing conferences and demonstrated his ability to understand and communicate effectively in English. The fact that the Appellant has the assistance of Krista Sittler as his representative in this appeal also militates against the need for an oral hearing. His representative can assist the Appellant in both presenting his case and understanding and replying to the Respondent's case in writing.

[44] The Respondent submits that if the Appellant requires additional time to prepare his written submission to accommodate the fact that English is his second language, Rule 21 could be relied upon by him in that regard. This approach should allow the Appellant to fully and fairly present his case in writing as well as allow for a fair and informed decision by the Board. An oral hearing, by contrast, presents far greater procedural complexity and risk of misunderstanding.

[45] The Respondent submits in conclusion that the Appellant has not demonstrated that an oral hearing is necessary for the Board to fairly adjudicate this appeal. If the need arises in future for portions of the appeal to be conducted orally, the Board retains that jurisdiction. For all of the above reasons, the Respondent says the appeal should proceed by way of written submissions.

Appellants' reply:

[46] The Appellant repeats that in order to fully and fairly present his case he should be able to question, in person, the "conflicting evidence" upon which the Quota Decision was based.

[47] The Appellant believes that the Respondent understates the community interest in the outcome of the appeal because of the severity of the quota cut resulting in a negative allocation across the entire Skeena Region. The negative allocation calculation suggests the entire licensed harvest for moose could be shut down, and the Appellant submits that the information that informed the Quota Decision is of interest to the public.

[48] The Appellant states he can fluently speak and understand English, but his ability to read/write complex legal language is more difficult for him.

[49] The Appellant requests that, given the fact that if the Quota Decision is confirmed on appeal he will essentially be put out of the moose hunting guide business, he should be granted the courtesy of an oral hearing.

Panel's Findings:

[50] I have found the *Manual* of assistance in my consideration of this application.

[51] As set out on pages 23 and 24 in the *Manual*, and as referenced in *Monroe*, when considering the type of hearing to be held, the Board:

> … will give careful consideration to balancing the process to be followed with the nature and complexity of the appeal, any views expressed by the parties, the likelihood that there will be conflicting evidence and/or credibility issues that will need to be assessed, the number of parties involved in the appeal, whether there are any language or literacy barriers to a particular type of hearing, and the potential for community interest in the appeal.

> If there are issues of credibility, complex issues that require oral evidence or other circumstances that warrant having the parties, participants and the panel to be in the same room, the Board will schedule an oral hearing.

[52] Conversely, and as set out at page 29 in the *Manual*:

> Written hearings are normally scheduled in cases where there are no language or literacy barriers for a party or participant, where credibility of the parties or witnesses is not a significant factor in the appeal, there is no dispute about material facts, the issues to be decided have been dealt with in previous appeals, or there are purely legal questions to be decided.

[53] I also agree with the Respondent that the Three Factors identified in *Peace River* and *Pharland* are to be considered by the Board when deciding the appropriate method of hearing of an appeal before it. This decision, therefore, is structured around a consideration of the Three Factors.

[54] In accordance with section 101.1 of the *Act* and Board practice, this appeal will be conducted as a new hearing, whether it is conducted by way of an oral hearing under Rule 19 or as a written hearing under Rule 20. This means that, in addition to reviewing the evidence and decision of the DDM, the panel of the Board hearing the appeal (the "Panel") may hear new evidence and argument that was not before the DDM, as well as make findings of fact on the evidence presented to it and decide questions of law. The Panel may exercise any discretion that it has without regard to the evidence presented to, or the conclusions reached by, the DDM. Simply put, the decision of the DDM does not constrain or limit the decision of the Panel.

[55] In exercising its jurisdiction under section 101.1 of the *Act,* the Panel will consider the Quota Decision in the context of section 60 of the *Act.* The imposition of a quota under section 60 of the *Act* is a matter of discretion. The exercise of that discretion requires consideration of the relevant underlying evidence in order to find the material facts upon which its exercise could reasonably be based. Accordingly, a major focus of this application involves a consideration of how that relevant underlying evidence can best and most fairly be introduced by the parties and weighed by the Panel.

[56] From the Notice of Appeal and the submissions of the parties it is apparent that at the heart of this appeal is a dispute over what the relevant evidence upon which the Quota Decision was based was, and how that evidence should have properly been considered when making that decision. The Appellant submits that the existence of "conflicting evidence" on this issue calls for an oral in-person hearing of the appeal.

