



Environmental Appeal Board

Citation: *Hanna Buchanan and Chad Sjodin v. Director of Fish and Wildlife*,
2023 BCEAB 12

Decision No.: EAB-WIL-22-A026(a)

Decision Date: 2023-05-04

Method of Hearing: Conducted by way of written submissions concluding on February
21, 2023

Decision Type: Summary Dismissal Decision

Panel: Shannon Bentley, Panel Chair

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

Between:

Hanna Buchanan and Chad Sjodin

Appellants

And:

Logan Wenham, Director of Fish and Wildlife, Ministry of Forests

Respondent

Appearing on Behalf of the Parties:

For the Appellants: Self-represented

For the Respondent: Karmen Lisaingo, Ministry of Attorney General

SUMMARY DISMISSAL DECISION

INTRODUCTION

[1] Hanna Buchanan and Chad Sjodin (“Appellants”) are guide outfitters in the Skeena region who received a quota amendment to their Guide Outfitter Licence 100003882 (the “Licence”) from the Ministry of Forests, Lands, Natural Resource Operations and Rural Development, as it was then known (the “Respondent”).

[2] The Appellants filed a notice of appeal of the quota amendment with the Board on August 16, 2022.

[3] The Respondent seeks a summary dismissal of the Appellants’ appeal on the grounds that it was filed after the 30 day time limit set in the Wildlife Act, R.S.B.C. 1996, c. 488 (the “Act”).

[4] This summary dismissal application proceeded by way of written submissions.

BACKGROUND

[5] The Appellants operate a guide outfitter business in the Skeena region and hold the Licence with the Respondent.

[6] The Respondent amended the License, creating a new version on July 13, 2022 (the “Licence Amendment”), with an altered quota limit.

[7] The Ministry utilizes an online system for communication of licences and quota decisions called the Fish and Wildlife Identification system (“FWID”) on which Guide Outfitters, such as the Appellants, have a profile and receive communications.

[8] The Respondent asserts that when the Licence Amendment was uploaded to the Appellants’ profile, an email was automatically generated and sent to the Appellants’ email address notifying them that their profile on FWID has new correspondence. The Respondent submits that on July 13, 2022, the Licence Amendment was uploaded to the Appellants’ FWID profile and a notification of this upload was sent to the Appellant’s email address.

[9] Following receipt of the notification email, the Appellants assert that when they logged onto their FWID profile, there was no document on the site and that they kept checking back but could not find it.

[10] The Appellants eventually phoned the Ministry of Forest’s BC Front Counter line on July 25, 2022 and were, that day, emailed a copy of the Licence Amendment from the Fish and Wildlife Permit Clerk for their region. While there was conflicting evidence as to if the email from the Permit Clerk was sent on the 25th or 26th of July 2022 nothing turns on which date it was.

[11] The Appellant then filed a Notice of Appeal with the Board on August 16, 2022, and stated:

...this quota was apparently issued and dated July 13, 2022 but we ask you would consider this appeal within the 30 day appeal window due to the fact that it was not made available to us until the 26th of July, 2022 after we called in and the BC government emailed it to us. It was not available on [the Appellant's] Fish and Wildlife ID (FWID) nor was it e:mailed or mailed to us upon issuance.

[12] By letter dated September 1, 2022, the Board notified the parties that, from the Board's perspective, the Licence Amendment was received by the Appellants on July 25, 2022, and that their Appeal filed on August 16, 2022, was filed within the 30-day time limit. In that letter, the Board also informed the Respondent they could file an application under Rule 16 if they disagreed with the Board's perspective.

[13] The Respondent disagreed with the determination that the appeal of the Licence Amendment was filed on time. On November 25, 2022, the Respondent filed an application for summary dismissal of the appeal on the grounds that it was not filed within the 30-day time limit required after notice of the Director's decision was given.

[14] The Board sought and received submissions from the parties on the Respondent's application to dismiss the appeal.

ISSUES

[15] This preliminary application raises the following issues:

1. Was the Appellant's Notice of Appeal filed within the 30-day time limit?
2. Does the Board have the jurisdiction to extend the time period for an appeal?

PARTIES' SUBMISSIONS

Summary of the Respondent's Submissions

[16] The Respondent submits that the Appellants' notice of appeal was not filed within the Act's 30-day time limit, and therefore should be dismissed.

[17] A summary of the Respondent's submission is as follows:

1. The Respondent provided the Appellant with notice of the Decision on July 13, 2022, in accordance with section 22.02(f) of the *Wildlife Act General Regulation*, BC Reg 340/82, under the Act (the "*General Regulation*") by sending a copy of the decision notice to an online account held by the Appellant on a website that is maintained by the Minister of Forests and which immediately sent an email notification to the email address previously provided by the Appellant;

2. In accordance with section 22.03(e) of the *General Regulation*, the notice of decision must be considered to have been received by the Appellant on July 16, 2022, the third day after the Decision notice was sent to his online account, regardless of when the Appellant actually received notice;
3. The 30-day appeal period would have commenced to run on July 16, 2022, making this the “reference day” for the purposes of determining the end of the appeal period in accordance with the *Interpretation Act* R.S.B.C. 1996, c. 238. Thirty days counting forward from and including July 16, 2022, is August 15, 2022. As August 15, 2022 was a Monday, and a regular working day for the Board, the time limit for commencing an appeal of the decision would have ended at the end of the day on August 15, 2022; and,
4. The notice of appeal filed by the Appellants on August 16, 2022, was filed outside of the 30-day appeal period. Therefore, this appeal should be dismissed due to the Board not having jurisdiction to hear this appeal.

