



# PUBLIC LANDS APPEAL BOARD

306 Peace Hills Trust Tower  
10011 - 109 Street  
Edmonton, Alberta T5J 3S8  
Telephone: 780-427-6207  
Fax: 780-427-4693  
Email: PLAB@gov.ab.ca

2021 ABPLAB 6

May 19, 2021

## Via E-Mail

Mr. Shawn Pitcher  
Amber Acres Livestock Ltd.  
Box 171  
Cardston, AB T0K 0K0  
(Appellants)

Ms. Nicole Hartman  
Environmental Law Section  
Alberta Justice and Solicitor General  
8<sup>th</sup> Floor, Oxbridge Place  
9820 – 106 Street  
Edmonton, AB T5K 2J6  
(Counsel for Director, AEP)

Dear Mr. Pitcher and Ms. Hartman:

**Re: Decision<sup>1</sup> - Shawn Pitcher and Amber Acres Livestock Ltd./Administrative Penalty No. PLA-20/08-AP-SR-20/08/Our File No.: PLAB 20-0026**

This is the decision of Mr. Gordon McClure, Appeals Co-ordinator, Public Lands Appeal Board, regarding the late filing of the Notice of Appeal from Mr. Shawn Pitcher and Amber Acres Livestock Ltd. ("Amber Acres") (collectively, the "Appellants").

## Background

The Appellants appealed the Notice of Administrative Penalty (the "Administrative Penalty") issued against them in the amount of \$10,500.00 by the Director, Regulatory Assurance Division – South Region, Alberta Environment and Parks (the "Director"), on January 12, 2021. The Director alleged the Appellant contravened the *Public Lands Act*, R.S.A. 2000, c. P-40 (the "Act"), by entering onto public land to dig two dugouts for cattle watering, operating a winter campsite without authorization from Alberta Environment and Parks ("AEP"), and providing payments totalling \$6,800.00 to gain access and use of the public lands.

The Administrative Penalty consisted of three counts and one adjustment factor to vary the assessment:

- Count 1: \$3,500.00 for causing or permitting an excavation on public lands;
- Count 2: \$3,500.00 for entering onto and occupying public lands without permission;

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<sup>1</sup> *Pitcher et al. v. Director, Compliance, Regulatory Assurance Division – South Region, Alberta Environment and Parks* (19 May 2021), Appeal No. 20-0026-ID1 (A.P.L.A.B.), 2021 ABPLAB 6.

Count 3: \$2,500.00 for providing payments for the purpose of access onto public lands; and

Adjustment: \$1,000.00 for the seriousness of the contravention.

The total Administrative Penalty was \$10,500.00.

The Appellant filed the Notice of Appeal on February 12, 2021. On February 22, 2021, the Director wrote to the Board, noting the Notice of Appeal was filed outside the timeframes prescribed in section 217(1) of the *Public Lands Administration Regulation*, A.R. 187/2011 ("PLAR"), which reads:

"A notice of appeal must be served on the appeals co-ordinator within  
 (a) 20 days after the appellant received, became aware of or should reasonably have become aware of the decision objected to, or  
 (b) 45 days after the date the decision was made, whichever elapses first."

The Director requested the Board ask the Appellants to explain why the Notice of Appeal was filed late and whether an extension of the filing period under section 217(2) of PLAR<sup>2</sup> would be contrary to the public interest. The Director also indicated that she did not oppose the Appellants' request for a stay of the Administrative Penalty.

The Board notes section 217(2) of PLAR permits the Appeals Co-ordinator to extend the time for filing a Notice of Appeal if it is not contrary to the public interest.

Before deciding whether to accept or dismiss the appeal, the Board asked the Appellants to respond to the following questions:

1. Why was the Notice of Appeal filed late with the Board? and
2. Is it against the public interest to extend the time for filing the appeal?

### Submissions

Mr. Pitcher stated he received the Administrative Penalty via email on January 12, 2021. He said much of his time had been dedicated to dealing with the various tasks and concerns related to the unexpected passing of his father, who was a principal in Amber Acres. Mr. Pitcher requested the Board consider these issues as extenuating circumstances leading to his late filing.

Mr. Pitcher stated:

"Much like parking fines which are not designed to generate revenue, but are used to encourage compliance with parking regulation and serve the public interest by ensuring parking availability, an Administrative Penalty should not be intended to generate revenue, but rather to encourage compliance. Therefore, it is not the fine

<sup>2</sup> Section 217 (2) of PLAR states:

"The appeals co-ordinator may, either before or after the expiry of a period described in subsection (1)(a) or (b), extend the time for service of a notice of appeal if, in the opinion of the appeals co-ordinator, it is not contrary to the public interest to do so."

that serves the public interest, but ensuring compliance with regulations that is the main point of public interest.”<sup>3</sup>

Mr. Pitcher submitted that the public interest is not diminished by extending the expiry period under section 217(1)(a) as compliance is the intent of the Administrative Penalty.

