
DECISION NO. 2010-WIL-018(a)

In the matter of an appeal under section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488.

BETWEEN:	Blueberry River First Nation	APPELLANT
AND:	Regional Manager	RESPONDENT
AND:	Dustin Roe	THIRD PARTY
BEFORE:	A Panel of the Environmental Appeal Board Alan Andison, Chair	
DATE:	Conducted by way of written submissions concluding on September 21, 2010	
APPEARING:	For the Appellant: Melinda J. Skeels, Counsel For the Respondent: Joseph McBride, Counsel For the Third Party: Katie Roe	

APPEAL

[1] The Blueberry River First Nation (the "First Nation") appeals the July 6, 2010 decision of Maurice Lirette, Regional Manager, Environmental Stewardship (the "Regional Manager"), Northern Region - Peace, Ministry of Environment (the "Ministry"). The Regional Manager issued a guide outfitter licence (the "Licence") to Dustin Roe, who is named in guiding territory certificate number 701240 (the "Certificate"). The Certificate and licence give Mr. Roe the exclusive control over guiding privileges in the territory described in the Certificate.

[2] The Environmental Appeal Board has the authority to hear this appeal pursuant to section 93 of the *Environmental Management Act* and section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488 (the "Act"). Section 101.1(5) of the *Act* provides that the Board may:

- (a) send the matter back to the regional manager or director, with directions,
- (b) confirm, reverse or vary the decision being appealed, or
- (c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

[3] The First Nation requests that the Board "quash" the Regional Manager's decision to issue the Licence to Mr. Roe. It also requests that a guide outfitter

licence for the area covered by the Certificate be issued to a person chosen by the First Nation.

BACKGROUND

[4] This appeal involves a dispute between the First Nation, which is the apparent owner of the Certificate, and Mr. Roe, the person named on the Certificate. The dispute arose, in part, because the First Nation cannot be named on the Certificate due to certain requirements in the *Act*. Only a natural person may be named on a guiding territory certificate, because section 59 of the *Act* states that a certificate may be issued to a "person" or a group of persons who meet certain criteria, and section 1 of the *Act* defines person as "a natural person" for the purposes of issuing a guiding territory certificate. In addition, before the *Act* was amended in June 2009, a guiding territory certificate (then called a guide outfitter certificate) could only be issued to a person who was a licensed guide outfitter. If the purchaser of a certificate cannot meet all of the statutory requirements, the purchaser cannot be named on the certificate. As a result, some purchasers make private arrangements or agreements with a licensed guide, whereby the guide is named on the certificate and operates under the certificate for the benefit of the purchaser.

[5] The First Nation submits that, although Mr. Roe is the person named on the Certificate, the First Nation is the beneficial owner of the Certificate, having purchased it in 1999 for over \$800,000. The First Nation submits that, since 2006, Mr. Roe and his parents, Dean and Katie Roe, operated a guide outfitting business on behalf of the First Nation in the territory covered by the Certificate. Dean and Katie Roe operate MVP Outfitters. Dustin Roe is an employee of MVP Outfitters.

[6] The First Nation has not provided the Board or the Regional Manager with a written agreement or other document confirming that it is the beneficial owner of the Certificate, or confirming the terms of any agreement it may have made with MVP Outfitters or Mr. Roe. However, in his submissions to the Board, Mr. Roe does not dispute that the First Nation is the beneficial owner of the Certificate. Similarly, the Regional Manager submits that the First Nation is "very likely" the beneficial owner of the Certificate.

[7] Following is a summary of events that lead up to the appeal.

[8] In July 2006, Mr. Roe applied to the Ministry to be issued the Certificate. In support of that application, the former Chief of the First Nation issued a letter dated July 26, 2006, to a Permitting and Licensing Officer with the Ministry. The Letter refers to transferring the Certificate and an annual guide licence to Mr. Roe "to operate on behalf of" the First Nation. The letter states that the First Nation had "no concerns with Mr. Roe operating the licence."

[9] Also in July 2006, the First Nation sent to the Ministry a form titled "Relinquishment of Guide Area". A "Relinquishment of Guide Area" is a standard Ministry form stating that the person who holds a licence and/or guiding territory certificate relinquishes the right to guide in the territory to another person. In this case, the form submitted in 2006 refers to the Certificate and is signed by Angela

Watson as the relinquishing guide. The space on the form for naming the transferee was left blank.

