



# PUBLIC LANDS APPEAL BOARD

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2019 APLAB 17

August 9, 2019

## Via E-Mail

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Ms. Colette Benson  
CRC Open Camp and Catering Ltd.  
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(*Appellants*)

Dear Ladies and Mr. Fortier:

**Re: *Decision Letter* – Colette Benson and CRC Open Camp and Catering Ltd.  
Administrative Penalty No. PLA-18/06-AP-LAR-18/10  
Our File No.: PLAB 18-0015 (public file)**

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This is the decision of the Public Lands Appeal Board (the “Board”) with respect to the admissibility of seven documents (the “Additional Documents”) provided by Ms. Colette Benson and CRC Open Camp and Catering Ltd. (“CRC”) (collectively the “Appellants”), in relation to an appeal by the Appellants of Administrative Penalty No. PLA-18/06-AP-LAR-18/10 (the “Administrative Penalty”) issued by the Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks, (the “Director”). The decision was made by the panel assigned to hear this appeal, Ms. Anjum Mullick (Panel Chair), Mr. Gordon McClure, and Mr. Tim Goos.

## Background

CRC is the leaseholder of Department Miscellaneous Lease No. 090101 (the “DML”), and Ms. Benson is the Director of CRC. On December 19, 2018, the Director issued the Administrative Penalty under section 58.3(d) of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”), to the Appellants for \$1,415,572.50. The Director alleged the Appellants sublet the DML without the written consent of the Director, received money or other consideration as monthly payments for the purpose of allowing access to and use of the public lands without authority, and received money in the form of proceeds from a sale by public auction of the DML or other consideration for the purpose of gaining access to the public lands. On January 4, 2019, the Appellants filed a Notice of Appeal with the Board.

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\* Cite as: *Colette Benson and CRC Open Camp and Catering Ltd. v. Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (9 August 2019), Appeal No. 18-0015-DL3 (APLAB), 2019 APLAB 17.

On January 9, 2019, the Board requested the Director provide the Director's Record, which the Board received on February 22, 2019, and provided to the Appellants on March 21, 2019. The Board received a supplemental record from the Director on June 12, 2019 and provided it to the Appellants on June 14, 2019.

On July 12, 2019, the Appellants provided the Additional Documents they wanted to rely upon at the hearing of the appeal.

On July 15, 2019, the Board acknowledged receipt of the Additional Documents and set out a schedule for motions and submissions regarding the admissibility of the Additional Documents. This process was agreed to by the Appellants and the Director (collectively, the "Parties") in a mediation, which is stated in the Board's letter of June 3, 2019.

On July 19, 2019, the Director advised the Board he opposed the admission of the Additional Documents and stated they should not be admitted as evidence at the oral hearing.

On July 26, 2019, the Appellants responded to the Director's objection and provided reasons and arguments in favour of admitting the Additional Documents.

The Director was invited to provide a submission by July 31, 2019 in response to the Appellants' July 26, 2019 submission, but chose not to do so.

### Submissions

The Appellants noted section 120 of the Act states the appeal is based only on the Director's Record, which is defined in section 209(f) of the Public Lands Administration Regulation, AR 187/2011 (the "Regulation"), as:

"director's file,<sup>1</sup> in respect of a prescribed decision made by the director, means records of the Department that are considered by the director in making the decision..."

The Director stated in *Dunn v. Director*,<sup>1</sup> *Inshore Developments v. Director*,<sup>2</sup> and *1657492 Alberta et al. v. Director ("Kalinski")*,<sup>3</sup> the Board confirmed its decision must be based on the evidence found in the Director's Record. The Director submitted the Appellants were attempting to introduce new evidence that was not before the Director when he made his decision regarding the Administrative Penalty.

The Director said the Appellants had the opportunity throughout the investigation to provide further information and facts they wanted him to consider before he made his decision, and he invited them to do so. However, the Appellants did not provide any new evidence at that time. The Director noted the Additional Documents were all dated before his decision.

The Director submitted there is no rational connection between the Additional Documents and the evidence in the Director's Record. The Director stated the Additional Documents should not be admitted as evidence at the oral hearing.

The Appellants stated the appeal must be based on the Director's decision and the information the Director relied upon to make his decision. However, the Appellants stated the Board interpreted section 120 of the Act more expansively than suggested by the Director. The Appellants quoted the *Kalinski* decision, where the Board said:

<sup>1</sup> *Dunn v. Director, Environment and Sustainable Resource Development et al.*, Appeal No. PLAB 14-0024.

<sup>2</sup> *Inshore Developments Ltd. v. Director, Provincial Approvals Section, Alberta Environment and Parks* (14 December 2018), Appeal No. 16-0023-R2 (A.P.L.A.B.).

<sup>3</sup> *1657492 Alberta et al. v. Director, Provincial Approvals Section, Alberta Environment and Parks* (14 August 2018), Appeal Nos. 17-0022, 0025-0027, and 0045-R (A.P.L.A.B.).



