

ALBERTA PUBLIC LANDS APPEAL BOARD

Report and Recommendations

Date of Decision – October 7, 2020

IN THE MATTER OF sections 121, 122, 123, and 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, 212, 213, 228, and 235 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

-and-

IN THE MATTER OF appeals filed by Paul Sanarov and Ignaty Sanarov, with respect to the decision of the Director, Regional Compliance, Lower Athabasca Region, Regulatory Assurance Division, Alberta Environment and Parks, to issue Notice of Administrative Penalty No. PLA-19/11-AP-LAR-19/11.

Cite as: *Sanarov et al. v. Director, Regional Compliance, Lower Athabasca Region, Regulatory Assurance Division, Alberta Environment and Parks* (7 October 2020), Appeal Nos. 19-0007-0008 -R (A.P.L.A.B.), 2020 ABPLAB 15.

BEFORE:

Mr. Gordon McClure, Board Chair; Dr. Nick Tywoniuk, Panel Member; and Mr. Chris Powter, Panel Member.

SUBMISSIONS BY:

Appellants: Mr. Ignaty Sanarov and Mr. Paul Sanarov, assisted by Mr. Peter Dobbie, Q.C., Farmers' Advocate Office.

Director: Mr. Mark Dmytriw, Director, Regional Compliance, Lower Athabasca Region, Regulatory Assurance Division, Alberta Environment and Parks, represented by Ms. Vivienne Ball, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

In 1988, Alberta Environment and Parks (AEP) issued a grazing lease to Mr. Ignaty Sanarov. AEP renewed the grazing lease in 1996 and 2006. In 2015, suffering from poor health, Mr. Ignaty Sanarov applied to have his son, Mr. Paul Sanarov, added to the grazing lease. AEP inspections in 2015 and 2016 noted the fencing was deteriorating, cattle were not grazing on the lands (the Lands), and the Lands had been cultivated and planted to crops.

In the spring of 2017, AEP issued a new grazing lease and Mr. Paul Sanarov was added as a joint-tenant. Shortly after the issuance of the grazing lease, Mr. Ignaty Sanarov was involved in a vehicle accident and suffered serious injuries.

In the fall of 2017, an inspection by AEP found the Lands had been cultivated and planted to crops. In November 2017, an AEP Agrologist notified AEP Regional Compliance that the grazing lease was in contravention of the *Public Lands Act* and the *Public Lands Administration Regulation*.

In 2019, at a meeting with the AEP, Mr. Paul Sanarov acknowledged the Lands had been rented out for cultivation. After the meeting, AEP served the Appellants with a Notice of Administrative Penalty for \$13,750.00 for subletting the land without authorization, allowing cultivation of the lands, which resulted in exposed soils being susceptible to erosion, and for not following the Director's directions to maintain the fences.

The Appellants filed a Notice of Appeal with the Public Lands Appeal Board (the Board). The Board had to reschedule a proposed oral hearing due to the COVID 19 Pandemic. On September 4, 2020, the Board held a written hearing with oral closing comments by telephone. The Board had questions regarding the calculation of the proceeds received from renting the land, which the parties provided written answers to after the oral closing comments.

The Board considered AEP's Record, the parties' submissions, the legislation, and relevant case law. The Board reviewed each count in the Administrative Penalty, the factors used by AEP to adjust the amount of the penalty, and the proceeds calculation. The Board found Mr. Paul Sanarov was not responsible for the contraventions before he was added to the grazing lease as a

joint-tenant in 2017. The Board found Mr. Ignaty Sanarov contravened the *Public Lands Act* and PLAR by:

- subletting the Lands without authorization from AEP; and
- not following the direction of AEP to maintain the fencing in an acceptable condition.

The Board found there was not sufficient evidence in AEP's Record to prove the Appellants contravened the *Public Lands Act* and PLAR by creating a condition on public land likely to result in soil erosion.

The Board considered the same table in section 171(3) of PLAR that AEP used to determine the amount of the Administrative Penalty. The Board reduced the extent of actual or potential loss or damage of the contravention in Count 1 from Moderate to Minor and reduced the seriousness of the contravention in Count 3 from Major to Moderate.

The Board also considered the factors used to adjust the Administrative Penalty amount. The Board reassessed the degree of willfulness or negligence of the Appellants and reduced the amount by half. The Board reassessed the steps taken by the Appellants to avoid or limit the extent of any actual loss or damage or potential damage that could result from the contravention, and reduced the factor to neutral. The Board did the same for steps taken by the Appellants to ensure the contravention would not reoccur, reducing the factor to neutral.

The Board applied the payments by the Appellants for taxes and rent for the grazing lease to reduce the proceeds calculation.

The Board recommended the Minister vary the Director's decision to issue the Administrative Penalty to the Appellants by:

- removing Mr. Paul Sanarov as a responsible party in the Administrative Penalty for contraventions that occurred before he signed the GRL as a joint tenant;
- accepting the Board's reassessment of the Administrative Penalty, which would reduce the penalty from \$13,750.00 to \$7,536.01.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
III.	ISSUES	10
IV.	SUBMISSIONS	10
A.	Appellants' Initial Submission.....	10
B.	Director's Initial Submission	11
C.	Appellants' Response Submission.....	12
D.	Director's Response Submissions.....	13
E.	Appellants' Final Comments	15
F.	Additional Questions on Proceeds	16
V.	STANDARD OF REVIEW	17
VI.	ANALYSIS.....	17
A.	Liability of Mr. Paul Sanarov Before Joint-Tenancy.....	18
B.	Iganty Sanarov	20
C.	The Administrative Penalty	21
i.	Count 1	21
ii.	Count 2.....	22
iii.	Count 3.....	24
iv.	Factors to be Considered to Vary Assessment.....	26
v.	Proceeds (Economic Benefit)	27
VII.	DECISION	29
VIII.	RECOMMENDATION	31
IX.	ADDITIONAL COMMENTS	32

I. INTRODUCTION

[1] This is the Report and Recommendations of the Public Lands Appeal Board (the “Board”) to the Minister of Environment and Parks (the “Minister”), regarding an appeal filed by Mr. Paul Sanarov and Mr. Ignaty Sanarov (the “Appellants”). The Appellants appealed the decision by the Director, Regional Compliance, Lower Athabasca Region, Regulatory Assurance Division, Alberta Environment and Parks (the “Director”), to issue the Notice of Administrative Penalty No. PLA-19/11-AP-LAR-19/11 (the “Administrative Penalty”) to the Appellants for \$13,750.00. The Director issued the Administrative Penalty for alleged contraventions (the “Contraventions”) of sections 43(1), 54(1)(f), and 54.01(5) of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”),¹ and section 27 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011 (“PLAR”).² These sections make it illegal to sublet a disposition without the appropriate permission, create any condition that may lead to erosion on public lands, receive money for providing access to public lands without authorization from AEP, and require the holder of a disposition to maintain fencing around the disposition land.

¹ Section 43(1) of the *Public Lands Act* states: “The holder shall not mortgage, assign, transfer or sublet the land contained in the holder’s disposition, or any part of it, without the written consent of the director.”

Section 54(1)(f) of the *Public Lands Act* provides: “No person shall cause, permit or suffer... (f) the creation of any condition on public land which is likely to result in soil erosion.”

Section 54.01(5) of the *Public Lands Act* states:

“No person shall provide or receive money or other consideration for the purpose of gaining or allowing access to, passage on or over or use of public land unless

(a) the person receiving the money or other consideration is the holder of a disposition or authorization under section 20 and is entitled at law to receive money or other consideration for that purpose, and

(b) the access, passage or use is in respect of public land that is the subject of the disposition or authorization.”

² Section 27 of PLAR provides: “The holder of a disposition must, at the holder’s sole expense, comply with any written direction of the director respecting the construction, maintenance and repair of any fences, gates and cattle guards bounding or within the subject land.”

II. BACKGROUND

[2] On October 31, 1988, Alberta Environment and Parks (“AEP”) issued Grazing Lease GRL 850147 (the “GRL”) to Mr. Ignaty Sanarov, for public lands located within SW-9-69-16-W4M, near the Hamlet of Plamondon, in the County of Lac La Biche (the “Lands”). AEP renewed the GRL in 1996 and in 2006 for terms of 10 years.