Summary of the Appellants' Submissions

[18] The Appellants submit that while they received the automatically generated email from the Ministry of Forests notifying them that a document had been posted to their FWID online account, when they logged into the account the document was not there. They submit that they continued checking their FWID account, and on July 25th, 2022, after phoning the BC Front Counter, they were emailed a copy of the quota decision letter directly from a Permit Clerk within Front Counter BC.

[19] The Appellants submit that there is no firm evidence that the quota decision letter had indeed been uploaded to the site and made available to them prior to it being emailed directly to them by Front Counter BC staff. They query whether there was a technical issue that prevented them from seeing the document, or whether this is a common issue with the system.

[20] The Appellants submit that they did file their appeal on time if the date they actually received the quota letter (July 25th, 2022) is used. If the Respondent's perspective that the date for calculating the time commences on July 16, 2022, then the Appellants submit that they are only one day late.

[21] The Appellants state that:

... this is the first year that quota decisions are not mailed or emailed directly to the outfitter, but instead made available exclusively on the FWID site. This could be a factor to consider in addition to above points including the appeal being less than a day late and this appeal being the first we have ever filed.

Summary of the Respondent's Reply Submissions

[22] In reply to the Appellants' submissions, the Respondent submits that there is no evidence that the system malfunctioned in generating or posting the letter or the Licence Amendment.

[23] The Respondent submits that this is not the first year the Ministry has exclusively used the online notification system. This is the second year that quota decision letters and guide outfitter licences have been distributed through the FWID profiles. The Respondent noted that their March 25, 2021 letter addressed to Guide Outfitters included "guide outfitter licensing, quota decision notification and guide outfitter reporting" among other topics. In that letter they communicated that:

NEW for 2021/22, notice of quota decision letters will be issued through the BC Hunting Online system and available on your fish and wildlife profile. You will receive an automatic email from the BC Hunting Online system notifying you that your licence has been approved and your quota letter issues...

[24] The Respondent adds that the fact the BC Front Counter emailed the Licence Amendment upon their request was an attempt by Ministry staff to be as helpful as possible and should not be interpreted as being done because the quota decision licence was not provided on the Appellants FWID.

[25] Finally, the Respondent asserts that the appeal is late and should be dismissed and that "the duration of time that had elapsed past the deadline when they filed the appeal is irrelevant...".

ANALYSIS

Issue 1: Was the Appellants' Notice of Appeal filed within the 30-day time limit?

[26] Once a decision has been made and the affected person has reviewed it, the affected person has a right to appeal that decision. Section 101.1 of the Act provides that an affected person may appeal a decision to the Board within 30 days:

101.1 (1) The affected person referred to in section 101 (2) may appeal the decision to the Environmental Appeal Board continued under the *Environmental Management Act*.

(2) The time limit for commencing an appeal is 30 days after notice is given

(a) to the affected person under section 101 (2), or

(b) in accordance with the regulations.

(3) Subject to this Act, Division 1 of Part 8 of the *Environmental Management Act* applies to an appeal under this Act.

...

[27] The Respondent submits that section 22.02(f) of the General Regulation allows for notice to be given by sending a copy to the Appellants FWID online account. They also point to section 22.03 (e) of the General Regulation that deems that the Appellants received it on the third day after it was sent to the Appellants' FWID account, regardless of when the Appellants actually received it:

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.

[28] The Interpretation Act provides direction on how to calculate timelines within BC legislation. Since notice is deemed to be delivered to the Appellants three days after the document was uploaded, the Interpretation Act identifies that date as the reference date for calculating the time. Section 25.2 (2) of the Interpretation Act directs that the calculation of the 30 days begins with, and includes, the day after the reference day.

[29] I have reviewed the applicable legislation concerning the deemed notice of the decision and how the 30-day time limit must be calculated in this instance. To assist, I also looked at a recent BC Supreme Court decision that applied those rules to the factual situation before it.

[30] The Supreme Court of British Columbia in *Frontier Kemper Constructors, Inc. v. Rio Tinto Alcan Inc.*, 2022 BCSC 868 (CanLII) provides direction on how to apply section 25 of the Interpretation Act. In that case, the Court indicated how the time period is counted following the identification of a reference day:

[80] In this case, if the contract was terminated on April 22, 2020 (the reference day for purposes of calculating time), then the 45-day period for filing a claim of lien would have started on and included April 23, 2020 and ended on Saturday, June 6, 2020: *Interpretation Act*, ss. 25.2(2)(a), 25(1).