[57] The Appellant submits that the information used to inform the Quota Decision was based on extrapolation from areas that are not similar in ecological characteristics, resulting in the Decision being made from poorly informed metrics. The Appellant states in his Notice of Appeal that, through multiple sources of evidence, he plans to show that the Quota Decision was not based on the "best available" information. I am confident that

both the data relied upon by the DDM in his decision and the competing data to be relied upon by the Appellant exists in written form or can readily be put in written form. Such documentary evidence can be fully and fairly introduced by the Appellant as part of his case whether the hearing is conducted in writing or orally.

[58] If the "conflicting evidence" is to be introduced through a witness, the options available to the Board are to hear this evidence either by in-person testimony or affidavit in the case of an oral hearing, or by way of affidavit in the case of a written hearing. While a right of cross-examination of an in-person witness is a given in an oral hearing format, cross-examination of an affiant is also contemplated and provided for in the Rules. Under either method of hearing, if the fact evidence is introduced by way of affidavit, the opposing party has the right to apply to cross-examine the affiant on the contents of the affidavit, (see Rule 19(3) and (4) for an oral hearing and Rule 20(4) for a written hearing). Accordingly, if cross-examination is necessary to facilitate a fair introduction and informed consideration of such evidence during the appeal, this can be ordered by the Board on its own initiative, or after application by a party.

[59] During pre-hearing conferences, the Appellant stated his intention to lead expert evidence on the subject of moose allocation process and calculations, likely in the form of a written report. It is logical to assume that the above referenced moose population data will constitute part of the evidentiary foundation upon which such opinion evidence will be based.

[60] If expert evidence is led in this appeal, then Rule 25 will apply to the introduction of that evidence. Rule 25 expressly provides that a party can give notice requiring the other party's expert to attend the hearing for cross-examination. Such cross-examination, or questions from the Panel, could address any questions or concerns about the underlying data upon which such opinion was based. This right exists whether the hearing is conducted orally or in writing. While both the parties and the Panel could benefit from the opportunity to question any such experts as part of a hearing, this benefit can be achieved under the Rules governing either an oral or written hearing.

[61] The *Manual* suggests that the existence of complex issues can weigh in favour of an oral hearing. While the likelihood of expert evidence being led suggests a degree of complexity in this appeal, the likely topic of such opinion evidence is well within the subject matter expertise of the Board. As noted in *Norton,* the issues to be addressed in the opinion evidence and considered by the Panel have been dealt with in previous appeals. Further, if oral evidence is called for to facilitate a fair and informed consideration of such evidence on the appeal, it can be obtained under Rule 25, whether the hearing is conducted in writing or orally.

[62] As stated by the Board in *Norton,* at para 36, the subject matter of decisions regarding quota allocations for guide outfitters is not novel or complex such that there are issues of conflicting evidence which may be better heard by an oral hearing. A written submission process provides the parties with time to consider evidence or arguments and

time to respond thoughtfully and fully. Oral hearing proceedings can be procedurally complex and rule driven and take significantly more time and cost to coordinate and schedule.

[63] For all of the forgoing reasons, I find that the anticipated presence of "conflicting evidence" in this case does not require an oral hearing in order for the Appellant to fully and fairly present his case or for the Board to make a fair and informed decision. Those objectives can all be achieved if the appeal proceeds in writing under Rule 20.

[64] Guidance in the *Manual* suggests that if there are issues of credibility then an oral hearing may be called for, at least in relation to the particular evidence that is subject to a credibility challenge. Having reviewed the Rules, I find that Rule 20(4) could accommodate cross-examination of such evidence in a written hearing format in appropriate circumstances and that a full oral hearing is not always required where there are issues of credibility.

[65] Based on the materials before me, I cannot find that the "credibility" point advanced in the Appellant's submissions meets a threshold of relevance to likely issues in this appeal to influence my decision as to the appropriate method of hearing. The Respondent's submission that any alleged commitment by a different decision maker in 2017 concerning a quota for a period ending in 2021 should have been set out in the prior consent order, and in any event, could not fetter the DDM's statutory authority in making his Quota Decision is a persuasive one. Argument to the contrary by the Appellant can fairly be advanced in a written hearing.

[66] The *Manual* states that language or literacy barriers to a particular type of hearing are a relevant consideration in deciding the appropriate method of hearing. Such barriers are relevant to whether an oral hearing is required for an Appellant to fully and fairly present his case or for the Board to make a fair and informed decision on the appeal.