[3] On April 10, 2015, AEP received an Application for Assignment to add Mr. Paul Sanarov, Mr. Ignaty Sanarov’s son, as a joint tenant to the GRL.

[4] On August 19, 2015, the Rangeland Management Inspection Form completed by an AEP Rangeland Agrologist noted: “Tame fields: being used for cultivation during inspection; lessee agreed to establish pasture; follow up required...” The Agrologist stated the fence was in satisfactory condition, but observed “Cross fences in poor condition; perimeter fences insufficient.”³

[5] On December 3, 2015, an AEP Rangeland Agrologist wrote Mr. Ignaty Sanarov. The Agrologist noted the lease was being used for crop production without proper authorization and was not properly fenced to confine cattle. The letter stated:

“I contacted you on November 6, 2015 to discuss this. You refused to speak because you were not comfortable speaking in English. You asked me to speak with your son. However, I was unable to contact him at the number you provided. Please contact the local Rangeland office upon receipt of this letter to discuss your options.”⁴

[6] The 2015 Stock Return Form submitted by Mr. Ignaty Sanarov stated the fences were degraded, and no livestock were grazed on the GRL. Mr. Paul Sanarov’s contact information was provided on the form.

[7] On January 12, 2016, the AEP Rangeland Agrologist wrote Mr. Ignaty Sanarov again and reminded him to contact the local Rangeland Office to discuss options to bring the

³ Department’s Record, at Tab 3.4.

⁴ Department’s Record, at Tab 3.16.

GRL into compliance. On February 24, 2016, the same AEP Rangeland Agrologist wrote Mr. Ignaty Sanarov and noted they met on February 16, 2016. The letter stated:

“You and your son Mr. Paul Sanarov came to this office on February 16, 2016, to discuss your options. In this meeting you mentioned that you understood the legal obligations to use a grazing lease for grazing only, not for cultivation. You also mentioned that an assignment application has been submitted to include your son Mr. Paul Sanarov’s name to this lease. Your son is currently working to bring the lease in compliance by taking the following tasks:

1. Fences around the south field (SW 9-69-16-W4) have been repaired/erected; this field will be grazed in 2016 grazing season.
2. The north field (SW 9-69-16-W4) will be seeded with perennial pasture seed mix in spring, 2016.
3. The perimeter fenceline along the east boundary will be repaired before June 15, 2017.
4. From this date onward, the lease will be used for grazing only unless otherwise authorized.”⁵

[8] On October 25, 2016, an AEP Senior Agrologist wrote Mr. Ignaty Sanarov and stated the GRL “must be reseeded to perennial forage, fenced and stocked with livestock owned solely by you during the 2017 grazing season.”⁶

[9] The 2016 Stock Return Form was filled out in Mr. Ignaty Sanarov’s name and signed by Mr. Paul Sanarov. The form stated in handwriting: “Not physically able to farm (weed repair).” The form noted no cattle had been grazed on the GRL in 2016, and the fences were not completed. The form indicated the fencing was expected to be completed by May 31, 2017.⁷

[10] On February 16, 2017, AEP wrote the Appellants and advised the Assignment of Disposition dated April 7, 2015, had been approved, “effective February 16, 2017.” The Director signed the new Grazing Lease Agreement on February 16, 2017.

⁵ Department’s Record, at Tab 3.18.

⁶ Department’s Record, at Tab 3.15.

⁷ Department’s Record, at Tab 3.5.

[11] On March 28, 2017, Mr. Paul Sanarov submitted a Range Improvement Application to AEP for approval to clear fence lines on the GRL boundaries so fence repair could commence. On April 20, 2017, AEP approved the application.

[12] On April 20, 2017, Mr. Paul Sanarov signed the Grazing Lease Agreement. Mr. Ignaty Sanarov's name was signed for him. A handwritten note below the signature line stated: "Mr. Ignaty was not able to sign document due to recovery from a vehicle accident." The Grazing Lease Agreement stated the "Effective Date" was June 1, 2016, and the term was for ten years.⁸

[13] At an unknown date in the spring of 2017, Mr. Ignaty Sanarov and his wife were involved in a serious vehicle accident.

[14] At an unknown date in the spring of 2017, Mr. Paul Sanarov became aware the fields in the GRL were being seeded for the 2017 growing season by the Kuznetsovs. Mr. Paul Sanarov told the employees of the Kuznetsovs, and Mrs. Kuznetsov, that the GRL fields were not to be seeded. The fields were seeded by Kuznetsovs without Mr. Paul Sanarov's approval.

[15] On October 13, 2017, a Rangeland Management Inspection Form completed by an AEP Rangeland Agrologist stated:

"...grazing lease inspection revealed area is being used for annual cropping and is not fenced to contain livestock. No livestock use observed as all tame pasture blocks are seeded to canola and no perimeter fence exists to contain livestock."⁹

[16] On November 27, 2017, an AEP Agrologist phoned AEP Compliance to report the Contraventions. On December 5, 2017, an AEP Environmental Protection Officer ("EPO") mailed an Investigator's Notice to the Appellants. The letter advised the Appellants that AEP

⁸ Department's Record, at Tab 3.1.

⁹ Department's Record, at Tab 3.6.

was investigating an alleged contravention of section 56(1) of PLAR,¹⁰ related to the alleged cultivation of the Lands in 2016 and 2017.

[17] On December 21, 2017, AEP interviewed Mr. Nikita Kuznetsov, who acknowledged farming the Lands under a rental agreement between Mr. “Steve” Kuznetsov and Mr. Ignaty Sanarov.

[18] On February 2, 2018, AEP interviewed Mr. Arseny Kuznetsov, who stated the Kuznetsovs family had been renting the Lands for \$4,000.00, for three to four years.

[19] On June 6, 2019, the Appellants received a “Notice of Investigation - Unauthorized Sublease” from the EPO. The notice stated AEP was investigating alleged contraventions related to unauthorized subleasing of the GRL. AEP also sent a Notice of Investigation to Mr. Stepan Kuznetsov, Mr. Nikita Kuznetsov, and Mr. Arseny Kuznetsov, in relation to the same investigation, along with a “Request for Information,” which asked for copies and receipts of payments made from Ruscan Farms Inc. or Kuznetsov Farms Ltd., to the Appellants.

[20] On June 29, 2019, Stepan Kuznetsov wrote to AEP and confirmed he had a verbal agreement with Mr. Ignaty Sanarov to rent the Lands as well as Mr. Ignaty Sanarov’s private land.

[21] On July 2, 2019, the AEP was provided with three receipts:

- October 16, 2015, “Stephan Kuznetsov” to Mr. Ignaty Sanarov, for \$4,200.00. The receipt states: “Paid to Paul Sanarov”;
- September 24, 2016, from Stepan Kuznetsov to Mr. Paul Sanarov, for \$4,900.00; and
- November 20, 2017, from “Stephan Kuznetsev” to Mr. Paul Sanarov, for \$4,900.00.

[22] On September 18 and 19, 2019, AEP served a “Preliminary Assessment of Administrative Penalty” on the Appellants.

¹⁰ Section 56(1) of PLAR states: “Subject to any approval issued under subsection (2), the holder of a grazing disposition shall not cause or allow the clearing, breaking, ploughing, cultivating or surface disturbance of the land under the grazing disposition.”

[23] On October 3, 2019, the Director and the EPO met with Mr. Paul Sanarov and Mrs. Maria Sanarov, Mr. Ignaty Sanarov’s spouse, in a “Due Process Meeting.” Mr. Ignaty Sanarov was not in attendance due to health concerns. At the meeting, Mr. Paul Sanarov stated:

- it had been at least five years since cattle were grazed on the GRL;
- some of the fields in the GRL were seeded in 2017;
- upon becoming aware of the seeding, he contacted the neighbours who were responsible for the cultivation to tell them to stop;
- the GRL was not seeded in 2018 or 2019;
- he had no knowledge of any rental arrangement; and
- land is typically rented at \$40 per acre or more in the area.¹¹

[24] On October 10, 2019, the Director issued the Administrative Penalty to the Appellants for the Contraventions. The Administrative Penalty consisted of three counts with an assessed penalty of \$10,000.00, and a proceeds amount of \$3,750.00 (the “Proceeds”), for a total of \$13,750.00.