[31] As with all BC Supreme Court decisions, this Board follows that court's decisions. So in applying the method of time calculation the BC Supreme Court used, I find that the letter was deemed to have been received on Saturday July 16, 2022 (the reference day for the purposes of calculating time). It follows that the 30-day period for filing an Application with the Board started on and included July 17, 2022, and ended on August 15, 2022. This method is the same one that was presented by the Respondent in this matter. As noted above, I consider this to be the appropriate way to calculate the passage of time must be calculated in this instance. Based on the legislated methodology, I arrive at the date of August 15, 2022, as the end of the appeal period for this appeal.

[32] Based on my calculation, the Appellants are time-barred because they submitted their appeal to the Board by email marked Tuesday, August 16, 2022, at 2:08 pm – one day late.

Issue 2: Does the Board have the jurisdiction to extend the time period for an appeal?

[33] The Appellants ask that their appeal be considered to have been filed within the 30-day appeal window “due to the fact that it was not made available to [them] until the 26th of July, 2022 after [they] called in and the BC government emailed it to [them].” They submit that it was not available on their FWID account, nor was it mailed or emailed to them.

[34] The Respondent submitted that there is no evidence that a technical error occurred with the WILD system, which is the system which houses the various FWID accounts.

[35] In recognition of the Appellants’ submission that there is no evidence to confirm that the FWID had not malfunctioned, I sought additional evidence from the parties to address that allegation.

[36] In response to my request, the Respondent provided additional submissions, including affidavit evidence, that described how the WILD system functions and system audit evidence that indicated the system was operating correctly. In short, the Respondents submitted that:

1. The Ministry has “not received any report that the guide outfitter pdf letter was [malfunctioning] nor that guide outfitters were unable to access their documents through their online profile”;
2. If the system were to malfunction, a pop window would alert the user and the system would seek to confirm the error. Once confirmed the matter would be escalated to the IT department and the third party software provider;
3. When the quota letter is created by the system there is a record in the system. “The audit report registers every change that occurs in a user’s profile and can be accessed by staff with the proper system access at any time. The audit report cannot be modified by staff”. The audit report was submitted as evidence;
4. If an error occurred while the system was generating the quota letter, the Ministry user would receive an error message instantly. “A report of a system break down would come directly to the Data and Licensing staff via the WILD support inbox or by email to the Manager or Unit Head through FrontCounter BC or a member of the public”;
5. Ongoing tests of the system are conducted by the Fish and Wildlife Branch, Natural Resource Information Department and the third party vendor.

[37] In summary, the Respondent submits that “the auto-generation of the quota letter is hard coded and not contingent on human error. If there was an issue with the system functionality, the issue would have affected other outfitters and potentially other functionalities. It is highly unlikely that the code would break for one individual”.

[38] The Respondent submits that even if there were a technical error, which there wasn't, the Board has no discretion to permit the Appellants' late filed application. They submit the Board is bound by the legislation to grant their Summary Dismissal Application.

[39] I find I cannot wholly agree with the Respondent's submissions on this point. The argument put forward by the Respondent is, essentially, that the notification system used in this case engaged a specific legislated process. Namely, because a copy of the decision was sent to an online account on a website that also sends an email notification, the appeal period for the decision began on July 15, 2022. If I had found that the facts of this case were different than they are, the appeal period could have begun on a different date. Factual determinations by a trier of fact can significantly alter what legislative provisions do or do not apply in an appeal. This is the essence of any question of mixed fact and law. It would not be an exercise of discretion, in my opinion, for the Board in another appeal to find that section 22.03 of the *General Regulation* did not apply due to the facts of that case.

[40] As a general rule, the *Administrative Tribunals Act, S.B.C. 2004, c.45* (the “ATA”), section 24 does provide Tribunals with the discretion to extend a timeline if a special circumstance exists. However, the *Environmental Management Act, S.B.C. 2003, c, 53*, (the “EMA”) in section 93.1(1)(d)(ii) outlines that s. 24 of the ATA (power to extend timelines in special circumstances) does not apply to this Board.

[41] Further, section 101.1 of the *Act* states that an affected person may appeal a decision to this Board and also confirms that the *EMA* section (noted above) has the effect of removing any discretion from the Board to extent time limits.

[42] Consistent with the legislation, the Board's Rule 5(3), which concerns starting an Appeal, states that the Board has no discretion to extend a statutory time period:

5(3) A notice of appeal must be filed within the appeal period specified in the particular statute. The Board has no power to extend the statutory time period to appeal.

[43] After applying the legislation and Rules to the specific fact situation in this matter, I find that I have no discretion to extend the filing period so I cannot accept this late-file appeal.

DECISION

[44] For the reasons provided above, I grant the Respondent's application to summarily dismiss the appeal as it was filed out of time.

[45] In reaching my decision I have read and considered all the submissions of the parties even if not specifically referenced.

“Shannon Bentley”

Shannon Bentley, Panel Chair
Environmental Appeal Board