[67] The Appellant submits he would benefit from an oral hearing as English is his second language and he does not understand complex or legal English that would be used in written submissions. In Reply submissions the Appellant acknowledges that he can fluently speak and understand English, but his ability to read/write complex legal language is more difficult for him.

[68] I initially observe that there is no requirement for the parties to an appeal before the Board to use "complex or legal English" in their written submissions.

[69] I agree with the Respondent that the fact that the Appellant has the assistance of Krista Sittler, a qualified wildlife biologist, as his representative in this appeal militates against the need for an oral hearing. His representative can assist the Appellant in both presenting his case and understanding and replying to the Respondent's case in writing. The obvious competency of that assistance is apparent from the quality of the written submissions advanced on the Appellant's behalf on this application. I find that the

Appellant's expressed concerns about making submissions in writing in the circumstances of this case do not require an oral hearing of this appeal.

[70] As submitted by the Respondent, if the Appellant requires additional time to prepare his written submission to accommodate the fact that English is his second language, Rule 21 could be relied upon by him in that regard. This approach, if necessary, could accommodate any concerns the Appellant has in relation to his ability to fully and fairly present his case in writing or the Board's ability to make a fair and informed decision.

[71] I also point out that even if an oral hearing was directed, Rule 19(1) requires all parties prior to the oral hearing to provide the other parties and the Board with a written Statement of Points including a summary of his or her case to be presented at the hearing. Under either method of hearing, the Appellant would be called upon to deal with making written submissions.

[72] Accordingly, I find that in the factual circumstances of this case, the Appellant's ability to fully and fairly present his case and the Board's ability to make a fair and informed decision can be met in a written hearing format. The Appellant's concerns about his written English skills do not call for an oral hearing in this appeal.

[73] In general, public access to the hearing of appeals before the Board is an important aspect of the administrative appeal process. As indicated in the *Manual*, the potential for community interest in the appeal is a factor to be considered in considering the method of hearing. The third of the Three Factors from *Peace River* and *Pharland* is whether the public can view proceedings that impact it, in a fair and accessible manner.

[74] The Appellant submits that the impacts of the Quota Decision will have lasting impacts on the local hunting community as the negative allocation calculation suggests the entire licensed harvest for moose could be shut down. Resident hunters should be able to attend the oral proceedings and be active participants in the appeal process and provide their perspective, calling for an oral hearing.

[75] The Respondent advises in its submissions that the BC Wildlife Federation ("BCWF") sought participant status in this appeal and that the Board granted it limited participant status to provide "additional evidence limited to the Provincial Allocation Policy and Procedures and potential impacts of guide outfitter quotas on resident hunters." The Board indicated that the BCWF's participation right "will include the right to provide either a written or oral statement, depending on the method of hearing."

[76] I agree with the Respondent that a written hearing will accommodate BCWF's participation right.

[77] As to other public participation in the appeal, if the Appellant believes evidence from resident hunters is relevant to his appeal he can lead such relevant evidence as part of his case, whether the appeal is conducted orally or in writing.

[78] The Board in *Bowden* recently considered the potential for community interest in the outcome of a guide outfitter's quota appeal where the BCWF was also granted participant status. I agree with the Respondent that there is no material difference between *Bowden* and the present appeal on this point.

[79] I agree with *Bowden* at paragraphs 41 and 42 and find that a written hearing can fairly and transparently accommodate reasonable public interest in this appeal. As was held in *Bowden*, I find that the broad availability of the appeal decision, when released, and the opportunity to request appeal records are both appropriate measures to allow for the engagement of the community in this appeal, and to have the community informed of both the issues under appeal and the disposition of the appeal after a hearing on the merits of the case.

[80] Having carefully considered the submissions of the parties and the relevant factors referred to above from *Peace River, Pharland* and the *Manual*, I find that an oral hearing is not required in the circumstances of this case and that a written hearing under Rule 20 would allow the Appellant to fully and fairly present his case and would also best allow the Panel to make a fair and informed decision.

DECISION

[81] For the reasons provided above, I direct that the hearing of the appeal be conducted by way of written hearing, and that Rule 20 will apply.

[82] In reaching this conclusion, I have considered all information and submissions provided by the parties in this appeal, even if not specifically referenced in this decision.

"Michael Tourigny"

Michael Tourigny, Panel Chair
Environmental Appeal Board