“...the Board’s decision can also be based on *other evidence that is rationally connected to evidence found in the Director’s Record, meaning evidence that provides details, clarifies, or helps the Board understand the evidence found in the Director’s Record.*”  
[Emphasis by the Appellants.]

The Appellants submitted the scope of evidence the Board can consider is broader than just the Director’s Record and should include evidence which clarifies and responds to evidence in the Director’s Record.

The Appellants said the fact the Director did not disclose that the improvements were an issue until after the Administrative Penalty was issued prevented the Appellants from responding with documents that would otherwise have been included in the Director’s Record. The Appellants stated they could not have known additional evidence supporting the value of the improvements to the DML were relevant, as the Director had never indicated the improvements were an issue he was considering, did not tell them he was seeking an independent assessment of the value of the improvements, and did not disclose the third-party contractor quotes he obtained, until the Director’s Record was provided in the course of the appeal.

The Appellants submitted the Additional Documents were provided to rebut the Director’s findings and assessments related to the value of the improvements. The Appellants said the principles of administrative justice and fairness require that they are allowed the opportunity to rebut the Director’s position regarding the value of the improvements and how it relates to the Appellants’ business operations. The Appellants stated the Additional Documents are rationally connected to the appeal as they relate to an issue raised by the Director and considered by him when deciding to issue the Administrative Penalty.

The Appellants submitted the Board should dismiss the Director’s objection to the admissibility of the Additional Documents, and that justice and fairness require the Board to review the Additional Documents in its consideration of this appeal.

### Analysis

When the Board determines whether certain evidence is admissible in an appeal before it, the first consideration is the governing legislation, being the Act and the Regulation. Section 120 of the Act states: “An appeal under this Act must be based on the decision and the record of the decision-maker.”

In *Kalinski*, the Board stated:

“In section 120, the ‘record’ is the Director’s Record. In an appeal on the record, the Board’s decision must be based on the evidence found in the record provided by the Director. However, the Board, in making its decision, can also consider other evidence that is rationally connected to evidence found in the Director’s Record, meaning evidence that provides details, clarifies, or helps the Board understand the evidence found in the Director’s Record.”<sup>4</sup>

In the appeal before it, the Board must determine if all, some, or none, of the Additional Documents, should be admitted as evidence for the Board to consider in the hearing of the appeal. In order to properly make a determination, the Board needs to consider the evidence in the context of the appeal and, where applicable, in the hearing.

The Nova Scotia Court of Appeal, in its decision *Kelly v. Nova Scotia Police Commission*, 2006 N.S.C.A. 27 (“*Kelly*”), considered whether the Nova Scotia Police Review Board was correct in admitting evidence that was of questionable relevance, and later determining the evidence’s probative value. The Court stated:

“... [T]he Board was within its discretion as to procedure to receive evidence of doubtful relevance and admissibility and to consider its admissibility and weight during its

<sup>4</sup> 1657492 *Alberta et al. v. Director, Provincial Approvals Section, Alberta Environment and Parks* (14 August 2018), Appeal Nos. 17-0022, 0025-0027, and 0045-R (A.P.L.A.B.), at paragraph 147.

"... [T]he Board was within its discretion as to procedure to receive evidence of doubtful relevance and admissibility and to consider its admissibility and weight during its deliberations after the hearing. This is a common practice in administrative tribunal hearings and it is rarely objectionable and often wise. From a practical perspective, it will be often difficult to take any other approach. Finely tuned judgments about relevance early in an administrative tribunal hearing are often difficult and sometimes impossible to make. As a general rule, the approach the Board took here was one that would be within its discretion and in accordance with common practice and good sense."<sup>5</sup>

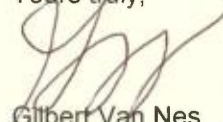
The Board, in this appeal, adopts the same general rule for the admissibility of evidence and determination of weight as outlined in *Kelly*.

#### Decision

The Board will admit the seven Additional Documents submitted by the Appellants, and determine the appropriate weight, if any, to give each of the documents, in its deliberations after the hearing has concluded. If the Parties would like to provide further submissions on the admissibility of the Additional Documents, they may be included with their written submissions filed in preparation for the hearing or in their oral submissions at the hearing.

Please do not hesitate to contact the Board if you have any questions. We can be reached toll-free by first dialing 310-0000 followed by 780-427-6207, by e-mail at [PLAB@gov.ab.ca](mailto:PLAB@gov.ab.ca), or by fax at 780-427-4693.

Yours truly,



Gilbert Van Nes  
General Counsel and  
Settlement Officer

Any information requested by the Public Lands Appeal Board is necessary to allow the Board to perform its function. The information is collected under the authority of the *Freedom of Information and Protection of Privacy Act*, section 33(c). Section 33(c) provides that personal information may only be collected if that information relates directly to and is necessary for the processing of this appeal. The information you provide will be considered a public record.

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<sup>5</sup> *Kelly v. Nova Scotia Police Commission*, 2006 N.S.C.A. 27, at paragraph 36.