## Director

The Director stated that on January 12, 2021, the Administrative Penalty and the appeal provisions in PLAR were sent to the Appellants via email, registered mail, and regular mail. The Director stated that on January 13, 2021, she spoke with Mr. Pitcher, who confirmed he had received the documents through email.

The Director noted that Mr. Pitcher acknowledged he received the Administrative Penalty on January 12, 2021, and filed his Notice of Appeal on February 12, 2021. The Director submitted that extending the time for the Appellants to serve the Notice of Appeal would “compromise the integrity of the legislation, and the regulatory certainty that is the cornerstone of the appeals; it therefore would be contrary to the public interest.”<sup>4</sup>

The Director referenced the Board’s decision in *Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks* (“*Gionet*”),<sup>5</sup> where the Board found the appellants, in that case, had not provided a reasonable explanation for not filing the Notices of Appeal on time.

The Director stated that legislated time limits to file a notice of appeal provide certainty to AEP as the regulator of public lands and as a participant in the appeal. The Director stated:

“It is critical to AEP’s authority under the Public Lands Act to know when the appeal process is complete. AEP’s authority to enforce the administrative penalty is subject to ‘any right of appeal.’ In the absence of certainty of appeal timelines, there continues to be the possibility that the penalty could be varied or reversed, and it is not until the appeal period expires that AEP is in a position to commence enforcement proceedings, if required.”<sup>6</sup>

The Director submitted that the Appellants had not demonstrated sufficient grounds to warrant the Board granting an extension of the timeline to file the appeal. The Director stated: “Mr. Pitcher has not met the onus of demonstrating their extenuating circumstances in this case that warrant extending the period to file his appeal.”<sup>7</sup> The Director said the steps to appeal are not onerous and involve completing the notice of appeal form available on the Board’s website and then serving it on the Board. The Director stated, “... it would’ve been a simple matter for Mr. Pitcher to fill out the form by February 1, 2021. Mr. Pitcher had ample time to prepare and file his notice of appeal within the statutory appeal period.”<sup>8</sup>

<sup>3</sup> Appellant’s Initial Submission re: Preliminary Motion, March 31, 2021, at page 1.

<sup>4</sup> Director’s Response Submission re: Preliminary Motion, April 15, 2021, at page 2.

<sup>5</sup> *Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks* (4 September 2018), Appeal Nos. 17-0014-0016-D (A.P.L.A.B.).

<sup>6</sup> Director’s Response Submission re: Preliminary Motion, April 15, 2021, at page 2.

<sup>7</sup> Director’s Response Submission re: Preliminary Motion, April 15, 2021, at page 3.

<sup>8</sup> Director’s Response Submission re: Preliminary Motion, April 15, 2021, at page 3.



## Appellants' Rebuttal

Mr. Pitcher stated that from mid-January through to April, Amber Acres is calving approximately six hundred cows, an average of eight calves per day. Mr. Pitcher noted that the calves must be attended to within a short period after their birth and may require intervention to ensure that they live. Mr. Pitcher said they had early winter farm responsibilities along with calving and were busy meeting requirements from AEP on a creek crossing project. Mr. Pitcher stated the creek crossing project took up significant time during calving season. Mr. Pitcher noted he was also dealing with his parents' serious health issues, which eventually resulted in his father's death on February 21, 2021. Mr. Pitcher stated:

"While I can appreciate that it is necessary to deal with these matters on a timely basis, I truly need and want to have my appeal heard. I disagree that the public interest is hurt in any way by allowing my late appeal when the extenuating circumstances outlined above are considered. I do not believe the public interest is served by the enforcement of arbitrary deadlines whose timing is controlled solely by the enforcement entity."<sup>9</sup>

## Analysis

The Director issued the Administrative Penalty on January 12, 2021, and the Appellants filed the Notice of Appeal on February 12, 2021, 30 days later. Section 217(1) of PLAR provides two possible deadlines for filing a Notice of Appeal. The first is that a Notice of Appeal may be served on the Appeals Co-ordinator "20 days after the appellant received, became aware of or should reasonably have become aware of the decision objected to." If an appellant did not receive the decision or was unaware of the decision, then the deadline to serve the Notice of Appeal is 45 days after the decision was made.

The legislation contemplates situations where it would be in the public interest to extend the deadline for an appellant to serve the Notice of Appeal on the Appeals Co-ordinator. Accordingly, section 217(2) of PLAR provides for the extension of the period to serve the Notice of Appeal, if, in the Appeals Co-ordinator's opinion, it is not contrary to the public interest. As this is a discretionary power, the Appeals Co-ordinator must determine what the public interest is on a case by case basis.

