



PUBLIC LANDS APPEAL BOARD

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2019 APLAB 16

July 18, 2019

Via E-Mail

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Ms. Colette Benson
CRC Open Camp and Catering Ltd.
PO Box 2100
Lac La Biche, AB T0A 2C0
(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 18-0015¹**

This is the decision of the Public Lands Appeal Board (the “Board”) with respect to an application by Ms. Colette Benson and CRC Open Camp and Catering Ltd. (“CRC”) (collectively, the “Appellants”) for additional disclosure from the Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks (the “Director”), relating to Administrative Penalty No. PLA-18/06-AP-LAR-18/10 (the “Administrative Penalty”).

Background

On December 19, 2018, the Director issued the Administrative Penalty to the Appellants under section 58.3(d) of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”), in the amount of \$1,415,572.50. The Director said the Appellants contravened the Act with regards to a sublease of Department Miscellaneous Lease No. 090101 (the “DML”). CRC is the leaseholder of the DML, and Ms. Colette Benson is the director of CRC. On January 4, 2019, the Appellants filed a Notice of Appeal with the Board.

¹ Cite as: *Colette Benson and CRC Open Camp and Catering Ltd. v. Director Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (18 July 2019), Appeal No. 18-0015-DL2 (A.P.L.A.B.) 2019 APLAB 16. The original citation contained an error in the date. The correct date is 18 July 2019, not 11 July 2019.

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.

On May 27, 2019, the Appellants advised the Board they would be requesting additional disclosure from the Director. The Appellants said some records had not been disclosed in the Director's Record, including:

- (a) inspection reports;
- (b) internal and external email messages;
- (c) meeting minutes and memoranda;
- (d) other official correspondence from Alberta Environment and Parks ("AEP");
and
- (e) other communications, reports, notes, photos and related records in AEP's files from the commencement of the DML with the Appellants.

The Appellants asked the Board if they should raise the disclosure issue in a preliminary application or address it at the mediation meeting the Board scheduled for May 29, 2019.

The Board responded on May 27, 2019, stating if the mediation meeting did not result in a resolution of the appeal, the Board would consider an application by the Appellants for further disclosure. The mediation meeting was held on May 29, 2019, and did not result in a resolution of the appeal.

On June 12, 2019, the Director, in response to the Appellant's May 27, 2019 letter, forwarded to the Board an amended index and documents to be included in the Director's Record. The Director stated the additional records were found in a search for records he relied on when making his decision on the Administrative Penalty.

On June 21, 2019, the Appellants advised the Board they were applying for additional disclosure of documents from the Director. The Appellants stated they were entitled to the disclosure or review of the entirety of the Director's Record concerning the DML, and not just the documents the Director identified as relevant to his decision regarding the Administrative Penalty.

The Appellants submitted disclosure of all documents in the Director's file was necessary for them to address the issues of the appeal fully. The Appellants stated the Director wanted the Appellants to identify specific records, and then the Director would determine if those records were relevant to the Administrative Penalty and the appeal. The Appellants said this placed them at a distinct disadvantage as they could not identify the records specifically as they had no way of knowing which records were not included in the Director's file.

The Appellants noted the amount of the Administrative Penalty is substantial and, therefore, the principles of natural justice and fairness require that the Appellants receive the fullest possible disclosure of the Director's file.

The Appellants said the Board has held that its decisions must be based on the record provided by the Director, which may include other evidence that provides details, clarifies, or helps the Board understand the evidence in the record.

The Appellants submitted, in the alternative, the Board should order the disclosure of the additional records:

- (a) any records relating to follow-up communications or directives from AEP to the Applicants resulting from the 2013 inspection;
- (b) all additional notes or other records prepared by Paul Smith or other AEP employees relating to the DML since the commencement of the disposition;
- (c) all records contained in the GLIMPS system relating to the DML; and
- (d) all AEP internal emails, memoranda, meeting notes, and other records in relation to the DML.

The Appellants acknowledged the Director may have provided some of these records in his June 12, 2019 supplement to the Director's Record.

On June 28, 2019, the Director advised the Board and the Appellants he was relying on the Director's June 12, 2019 letter, along with the relevant legislation.