[25] The Director used the Base Penalty Table in section 171(3) of PLAR to assess the Administrative Penalty. Section 171(3) of PLAR provides:

“Subject to subsections (4) and (5), the amount of an administrative penalty for each contravention that occurs or continues is the amount determined by the director, taking into account the seriousness of the contravention and the extent of any actual loss or damage that resulted or any potential loss or damage that may reasonably be expected to result from the contravention, in accordance with the following Base Penalty Table:

Extent of actual or potential loss or damage	Seriousness of contravention		
	Major	Moderate	Minor
Major	\$5000	\$3500	\$2500
Moderate	3500	2500	1500
Minor	2500	1500	1000
None	1000	650	250”

[26] On Count 1, the Director alleged the Appellants contravened section 43(1) of the Act by subletting the Lands without consent. The Director stated:

“Allowing access to and use of public lands without authorization of the Director is ‘a serious contravention,’ which interferes with AEP’s authority to administer public lands. Access was granted by Mr. Ignaty Sanarov to the Kuznetsovs in 2015, 2016 and 2017. The access without Director authorization by the Kuznetsovs in 2015 and 2016 occurred prior to the joint tenancy and Mr. Paul Sanarov made attempts to stop access after the joint tenancy was issued and prior to seeding in 2017. Although the Potential loss to crown revenue may exceed \$5000, the actual damage as a result may only require minor short-term remediation. I am reducing the extent of actual or potential loss or damage from Major to Moderate.”¹²

The Director assessed the amount for Count 1 at \$3,500.00.

[27] On Count 2, the Director alleged the Appellants contravened section 54(1)(f) of the Act by creating a condition likely to result in soil erosion. The Director stated:

“Although Cultivation of a portion of Grazing Leases may be permitted with written authorization from AEP, Messrs. Sanarov did not receive AEP authorization to cultivate nor to plant crop in the North and South field for the growing sessions in 2015, 2016 and 2017. Again, as the cultivation and crop seeding for 2015 and 2016 occurred prior to the joint tenancy and Mr. Paul made attempts to stop the field work and seeding after the joint tenancy was issued in 2017, I am reducing the seriousness of contravention from Major to Moderate.”¹³

The Director assessed the amount for Count 2 at \$2,500.00.

[28] On Count 3, the Director alleged the Appellants contravened section 27 of PLAR by failing to follow the direction of the Director. The Director stated the Appellants “between January 1, 2015 and December 31, 2017... did not follow the written direction of the Director to maintain and/or repair fences bounding or within the subject land.”¹⁴ The Director assessed the amount for Count 3 at \$1,000.00.

¹¹ Department’s Record, at Tabs 3.37 and 3.38.

¹² Department’s Record, at Tab 1.1.

¹³ Department’s Record, at Tab 1.1.

¹⁴ Department’s Record, at Tab 1.2.

[29] The Director considered the factors listed in section 171(4) of PLAR,¹⁵ and assessed additional amounts for the following factors:

- Section 171(4)(b): \$2,000.00 for the degree of willfulness or negligence. The Director stated two “Notices of Non-Compliance were sent from AEP [to the Appellants] with regard to non-compliant cultivation, but requests to come into compliance were not complied with. Additionally, follow up letters after in-person meetings were sent on two occasions reminding the Parties of their obligations, yet yielded no compliance as a result.”
- Section 171(4)(c): \$500.00 for steps taken to avoid or limit the extent of any actual loss or damage. The Director said there was “no evidence to support that steps were taken to limit the loss or damage.”
- Section 171(4)(d): \$500.00 for steps taken to prevent a contravention’s recurrence. The Director stated the Appellants took no steps “to prevent reoccurrence, as the Lands were seeded and harvested for three consecutive growing seasons.”¹⁶

The Director found the remaining factors were “Neutral.”

[30] The Director assessed the Proceeds at \$3,750.00, based on receipts supplied by the Kuznetsovs.

¹⁵ Section 171(4) of PLAR provides:

“The director may, in any particular case, increase or decrease the amount of the administrative penalty determined under subsection (3) if, after considering the following factors, the director considers it appropriate to do so:

- (a) the importance to the regulatory scheme of compliance with the provision that was contravened;
- (b) the degree of wilfulness or negligence, if any, on the part of any person responsible for the contravention;
- (c) any steps taken by a person responsible for the contravention to avoid or limit the extent of any actual loss or damage that resulted or any potential loss or damage that may reasonably be expected to result from the contravention;
- (d) any steps taken by a person responsible for the contravention to prevent its recurrence;
- (e) any previous contravention of a provision prescribed by subsection (2) by a person responsible for the contravention;
- (f) whether a person responsible for the contravention derived or is likely to derive any economic benefit from the contravention;
- (g) any other factor that, in the opinion of the director, is relevant.”

¹⁶ Department’s Record, at Tab 1.2.

[31] On October 18, 2019, Messrs. Ignaty and Paul Sanarov filed a Notice of Appeal with the Public Lands Appeal Board. The Notice of Appeal alleged the Director who made the decision erred in the determination of a material fact on the face of the record.

[32] The Board acknowledged the Notice of Appeal and requested the AEP's records (the "Department's Records") on October 21, 2019.

[33] On November 20, 2019, the Director provided an indexed copy of the Department's Record, which the Board forwarded to the Appellants.

[34] The Board scheduled a mediation meeting for January 21, 2020. On January 10, 2020, the Director wrote the Board advising he had contacted the Appellants to discuss settling the appeal. No resolution was reached. The Director requested the appeal proceed to a hearing without a mediation meeting.

[35] On January 13, 2020, the Board acknowledged the Director's letter and requested the Director reconsider participating in a mediation.

[36] On January 16, 2020, the Director confirmed his desire to proceed to a hearing, requested the hearing be conducted in writing.

[37] Due to the COVID 19 pandemic, the Board set a schedule for a written hearing with oral closing comments by telephone conference call. The Board received written submissions from the Director and the Appellants (collectively, the "Parties") and heard closing comments on September 9, 2020.

[38] On September 10, 2020, the Board requested the Parties provide written responses to questions on the Proceeds calculation of the Administrative Penalty regarding tax and rental expenses paid by the Appellants for the Lands. The Board asked the Parties the following questions:

For the Appellants:

1. What was the amount of tax paid by the Appellants on the GRL for the years 2015, 2016, and 2017?

For the Appellants and the Director:

1. How much rent was paid by the Appellants for GRL 850147 for the years 2015, 2016, and 2017? and
2. Is it appropriate for the Board to consider the rents and taxes paid by the Appellants for the GRL for the years 2015, 2016, 2017 as a part of the Proceeds calculation?

[39] On September 24, 2020, the Board considered the responses from the Parties to its September 10, 2020 letter.

III. ISSUES

[40] The Board set the following issue to be heard in the hearing:

Did the Director who made the decision to issue the Administrative Penalty to Mr. Paul Sanarov and Mr. Ignaty Sanarov err in the determination of a material fact on the face of the record?

IV. SUBMISSIONS

A. Appellants' Initial Submission

[41] The Appellants did not dispute the facts as they related to Mr. Ignaty Sanarov.

[42] Mr. Paul Sanarov submitted that when he noticed the GRL “was having issues,” he sought advice from AEP staff. Mr. Paul Sanarov stated he applied to have his name added to the GRL as action was needed to bring the GRL into compliance. Mr. Paul Sanarov noted that he could not take any actions on improvements, decision-making or administrative actions without authority.¹⁷

[43] Mr. Paul Sanarov submitted the Director levied the Administrative Penalty against him for trying to assist his father when his father's health was failing.

¹⁷ Appellants' Initial Submission, March 13, 2020, at page 1.

[44] Mr. Paul Sanarov submitted the Appellants did not give permission to seed the Lands in 2017. Mr. Paul Sanarov stated Mr. Ignaty Sanarov was in the hospital from February 20, 2017, through the summer of 2017.

[45] Mr. Paul Sanarov submitted he “tried to stop the seeding on the grazing lease, though the message was not relayed in time to stop the tractor.”