The Board notes that neither the Act nor PLAR provides a definition or interpretation of the term "public interest." The Board has reviewed case law to assist in determining the appropriate exercise of the discretion to act in the public interest. In *Memorial Gardens Association (Canada) Limited v. Colwood Cemetery Company*, the Supreme Court of Canada held that public interest:

"... is predominantly the formulation of an opinion. Facts must, of course, be established to justify a decision by the Commission but that decision is one which cannot be made without a substantial exercise of administrative discretion. In delegating this administrative discretion to the Commission the Legislature has delegated to that body the responsibility of deciding, in the public interest ... and in reaching that decision the degree of need and of desirability is left to the discretion of the Commission."<sup>10</sup>

<sup>9</sup> Appellant's Rebuttal Submission, re: Preliminary Motion, May 3, 2021, at page 1.

<sup>10</sup> *Memorial Gardens Association (Canada) Limited v. Colwood Cemetery Company*, [1985] SCR 353 at page 357.

The discretion to determine the public interest must be exercised within the parameters of the Act and PLAR. Macaulay and Sprague, the authors of *Practice and Procedure Before Administrative Tribunals*, stated that the discretionary determination of the public interest must take into account the interests reflected in the legislation governing the discretion.<sup>11</sup> The purpose of the Act and PLAR is to ensure public lands are managed responsibly throughout the Province. A key part of that management is balancing the various competing interests of people who want to use the land for different purposes, and ensuring the land is available for future generations.

The nature of the issue in this appeal is an enforcement proceeding. In this case, the Director had determined (and for this decision, the Board does not have to agree or disagree with this assessment) the Appellant contravened the legislation by paying to enter onto public lands and construct dugouts without proper authorization. The unauthorized use of public lands is directly contrary to AEP's responsibility to manage public lands properly, and the use of administrative penalties is one of the tools the Director uses to respond to such contraventions.

In *Gionet*, the Board reviewed some basic principles the Appeals Co-ordinator considers when determining whether to extend the time to file a Notice of Appeal:

- the time limits for filing an appeal was included in the Act and PLAR in order to provide a level of certainty to the appeal process;
- the authority to extend an appeal period is used only in extenuating circumstances, as it would render the appeal period meaningless if extensions were routinely granted;
- the Board should not extend the appeal period without a valid reason for doing so; and
- the onus is on an appellant to provide sufficient reasons to grant the extension.

Mr. Pitcher said the issuance of the Administrative Penalty coincided with the illness of his parents and the death of his father, calving season, and extensive hours spent addressing opposition to an authorized creek crossing. Despite the significant personal stresses of those circumstances, Mr. Pitcher served the Appeals Co-ordinator with a Notice of Appeal within 30 days after receiving the Administrative Penalty.

The public interest in this appeal requires weighing the importance of maintaining integrity in the regulatory process and ensuring administrative penalties are addressed in a timely manner against the rights of appellants to proceed with their appeals. In this case, the Board finds the Appellants provided a reasonable explanation for the delay in submitting the Notice of Appeal. The Board finds the public interest is not served by an overly strict exercise of the discretion granted by the legislature to the Appeals Co-ordinator to extend the time to serve a notice of appeal where there are extenuating individual circumstances that prevented the Appellants from meeting the timelines.

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<sup>11</sup> In its decision in *Wamer v. Alberta (Environment and Sustainable Resource Development)*, 2014 ABPLAB 14-0010, the Board considered the comment from Robert W. Macaulay and James L.H. Sprague:

"The concept of doing something in the 'public interest' refers to actions or decisions which are seen in the context of the spirit and intent of the legislation granting the authority as resulting in the good, or the benefit, or the well-being, of the public (to use different words to convey essentially the same meaning). Beyond that, the term does not have a specific meaning but takes its parameters from the legislative context in which it is found. The application of the phrase involves the value judgment, or discretion, of the decision-maker that the thing being done will be, in the context of the relevant legislation, to the benefit of the public." Macaulay and Sprague, *Practice and Procedure before Administrative Tribunals*, page 8.2.

**Decision**

The Appeals Co-ordinator considered the legislation as a whole, the circumstances and arguments of the Director and the Appellants, and the relevant case law. In the Appeal Co-ordinator's opinion it is not contrary to the public interest to extend the time for the Appellants to serve the Notice of Appeal on the Appeals Co-ordinator. Accordingly, the Appeals Co-ordinator extends the time for service of the Notice of Appeal as per section 217(2) of PLAR.

**Obiter**

As a final comment, while not relevant to the Appeal Co-ordinator's findings, the Board finds the Director acted correctly and responsibly in serving the Appellants the Administrative Penalty by email, registered mail, and regular mail, and in following up to confirm the Appellants' receipt of the Administrative Penalty. In the Board's view, while this is not necessary, it is good practice.

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,



Gordon McClure  
Chair & Appeals Coordinator  
Public Lands Appeal Board

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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