Analysis

One of the basic principles of natural justice and the duty to be fair is the principle of *audi alteram partem*, which means, "hear the other side."² This principle has been described as:

"...the requirement in administrative law that a person must know the case being made against him or her and be given an opportunity to answer it before the delegate making the decision."³

Disclosure is an essential element of knowing the case to be made, as stated by one administrative law expert:

"Disclosure enables a party to review the alleged facts, to prepare to challenge them with evidence that rebuts them or reduces their impact and prepare submissions explaining how they should be weighed and analyzed."⁴

However, fairness in disclosure applies to both the recipient of the documents and the provider. The information being sought must be relevant to the issue being considered. Requests for disclosure should be as focused as possible, with the understanding that the party requesting the disclosure does not have access to the documents and may not be able to precisely identify the records sought. While the provider of the records has a duty to be fair, irrelevant information does not have to be disclosed.⁵

The extent of disclosure necessary to fulfill the duty of fairness depends on the circumstances of the appeal. The Supreme Court of Canada stated:

"... the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case."⁶

² David Phillip Jones, Q.C., and Anne S. de Villars, Q.C., *Principles of Administrative Law*, 6th ed. (Toronto: Carswell, 2014), at page 263. See also: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

³ David Phillip Jones, Q.C., and Anne S. de Villars, Q.C., *Principles of Administrative Law*, 6th ed. (Toronto: Carswell, 2014), at page 263.

⁴ Sara Blake, *Administrative Law in Canada*, 5th ed. (Markham, ON: LexisNexis, 2011), at page 36.

⁵ Sara Blake, *Administrative Law in Canada*, 5th ed. (Markham, ON: LexisNexis, 2011), at page 37.

⁶ *Knight v. Indian Head School Division No. 19* [1990], 1 S.C.R. 653, at page 682.

The Supreme Court of Canada also said that the more impact a decision has on an individual, the more the standard of the duty of fairness increases. The Court stated:

"The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated."⁷

In the context of disclosure, the more important and impactful a decision is to an individual, the greater the duty to disclose is.

The Board's statutory jurisdiction to compel the provision of records, including the Director's file, is set out in the Act. Section 120 of the Act states:

"An appeal under this Act must be based on the decision and the record of the decision maker."⁸

Section 123(4) of the Act grants the Board the authority to "require the submission of additional information."⁹

In an appeal on the record, the Board's decision must be based on the Director's decision and the evidence found in the record provided by the Director. However, the Board's decision can also consider additional information 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.¹⁰

In this appeal, the Director provided the Director's file, which is defined in the *Public Lands Administrative Regulation*, AR 187/2011 ("PLAR), as: "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 provided additional records after the Appellants indicated there were documents they would likely request from the Director. After the mediation, the Appellants requested further documents, and were reasonably precise in the identification of those documents.

The Director responded by relying on his previous provision of the Director's Record, including the supplemental records provided on June 12, 2019.

The Board appreciates the Director's initial response of providing additional records before a formal request was made. The Board notes the Appellants' application for disclosure on June 21, 2019, was significantly more focused than their May 27, 2019 letter.

In examining the circumstances and facts of the appeal, the amount of the Administrative Penalty attracts a greater duty of fairness. As a result of this increased duty, in accordance with natural justice and fairness, and as part of the Board's jurisdiction to determine

⁷ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paragraph 25.

⁸ Section 120 of the Act provides:

"An appeal under this Act must be based on the decision and the record of the decision-maker."

⁹ Section 123(4) of the Act states:

"The appeal body may require the submission of additional information."

¹⁰ See: 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 paragraphs 145-147.

error of law and error of fact, the Board seeks to ensure the Director's Record is complete and is made available to the Appellant and the Board. The Appellant is entitled to review the entire Director's Record, which includes the complete record relating to the DML and the Administrative Penalty, not just what the Director looked at in making his decision. A full and complete record allows the Appellant to determine if there are contradictory facts in the record, and whether the Director erred in law by not considering information he should have considered.

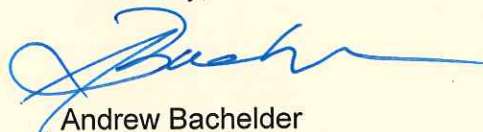
To be clear, the Board is not asking for document production beyond what documents and information are in the Director's Record, or should be in the Director's Record. The Board is asking for those records that are rationally connected to the DML and the Administrative Penalty.

The Board notes that some of the documents requested by the Appellants were provided in the June 12, 2019 supplement to the Director's Record. However, the Board requests the Director review the file, and any other relevant records, for the following:

- (a) any records relating to follow-up communications or directives from AEP to the Appellants resulting from the 2013 inspection;
- (b) all additional notes or other records prepared by Mr. Paul Smith or other AEP employees relating to the DML since the commencement of the disposition;
- (c) any records contained in the GLIMPS system relating to the DML, which were available to the Director at the time of the decision and not already provided; and
- (d) all AEP internal emails, memoranda, meeting notes, and other records in relation to the DML.

The Board requests the Director provide these records by **July 26, 2019**. If the Director has already conducted a comprehensive search and has provided all relevant documents in the June 12, 2019 supplement to the Director's Record, then the Board requests confirmation of such by **July 26, 2019**.

Yours truly,



Andrew Bachelder
Board Legal Counsel

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.