B. Director’s Initial Submission

[46] The Director submitted he did not err in the determination of a material fact on the face of the record and noted there were no material facts in dispute in the appeal.

[47] The Director stated that before the issuance of the Administrative Penalty, the Appellants did not dispute any of the facts. The Director submitted the Appellants have provided no evidence regarding the allegation of which material facts the Director erred in determining.

[48] The Director noted the Act and PLAR require certain obligations of the holders of a disposition, and it was the responsibility of the Appellants to “make every effort to read, know and understand the legislation that governs their proposed use of public land.”¹⁸

[49] The Director stated section 43(1) of the Act prohibited subletting of public lands without the Director’s written consent.¹⁹ The Director submitted that AEP did not receive a request from the Appellants to sublet the Lands.

[50] The Director submitted AEP never received a request to sublet the lands from the Appellants as required under section 43(1) of the Act.

[51] The Director stated he was designated as a Director under the Act when the Administrative Penalty was issued. The Director submitted he had the authority to issue the Administrative Penalty under the Act. The Director noted the Administrative Penalty is composed of the penalty component and the proceeds component. The Director stated the

¹⁸ Director’s Initial Submission, March 13, 2020, at paragraph 39.

¹⁹ Section 43(1) of the *Public Lands Act* states: “The holder shall not mortgage, assign, transfer or sublet the land contained in the holder’s disposition, or any part of it, without the written consent of the director.”

penalty's purpose is to deter the regulated community and prevent the prohibited activity reoccurring.

[52] The Director submitted Mr. Paul Sanarov should be held accountable for the Contraventions that occurred before he became a holder of the GRL. The Director submitted:

- the renewal was effective June 1, 2016, when Mr. Paul Sanarov signed the GRL on April 20, 2017;
- Mr. Paul Sanarov took an active role in the management of the Lands before June 1, 2016;
- Mr. Paul Sanarov received rent money from the Kuznetsov family in 2015, 2016 and 2017.

[53] The Director stated he had the authority to assess a one-time amount as part of the Administrative Penalty relating to proceeds obtained from public land use in contravention of the Act. The Director said the objective of assessing proceeds was to level the economic "playing-field" for the regulated community, restoring the economic status quo to what it was before the non-compliant behaviour occurred.

[54] The Director submitted the Appellants received \$3,750.00 from rent to sublet the Lands, which is reflected in the Administrative Penalty's Proceeds amount. The Director stated the Proceeds component was determined based on the total rent monies paid by the Kuznetsovs as evidenced by an email and payment receipts collected during the investigation. The Director stated the Appellants did not provide any costs or expenses for the Director to consider as an offset against the Proceeds calculation.

[55] The Director requested the Board find the Director did not err in fact nor law and recommend the appeal be dismissed.

C. Appellants' Response Submission

[56] The Appellants stated the Director erred in assessing the Administrative Penalty against Mr. Paul Sanarov as he was not a lessee at the time of the alleged Contraventions.

[57] The Appellants submitted the Director erred in assessing the Administrative Penalty against the Appellants given the delay in processing the Application for Assignment to add Mr. Paul Sanarov to the GRL. The Appellants stated the delay frustrated attempts by Mr. Paul Sanarov to remedy any of the Contraventions “as he did not have any legal authority to instruct work on or manage the grazing lease until he was added as a lessee.”²⁰

[58] The Appellants noted AEP knew of Mr. Ignaty Sanarov’s poor physical and mental health and his inability to manage the GRL properly. The Appellants said:

“The Director erred in assessing the penalties at all, or the quantum of the penalties and improperly applied any statutory factors by failing to take into account the failure of the [AEP] to act reasonably and expeditiously in approving a transfer of the grazing lease in the face of its specific knowledge of the physical and mental health condition of Ignaty Sanarov.”²¹

D. Director’s Response Submissions

[59] The Director noted that Mr. Paul Sanarov sent the Application for Assignment to AEP on April 7, 2015. The Director submitted that Mr. Paul Sanarov “accepted rent for the sublet of the Lands...”²²

[60] The Director stated Mr. Paul Sanarov was aware the Kuznetsovs were cultivating the Lands during 2015, 2016, and 2017.

[61] The Director said Mr. Paul Sanarov was a holder of the GRL when “he failed to follow the direction of the Director to maintain and/or repair fences bounding or within the Lands...”²³

[62] The Director claimed the Appellants did not provide evidence to support their claims regarding the delay in processing the Application for Assignment. The Director stated,

²⁰ Appellants’ Response Submission, August 17, 2020, at paragraph 2.

²¹ Appellants’ Response Submission, August 17, 2020, at paragraph 3.

²² Director’s Response Submission, August 24, 2017, at page 1.

²³ Director’s Response Submission, August 24, 2017, at page 2.

“The Director who issued the administrative penalty has no knowledge of any delay as alleged by the Appellants.”²⁴

[63] The Director submitted Mr. Paul Sanarov was very involved in managing the GRL since at least 2015, as evidenced by the following:

- Mr. Paul Sanarov’s name and contact information were listed on the 2015 Stock Return Form;
- in 2015, 2016, and 2017, Mr. Paul Sanarov received money from Stephan Kuznetsov for the rent of the Lands;
- on February 16, 2016, an AEP Agrologist met with Mr. Paul Sanarov and Mr. Ignaty Sanarov, and Mr. Paul Sanarov committed to bringing the Lands back into compliance’ and
- before he was added to the GRL, Mr. Paul Sanarov requested AEP send him communications about non-compliance with the GRL.

[64] The Director submitted the Appellants failed to establish how an alleged delay is relevant to the Administrative Penalty and the issues set by the Board.

[65] In closing comments, the Director submitted there was no evidence of any due diligence actions by Mr. Paul Sanarov. The Director said the Appellants have a duty as disposition holders to report contraventions to AEP, but they did not do so. The Director stated that if the Appellants had reported the Contraventions, AEP could have investigated and taken action.

[66] The Director acknowledged AEP in other administrative penalties had considered taxes and rent paid for a disposition in past proceeds calculations.

[67] The Director said the AEP Agrologists manage the public lands used for grazing leases, and are responsible for taking the first steps to bring the lands into compliance. The Director stated if an Agrologist discovers a non-compliant situation, Regional Compliance is usually involved only if the disposition holders fail to make progress in rectifying the contravention.

²⁴ Director’s Response Submission, August 24, 2020, at page 2.

[68] The Director noted the lease expired before the application for Assignment of Disposition was processed. The Director stated a lease could not be assigned if it is expired. The Director said section 15.1 of the Act allows the Director to exercise discretion to refuse to issue a renewal if the lease is in non-compliance.²⁵ The Director submitted AEP approved the lease as a good-faith gesture that Mr. Paul Sanarov would bring the GRL into compliance where his father could not.

[69] The Director requested the Board recommend the Minister confirm the Director's decision and dismiss the appeals.

E Appellants' Final Comments

[70] The Appellants submitted Mr. Paul Sanarov exercised due diligence in attempting to stop the Contraventions once he became a joint tenant of the GRL.

[71] The Appellants stated Mr. Paul Sanarov contacted AEP staff to have his name added to the GRL as a joint tenant due to his father's deteriorating health. The Appellants submitted that in 2015 and 2016, Mr. Paul Sanarov did not have authority to take any actions on the Lands.

[72] The Appellants noted that while Mr. Ignaty Sanarov may not have a due diligence argument, the evidence shows the Director knew of Mr. Ignaty Sanarov's inability to direct the management of the GRL. The Appellants submitted the Director failed to take such facts into account in assessing the Administrative Penalty.

²⁵ Section 15.1 of the Act states:

“The director may refuse to issue, mortgage, assign, transfer, sublet or renew a disposition if the applicant

(a) is indebted to the Crown, or

(b) is otherwise in non-compliance with this Act or the regulations.”

F. Additional Questions on Proceeds

[73] The Appellants submitted the expenses incurred by the Appellants in relation to the grazing lease are relevant matters and facts the Board may consider in making its decisions. The Appellants stated they thought the annual rent paid for the GRL was \$70.00 for the years 2015, 2016, and 2017. The Appellants said that due to illness, Mr. Paul Sanarov was unable to meet with Mr. Ignaty Sanarov to examine the GRL's financial records. The Appellants said the property taxes for the GRL paid to the County of Lac La Biche were:

2015	\$31.53
2016	\$33.57
2017	\$33.26

The Appellants noted Mr. Paul Sanarov expended "thousands of days" worth of time, fuel and equipment to "clear land to rebuild the fences as required by the [Director]."²⁶

[74] The Director stated the Appellants paid the following rents on the GRL:

2015	\$83.19
2016	\$83.19
2017	\$99.25

The Director submitted it was not appropriate for the Board to deduct the rent or taxes from the Proceeds the Appellants received for the Contraventions of the Act and regulations. The Director said the rent and taxes are obligations the Appellants are required to pay as dispositions holders, and to deduct the rent and taxes would allow the Appellants to benefit from the Contraventions.

[75] The Director stated the objective of assessing proceeds is to restore the economic status quo in its position before a contravention. The Director submitted the Administrative Penalty's deterrence and educational factors could be undermined if the Proceeds are reduced.

[76] The Director said the Board should not consider any time, costs or expense the Appellants incurred to clear land for fencing, a regulatory obligation as a holder of a grazing lease.

V. STANDARD OF REVIEW

[77] When the Board reviews a director's decision that has been appealed, it applies a "standard of review." A standard of review is the legal approach taken by the Board in analyzing the decision. The Supreme Court of Canada has determined two possible standards of review can be applied to a decision under consideration: "reasonableness" and "correctness."

[78] The Supreme Court of Canada stated in *Dunsmuir v. New Brunswick*, "[a]n exhaustive review is not required in every case to determine the proper standard of review... This simply means that the analysis required is already deemed to have been performed and need not be repeated."²⁷ In previous appeals, the Board undertook a detailed analysis of the standard of review for appeals under the *Public Lands Act* and PLAR. The Board's analysis determined the standard of correctness is appropriate for appeals before it.²⁸ The Parties did not make submissions on the standard of review, and the Board's analysis remains the same as previous decisions. The Board has determined the standard of review to apply to this appeal is correctness.

VI. ANALYSIS

[79] The issue in this appeal was set by the Board: Did the Director who made the decision to issue the Administrative Penalty to Mr. Paul Sanarov and Mr. Ignaty Sanarov err in the determination of a material fact on the face of the record? The Appellants argued the Director did not consider several mitigating factors when assessing the Administrative Penalty and, therefore, the Administrative Penalty should be reduced. The Director argued he considered all the relevant facts and assessed the Administrative Penalty correctly.

²⁶ Letter from the Appellants, dated September 16, 2020.

²⁷ *Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 57.

²⁸ See: *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.) 2018 APLAB 7; and *Jason King and Kingdom Properties Ltd. v. Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (31 July 2020), Appeal Nos. 19-0005-0006-R (A.P.L.A.B.), 2020 ABPLAB 12.

[80] The Appellants do not dispute that Mr. Ignaty Sanarov contravened the Act and GRL by subletting the Lands for cultivation without approval from AEP. However, the Appellants submitted that serious injuries and health matters were suffered by Mr. Ignaty Sanarov, which left him with disabilities that affected his ability to manage the GRL.

[81] AEP Agrologists made attempts to work with Mr. Ignaty Sanarov to bring the GRL into compliance, but Mr. Ignaty Sanarov's disabilities and lack of English comprehension hampered any progress. Mr. Paul Sanarov's efforts to help his father with the GRL do not appear to have been successful, even after he was added to the GRL as a joint-tenant.

A. Liability of Mr. Paul Sanarov Before Joint-Tenancy

[82] The Director issued the Administrative Penalty to both Mr. Ignaty Sanarov and Mr. Paul Sanarov. The Director stated Mr. Paul Sanarov was liable for all the Contraventions that occurred before he became a joint-tenant to the GRL for the following reasons:

- he signed the GRL on April 20, 2017, and the renewal was effective June 1, 2016;
- he took an active role in the management of the Lands as evidenced by a letter referring to a meeting with the AEP Agrologist where Mr. Paul Sanarov allegedly confirmed the lease would only be used for grazing; and
- he accepted rent money from the Kuznetsovs in 2015, 2016 and 2017.

[83] If not for his father's poor health, Mr. Paul Sanarov may not have been involved with the GRL in any manner. His father's health prompted Mr. Paul Sanarov to apply for an Assignment of Disposition on April 7, 2015, to have himself added as a joint-tenant. AEP took almost two years to process the application. The letter from AEP to the Appellants approving the application stated the assignment was "granted effective February 16, 2017 (the 'Effective Date'). The Assignee is registered in department records as the disposition holder under GRL 850147 (the 'Disposition') as of the Effective Date."²⁹ When the new GRL arrived for the Appellants to sign, the GRL's effective date was June 1, 2016. In closing comments, the

²⁹ Department's Record, at Tab 3.19.

Director explained the GRL was back-dated because the lease was processed as a renewal, and AEP wanted to continue with the schedule of 10-year renewal dates.

[84] The Board finds it disconcerting that the practice of back-dating a lease for administrative purposes would be used to hold a new leaseholder responsible for past contraventions of the previous leaseholder. The use of the practice in this manner is particularly troubling when AEP's assignment approval letter clearly stated the assignment was "effective February 16, 2017."

[85] The Board is unconvinced the Director's evidence supports the allegation Mr. Paul Sanarov had taken an active role in managing the lease before being added as a joint-tenant. That Mr. Paul Sanarov accompanied his father to a meeting with the Agrologist on February 16, 2016, is not evidence of a managing role of the GRL. AEP has acknowledged Mr. Ignaty Sanarov has difficulty comprehending English. It is reasonable that Mr. Paul Sanarov would accompany his father to assist him. Accepting cheques from the Kuznetsovs and filling out the Stock Return Forms are likewise not evidence Mr. Paul Sanarov had control of the GRL. Mr. Paul Sanarov told the Director at the due process meeting he was unaware the payments he accepted from the Kuznetsovs on behalf of Mr. Ignaty Sanarov included payments for use of the GRL. The Board views Mr. Paul Sanarov's actions as a dutiful son attempting to assist his parents while his father was in failing health. The situation was further complicated after his father suffered a severe and disabling vehicle accident.

[86] Section 59.3 of the Act provides the Director with options when determining who should pay an administrative penalty. The Director is not required to assess an administrative penalty against every holder of a disposition. He only needs to hold the actual offender responsible. The Director chose to exercise his discretion to assess the Administrative Penalty against Mr. Paul Sanarov for the Contraventions that occurred before he was a joint-tenant of the GRL. This is an error of material fact on the face of the record.

[87] The Board finds Mr. Paul Sanarov is not liable for any of the Contraventions that occurred before February 16, 2017, the date AEP approved the Assignment of Disposition.

B. Ignaty Sanarov

[88] The Appellants do not dispute the allegations of the Director that there was an agreement with the Kuznetsovs to cultivate the Lands, but they stated the Director failed to consider mitigating factors and the amount of the Administrative Penalty.

[89] Mr. Ignaty Sanarov's deteriorating health and difficulty in comprehending English contributed to the poor management of the GRL. AEP was aware of Mr. Ignaty Sanarov's difficulty communicating in English at least as early as November 6, 2015. An AEP Agrologist contacted Mr. Ignaty Sanarov and acknowledged in a follow-up letter on December 3, 2015, "You refused to speak because you were not comfortable speaking in English." Mr. Ignaty Sanarov's health problems and the language issues were the reason the Appellants applied on April 7, 2015, for an Assignment of Disposition to add Mr. Paul Sanarov, which was granted by AEP on February 16, 2017. The unreasonable delay in granting the Assignment of Disposition and the uncertainty it created contributed to inaction on the compliance problems.

[90] The Board appreciates AEP was in a difficult situation in its dealings with Mr. Ignaty Sanarov. AEP has a responsibility to ensure public land leaseholders follow the legislation. The leaseholder is ultimately responsible for understanding and complying with the legislation and terms and conditions of the lease. AEP is under no legal duty to accommodate a leaseholder due to health or language barriers. However, AEP is a part of the Government of Alberta, and while it may not have a legal duty of care, it does have a moral duty to uphold the honour of the Crown. Under these specific circumstances, the public would have been best served by a more patient approach the Appellants, particularly as the Appellants were trying to add Mr. Paul Sanarov to the GRL, which AEP took almost two years to approve.

[91] The Board is not suggesting AEP should turn a blind eye to non-compliance. The Board recognizes the importance of AEP's compliance efforts and the difficulties AEP employees face in carrying out their duties. However, when faced with a situation where one leaseholder was incapacitated by illness, injury, and language barriers, and the other had only recently been added to the GRL, it appears to the Board that AEP gave up on helping the Appellants achieve compliance and rushed to undertake enforcement measures. There was only

one season between Mr. Paul Sanarov being added as a joint-tenant and the issuance of the Investigator's Notice. AEP could have worked with Mr. Paul Sanarov after he was added to the GRL and delayed issuing penalties related to the cultivation and fencing until Mr. Paul Sanarov had time to bring the GRL into compliance. The investigation into the unauthorized access could have continued while the other issues were dealt with by Mr. Paul Sanarov.

C. The Administrative Penalty

[92] In determining the amount of the Administrative Penalty, the Director used the Base Penalty Table from section 171(3) of PLAR, which sets the amounts as follows:

Extent of actual or potential loss or damage	Seriousness of contravention		
	Major	Moderate	Minor
Major	\$5000	\$3500	\$2500
Moderate	3500	2500	1500
Minor	2500	1500	1000
None	1000	650	250

i. Count 1

[93] The Director issued Count 1 of the Administrative Penalty for contravention of section 43(1) of the Act, which states: "The holder shall not mortgage, assign, transfer or sublet the land contained in the holder's disposition, or any part of it, without the written consent of the director." The Director stated Count 1 addressed access granted by the Appellants to the Kuznetsovs without authorization from the Director. The Director used the Base Penalty Table from section 171(3) of PLAR to assess the actual or potential loss or damage to be Moderate and the seriousness of the contravention to be Major. The Base Penalty Table lists the amount of the Administrative Penalty for Major/Moderate to be \$3,500.00.

[94] The Director accepted the Appellants' submission that Mr. Paul Sanarov attempted to stop the Kuznetsovs from fieldwork and seeding on the Lands. In the Director's

Decision on the Administrative Penalty, the Director explained the extent of actual or potential loss or damage was reduced from Major to Moderate because of Mr. Paul Sanarov's efforts to stop the unauthorized access.

[95] The Board finds Mr. Paul Sanarov took reasonable steps to stop the unauthorized access in 2017. The Board notes the Director did not issue the Administrative Penalty against the Kuznetsovs, despite their involvement and history of similar contraventions. The Board finds the Kuznetsovs were more responsible for the unauthorized access in 2017 than Mr. Paul Sanarov. The Board notes Mr. Paul Sanarov, as a leaseholder, had an obligation to inform AEP of unauthorized access to the GRL, which he fulfilled in 2019 during the due process meeting. It is unclear from the Department's Record when Mr. Paul Sanarov knew his instructions to the Kuznetsovs had not been relayed. As a leaseholder, Mr. Paul Sanarov was responsible for the unauthorized access in 2017, but the Board finds he took reasonable steps to prevent the contravention.

[96] The Board finds Mr. Ignaty Sanarov was responsible for the unauthorized access in 2015, 2016, and 2017. The Board notes there was no evidence in the Department's Record to suggest harvesting occurred on the Lands in 2017. The Board also notes the Director found the actual damage "may only require minor short-term remediation efforts."³⁰ The Board found the Director erred in a material fact on the face of the record by assessing the extent of actual or potential loss or damage of the contravention in Count 1 as Moderate. The Board would reduce the extent of actual or potential loss or damage of the contravention in Count 1 from Moderate to Minor. The Board would leave the assessment of the seriousness of the contravention at Major. The final amount would be \$2,500.00.

ii. Count 2

[97] Count 2 was for a contravention of section 54(1)(f) of the Act, which states: No person shall cause, permit or suffer... the creation of any condition on public land which is likely to result in soil erosion." The Director stated the unauthorized cultivation of the Lands made the

³⁰ Department's Record, at Tab 1.1.

soil susceptible to erosion. The Director found the extent of actual or potential loss or damage to be Moderate. The Director initially found the seriousness of the contravention was Major but reduced it to Moderate “as the cultivation and crop seeding for 2015 and 2016 occurred prior to the joint tenancy and Mr. Paul made attempts to stop the field work and seeding after the joint tenancy was issued in 2017...”³¹ The assessed level from the Base Penalty Table was \$2,500.00.

[98] The Courts have considered the word “likely.” In *R. v. A. Warner Ltd.*, the Court found “likely” “means the probability of” and it is a “conclusion or fact which must be found by the Court from the evidence adduced...”³² Although the case involves a criminal matter, the meaning the word is the same as in section 54(1)(f) of the Act.

[99] The Director stated the decision soil erosion would occur on the Lands due to the cultivation was based on training information on the *Alberta Soil Conservation Act*, R.S.A. 2000, c. S-15, and the “An Introduction to Water Erosion Control” and “An Introduction to Wind Erosion Control” information sheets (collectively, the “Policy Documents”).³³

[100] Using policy to guide decision-making is a reasonable practice, as long as the decision-maker does not fetter his or her discretion by relying on the policy to the exclusion of other relevant considerations.

[101] The Board notes the Director referred to soil erosion in the Director’s Initial Submissions,³⁴ but there are no documents in the Department’s Record or the Department’s Supplemental Record to show an assessment was done on the Lands to determine the potential of likely, or probable, erosion, or to show how the Policy Documents the Director relied on were applied to the Lands.

[102] The Director has the discretion to determine whether a contravention creates a “condition on public land which is likely to result in soil erosion.” However, the Courts have held discretion must be exercised “in line with general principles of administrative law

³¹ Department’s Record, at Tab 1.1.

³² *R. v. Warner Ltd.*, 1948 CarswellOnt 382, at paragraph 3.

³³ Department’s Supplemental Record, at Tab 2.

governing the exercise of discretion.”³⁵ Any discretionary administrative decision must “be based upon a weighing of considerations pertinent to the object of the administration.” The Supreme Court of Canada noted Lord Denning pointed out “the failure of an administrative decision-maker to take into account a highly relevant consideration is just as erroneous as the improper importation of an extraneous consideration.”³⁶

[103] The Director appears to have used the Policy Documents to make his decision without consulting the AEP Agrologists who were familiar with the Lands or investigating the soil conditions on the Lands. If there was a consultation or investigation, there is no indication of it in the Department’s Record. In failing to base his decision on relevant evidence and relying exclusively on the Policy Documents, the Director fettered his discretion and acted on inadequate or no evidence. The Board finds it is improper to rely solely on general principles in the Policy Documents when knowledge of site-specific conditions is required. Policy is not a substitute for on-the-ground investigations and evidence. In the Board’s view this constitutes an error of material fact on the face of the record.

[104] Section 120 of the Act states, “An appeal under this Act must be based on the decision and the record of the decision-maker.” As there is no evidence in “the record of the decision-maker” to support Count 2, the Board dismisses this part of the Administrative Penalty.

iii Count 3

[105] The Director issued Count 3 of the Administrative Penalty for contravention of section 27 of PLAR, which states:

“The holder of a disposition must, at the holder’s sole expense, comply with any written direction of the director respecting the construction, maintenance and repair of any fences, gates and cattle guards bounding or within the subject land.”

³⁴ The Director’s Initial Submissions, at paragraphs 21 to 24.

³⁵ *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 SCC 699, at paragraph 53.

³⁶ *Oakwood Development Ltd. v. St. François Xavier (Rural Municipality)*, [1985] 2 S.C.R. 164, at paragraph 15.

[106] The Director assessed the extent of actual or potential loss or damage from the Base Penalty Table to be “None,” as “no damage or loss to the resource, or loss to Crown revenue resulted from the failure to follow the direction of the director.”³⁷ The Director found the seriousness of the contravention to be Major. The penalty amount for Count 3 was \$1000.00.

[107] In the Preliminary Assessment, the Director considered Count 3 and stated:
“... the Crown, as a land manager, has exclusive regulatory authority to establish the conditions under which the Lands are utilized, and failure to follow this direction interferes with AEP’s authority to administer public lands.”³⁸

[108] The Director stated fencing a grazing lease is a fundamental obligation of a grazing leaseholder. The Department’s Record documents warnings from AEP to the Appellants that the fencing was inadequate. AEP sent letters regarding the fencing to the Appellants on December 3, 2015, January 12, 2016, February 24, 2016, and October 25, 2016. On April 20, 2017, an AEP Rangeland Agrologist wrote to Mr. Paul Sanarov, providing authorization to clear existing fencelines. The letter refers to a “March 28, 2017 range improvement application” by the Appellants. The Board notes with concern that the Department’s Record does not contain a 2017 range improvement application by the Appellants.

[109] The October 25, 2016 letter from an AEP Agrologist noted the requirement in PLAR for a grazing leaseholder to erect fences to keep cattle confined. The letter stated there would be an inspection “prior to the end of September, 2017 to ensure compliance with this legislation.”³⁹ The Board notes there is no documentation in the Department’s Record of an inspection occurring before the end of September 2017, to ensure compliance by the Appellants. During AEP’s interview with Mr. Paul Sanarov on December 12, 2017, Mr. Paul Sanarov stated he had cleared some of the fenceline and installed posts, but had difficulties as the field was very wet and the equipment kept breaking through the ground.

³⁷ Department’s Record, at Tab 1.2.

³⁸ Department’s Record, at Tab 1.2.

³⁹ Department’s Record, at Tab 3.15.

[110] The Board agrees that fencing is a basic requirement of holding a grazing lease. The Board finds the following factors are important in assessing Count 3:

- AEP's delay in granting the Assignment of Disposition undermined the Agrologists' efforts to bring the GRL into compliance;
- Mr. Ignaty Sanarov was in no condition to repair and build fences;
- Mr. Paul Sanarov did not have legal authority to manage the GRL until he was a joint-tenant on February 16, 2017; and
- Mr. Paul Sanarov committed to getting the fencing into compliance, but did not do so after he was added as a joint tenant.

[111] The Board finds the Director erred in a material fact on the face of the record by not properly considering the mitigating factors when assessing Count 3. The Board would reduce the seriousness of the contravention to Moderate, and leave the assessment of the extent of actual or potential loss or damage at "None." The final amount would be \$650.00. The Board finds Mr. Paul Sanarov is liable for half of Count 3, which is \$350.00.

iv. Factors to be Considered to Vary Assessment

[112] The Director considered the factors listed in section 171(4) that may result in an increase or decrease of the amount of the Administrative Penalty and determined the following to apply to the assessment:

- Section 171(4)(b) - the degree of wilfulness or negligence, if any, on the part of any person responsible for the contravention. The Director assessed this factor at + \$2000.00.
- Section 171(4)(c) - any steps taken by a person responsible for the contravention to avoid or limit the extent of any actual loss or damage that resulted. The Director assessed this factor at + \$500.00.
- Section 171(4)(d) any steps taken by a person responsible for the contravention to prevent its recurrence. The Director assessed this factor at + \$500.00.

[113] The Board finds the Director erred in a material fact on the face of the record in the consideration of factors to adjust the assessment. In the Board's opinion, the assessment under section 171(4)(b) of willfulness or negligence must be reduced because of Mr. Ignaty Sanarov's health and language barriers, which prevented him from responding effectively to the

compliance letter and addressing the unauthorized access. AEP's delay in granting the Assignment of Disposition also prevented the Contraventions from being corrected in a timelier manner. However, the Appellants must assume responsibility for the initial Contraventions. The Board would reduce the assessed amount of this factor to + \$1,000.00.

[114] The Board finds Mr. Paul Sanarov took reasonable steps to avoid or limit the extent of any actual loss or damage or potential damage that could have resulted from the Contraventions. Mr. Paul Sanarov contacted the Kuznetsovs and told them not to seed the Lands, an action the Director acknowledged in the Administrative Penalty. He also applied for and received authorization to clear brush from the fenceline, and started the fencing's repairs. The Board would reduce the assessment of this factor to \$0.00 (zero).

[115] The Board finds the Appellants took reasonable steps to ensure the Contraventions would not reoccur by adding Mr. Paul Sanarov to the GRL. Mr. Paul Sanarov also took steps to prevent reoccurrence by communicating with the Kuznetsovs, and starting the fencing. The Board would reduce the assessment of this factor to \$0.00 (zero).

v. *Proceeds (Economic Benefit)*

[116] Section 59.3(4)(c) of the Act⁴⁰ authorizes the Director to assess a penalty for proceeds received from a contravention of the Act or regulations. The Director assessed the Proceeds received by the Appellants from the Kuznetsovs to total \$3,750.00.

[117] At the oral closing comments portion of the hearing, the Director was asked by the Board if he considered in the Proceeds assessment the taxes and rent for the GRL paid by the Appellants. The Director stated AEP had not received evidence of the taxes and GRL rent paid by the Appellants but acknowledged he had considered such payments before. Following the hearing, the Board requested the Parties answer the following questions:

⁴⁰ Section 59.4(4)(c) of the Act provides:

"A notice of administrative penalty under this section may require one or more of the following:...

(c) payment by a person referred to in clause (b) of any proceeds referred to in that clause, or an amount equivalent to the value of the proceeds if the person has converted the proceeds."

For the Appellants:

1. What was the amount of tax paid by the Appellants on the GRL for the years 2015, 2016, and 2017?

For the Appellants and the Director:

2. How much rent was paid by the Appellants for GRL 850147 for the years 2015, 2016, and 2017? and
3. Is it appropriate for the Board to consider the rents and taxes paid by the Appellants for the GRL for the years 2015, 2016, 2017 as a part of the Proceeds calculation?

[118] The Appellants provided receipts from the County of Lac La Biche, showing they had paid a total of \$98.36 for taxes on the GRL for 2015, 2016, and 2017. While acknowledging Mr. Paul Sanarov was unable to meet with Mr. Ignaty Sanarov to discuss the finances of the GRL, due to COVID 19, the Appellants stated the GRL rental payments totalled \$210.00 for 2015, 2016, and 2017. The Appellants noted Mr. Paul Sanarov expended “thousands of days” worth of time, fuel and equipment to clear land to rebuild the fences.⁴¹ The Director calculated GRL rent payments at \$265.63 for the three years. The Board accepts the Director’s calculations as being more accurate.

[119] The Director noted new evidence regarding alleged payment arrears for the years 2019 and 2020. The Board refuses to consider such evidence, which is irrelevant to this appeal, was not properly brought before the Board, and is not in the Department’s Record.

[120] The Director referred to the Director’s Initial Submission, which argued the objective of assessing proceeds was to restore the economic status quo before a contravention occurred.

[121] The Board considered the intent of the proceeds portion of the Administrative Penalty. If the objective of assessing proceeds is to restore the economic status quo, then the profit made by the Appellants from the Proceeds is a relevant consideration, and any expenses

⁴¹ Appellants’ letter to the Board, dated September 16, 2020.

the Appellants incurred is part of the calculation of the profits. Rent for the GRL and the taxes paid are part of leaseholder's operating expenses and should be considered in the profit calculation. The Board notes the Director confirmed he had considered rent and leases in previous situations.

[122] The Board finds the Director erred in the determination of a material fact on the face of the record by not including the taxes and rent paid by the Appellants in 2015, 2016, and 2017. The Board finds the total taxes and rent paid by the Appellants for the GRL to be \$363.99 (\$265.63 + \$98.36). This amount should be deducted from the total Proceeds as follows:

$$\begin{array}{r} \$3,750.00 \\ - \quad \$363.99 \\ \hline \$3,386.01 \end{array}$$

The Board finds the amount of the Proceeds should be \$3,386.01.

VII. DECISION

[123] The Board finds the Director erred in the determination of a material fact on the face of the record in the assessment of the Administrative Penalty. However, these errors are not fatal to the Administrative Penalty and can be corrected. The Board finds as follows:

- The Director erred in the determination of a material fact on the face of the record by assessing the Administrative Penalty against Mr. Paul Sanarov for the Contraventions that occurred before February 16, 2017.
- The Director erred in the determination of a material fact on the face of the record in the assessment of Count 1. The Board finds the extent of actual or potential loss or damage of the contravention in Count 1 should be changed from Moderate to Minor. The penalty amount for Count 1 should be reduced to \$2,500.00.
- The Director erred in the determination of a material fact on the face of the record in the assessment of Count 2. The Board finds Count 2 should be dismissed for lack of evidence in the Department's Record. The penalty amount for Count 2 would be reduced to zero.

- The Director erred in the determination of a material fact on the face of the record in the assessment of Count 3. The Board finds Count 3 should be varied to reduce the seriousness of the contravention to Moderate. The penalty amount for Count 3 would be reduced to \$650.00.
- The Director erred in the determination of a material fact on the face of the record in the assessment of the degree of willfulness or negligence as a factor to adjust the penalty. The Board finds this factor should be reassessed by half. This would reduce the penalty amount for this factor to \$1,000.00.
- The Director erred in the determination of a material fact on the face of the record in the assessment of the steps taken by the Appellants to avoid or limit the extent of any actual loss or damage or potential damage that could result from the Contraventions, as a factor to adjust the penalty. The Board finds this factor should be reassessed as “Neutral.” This would reduce the assessment of the factor to zero.
- The Director erred in the determination of a material fact on the face of the record in the assessment of the steps taken by the Appellants to ensure the Contraventions would not reoccur, as a factor to adjust the penalty. The Board finds this factor should be reassessed as “Neutral.” This would reduce the assessment of the factor to zero.
- The Director erred in the determination of a material fact on the face of the record in the assessment of the Proceeds. The Proceeds should be reassessed by considering the taxes and the rent paid by the Appellants on the GRL, which totalled \$363.99. This would reduce the Proceeds amount to \$3,386.01.
- The total of the Administrative Penalty should be reduced from \$13,750.00 to \$7,536.01, which is calculated as follows:

Count 1	\$2,500.00
Count 2	\$0.00
Count 3	\$650.00
Factors to adjust the assessment	\$1,000.00
Proceeds	\$3,386.01
<hr/> Total	<hr/> \$7,536.01

VIII. RECOMMENDATION

[124] The Board recommends the Minister vary the decision of the Director to issue Administrative Penalty No. PLA-19/11-AP-LAR-19/11, as follows:

- (a) removing Mr. Paul Sanarov from responsibility for the Contraventions that occurred before February 16, 2017;
- (b) in Count 1, changing the extent of actual or potential loss or damage of the contravention from Moderate to Minor. The penalty amount for Count 1 will be reduced to \$2,500.00;
- (c) dismissing Count 2;
- (d) in Count 3, changing the seriousness of the contravention to Moderate. The penalty amount for Count 3 will be reduced to \$650.00, divided equally between Mr. Ignaty Sanarov and Mr. Paul Sanarov;
- (e) for factors to adjust the assessment:
 - (i) reducing by 50% the assessed amount for the degree of willfulness or negligence. This will reduce the penalty amount for this factor to \$1,000.00;
 - (ii) changing the assessment of steps taken by the Appellants to avoid or limit the extent of any actual loss or damage or potential damage that could result from the Contraventions to “Neutral.” This will reduce the assessment of the factor to zero;
 - (iii) changing the assessment of the steps taken by the Appellants to ensure the Contraventions would not reoccur to “Neutral.” This will reduce the assessment of the factor to zero;
- (f) applying the amount the Appellants paid for taxes, \$98.36, and rent, \$265.63, for the Lands in 2015, 2016, and 2017, to the Proceeds amount. This will reduce the Proceeds amount to \$3,386.01;

[125] The variation of the Administrative Penalty will reduce the Final Assessment from \$13,750.00 to \$7,536.01.

[126] The Administrative Penalty will be due 30 days after the date of the Minister’s Order, and no interest will accrue until the due date.

IX. ADDITIONAL COMMENTS

[127] The Board is very concerned at the lack of documentation in the Department's Record. Documents referred to in the Department's Record were missing, such as the application for Assignment of Disposition dated April 7, 2015, and the March 28, 2017 range improvement application. Other documents the Board expected to see were not included. Specifically, the Board is concerned there is no documentation of AEP's discussions leading up to the decision to issue the Administrative Penalty. A decision to issue an Administrative Penalty, or to refuse an application for a disposition, is not made by the Director in isolation. The Director receives input from AEP staff involved in the file, and that input is often crucial to the decision and the outcome of the appeal. The Board requires a more fulsome record in order to provide the best possible advice to the Minister on appeals.

Dated on October 7, 2020, at Edmonton, Alberta.

"original signed by"
Gordon McClure
Board Chair

"original signed by"
Nick Tywoniuk
Board Member

"original signed by"
Chris Powter
Board Member



ALBERTA
ENVIRONMENT AND PARKS

*Office of the Minister
Government House Leader
MLA, Rimbey-Rocky Mountain House-Sundre*

Ministerial Order
52/2020

Public Lands Act,
R.S.A. 2000, c. P-40


and

Public Lands Administration Regulation,
Alta. Reg. 187/2011

Order Respecting Public Lands Appeal Board
Appeal Nos. 19-0007-0008

I, Jason Nixon, Minister of Environment and Parks, pursuant to section 124 of the *Public Lands Act*, make the order in the attached Appendix, being an Order Respecting Public Lands Appeal Board Appeal Nos. 19-0007-0008.

Dated at the City of Edmonton, Province of Alberta, this 14 day of Oct.,
2020.



Jason Nixon
Minister

Appendix

Order Respecting Public Lands Appeal Board Appeal Nos. 19-0007-0008

With respect to the decision of the Director, Regional Compliance, Lower Athabasca Region, Regulatory Assurance Division, Alberta Environment and Parks (the "Director"), to issue Administrative Penalty No. PLA-19/11-AP-LAR-19/11 (the "Administrative Penalty") to Ignaty Sanarov and Paul Sanarov, in the amount of \$13,500.00, pursuant to the *Public Lands Act*, R.S.A. 2000, c. P-40 (the "Act"), I, Jason Nixon, Minister of Environment and Parks, order that:

1. The decision of the Director to issue the Administrative Penalty be varied by reducing the total amount of the Administrative Penalty from \$13,500.00 to \$7,536.01 as follows:
 - (a) in Count 1 of the Administrative Penalty, changing the extent of actual or potential loss or damage of the contravention as per the Base Penalty Table in section 171(3) of the *Public Lands Administration Regulation* ("PLAR"), from "Moderate" to "Minor", which reduces the penalty amount for Count 1 from \$3,500.00 to \$2,500.00;
 - (b) dismissing Count 2 of the Administrative Penalty, which reduces the penalty amount for Count 2 to \$0.00 (zero);
 - (c) in Count 3 of the Administrative Penalty, changing the seriousness of the contravention as per the Base Penalty Table in section 171(3) of PLAR from "Major" to "Moderate", which reduces the penalty amount for Count 3 from \$1,000.00 to \$650.00;
 - (d) reassessing the factors considered under section 171(4) of PLAR as follows:
 - (i) varying the assessment by the Director under section 171(4)(b) of PLAR for "willfulness or negligence," from \$2,000.00 to \$1,000.00;
 - (ii) varying the assessment by the Director under section 171(4)(c) of PLAR to "Neutral," for "any steps taken by a person responsible for the contravention to avoid or limit the extent of any actual loss or damage that resulted or any potential loss or damage that may reasonably be expected to result from the contravention." The penalty is reduced from \$500.00 to \$0.00 (zero); and

- (iii) varying the assessment by the Director under section 171(4)(d) of PLAR to "Neutral," for "any steps taken by a person responsible for the contravention to prevent its recurrence." The penalty is reduced from \$500.00 to \$0.00 (zero);
- (e) reducing the proceeds amount assessed by the Director under section 59.4(4) of the Act, from \$3,500.00 to \$3,386.01; and
- (f) Paul Sanarov is not responsible for any contraventions in the Administrative Penalty that occurred before February 16, 2017. Therefore, the amount of the Administrative Penalty assessed solely against Paul Sanarov is \$325.00, with the remaining amount of the Administrative Penalty (\$7,211.01) being assessed solely against Ignaty Sanarov.