[10] On August 15, 2006, the Certificate was issued to Mr. Roe. The Certificate is signed by Mr. Roe and the former Regional Manager. The Certificate states that it is an "indenture" between Her Majesty the Queen in Right of the Province of British Columbia and Mr. Roe, and is valid until July 27, 2016. A schedule attached to the Certificate describes the territory that it covers.

[11] Also on August 15, 2006, the former Regional Manager issued a guide outfitter licence to Mr. Roe, authorizing him to guide in the territory covered by the Certificate. Attached as a schedule to the licence are quotas allowing Mr. Roe's clients to take specific numbers of certain wildlife species including bison, moose, grizzly bear, and stone sheep.

[12] Guide outfitting licences for the territory covered by the Certificate were again issued to Mr. Roe in 2007, 2008 and 2009.

[13] The First Nation owns Pink Mountain Ranch (the "Ranch"), which is located in the territory covered by the Certificate. The Ranch is used as a base for guide outfitting activities conducted under the Certificate, including hunting free range bison. The gate at the Ranch controls the road to access bison hunting in the territory covered by the Certificate. From sometime in 2006 until late April 2010, Dean and Katie Roe lived at and managed the Ranch.

[14] In February 2010, Mr. Roe filed an application with the Ministry to renew his annual guide outfitter licence for the territory covered by the Certificate.

[15] In or about April 2010, the Chief and Council of the First Nation became aware of Mr. Roe's application for a licence. They began taking steps to end the First Nation's business relationship with the Roes and MVP Outfitters Ltd., and to have a different guide operate in the territory covered by the Certificate.

[16] In a letter dated April 19, 2010, the First Nation's Chief advised the Regional Manager that Mr. Roe holds the Certificate in order to operate on behalf of the First Nation, and that the First Nation was dissatisfied with Mr. Roe's operation of the business. The Chief also stated that "we have taken steps to sever our business relationship with Mr. Roe" and "we intend to take steps in the near future to remove Mr. Roe's name from the Certificate." He emphasized that "we strenuously object to the renewal of Mr. Roe's annual licence to operate in the territory covered by the Certificate."

[17] In a separate letter dated April 19, 2010, the First Nation's legal counsel notified Dean and Katie Roe that the First Nation no longer required their "management services" at the Ranch, and she asked that they vacate the premises by April 26, 2010. Enclosed with that letter was a copy of the Chief's April 19, 2010 letter to the Regional Manager.

[18] By a letter dated April 20, 2010, the First Nation's legal counsel advised Mr. Roe that the First Nation did not support the renewal of his guide outfitter licence, and she requested that Mr. Roe complete an application to transfer the Certificate. Enclosed with that letter was a copy of the Chief's April 19, 2010, letter to the Regional Manager.

[19] In a letter dated April 29, 2010, the Regional Manager advised that he had decided not to issue a guide outfitter licence to Mr. Roe "at this time." The Regional Manager's letter states, in part, as follows:

... although Dustin Roe is named on the certificate, there is sufficient evidence that the territory and assets of the territory belong to the Blueberry River First Nations. I have decided not to issue a guide outfitter licence to Dustin Roe at this time.

I encourage both parties to reconcile their differences as soon as possible. I want to ensure that clients who have booked hunts are accommodated and the reputation of the guiding industry is maintained.

...

[20] In a letter dated May 28, 2010, the Regional Manager again encouraged the parties to negotiate a settlement. That letter states:

Further to my letter of April 29, 2010 on guide territory #701240, I encourage both parties to reach a third party agreement on the operation of the guide area as soon as possible.

I chose to delay issuing a guide outfitting licence for Certificate #701240 to give the parties time to reconcile their differences. However, the moose and bison hunting seasons are fast approaching and a guide should be licensed in time to accommodate hunters that have booked hunts.

As such, I am providing both parties with 30 days (June 28) to negotiate and recommend to me who should be licensed to guide and operate the area this hunting season. I plan on issuing a guide licence for this area in early July.

[21] By a letter dated June 28, 2010, the First Nation's legal counsel submitted to the Ministry an application to transfer the Certificate from Mr. Roe to a member of the First Nation's Band Council. The letter states that Mr. Roe had not responded to the First Nation's April 20, 2010 letter requesting that he complete the transfer application form.

[22] In a letter dated July 6, 2010, the Chief of the First Nation advised the Regional Manager that the First Nation supported transferring the Certificate to a member of the Band Council.

[23] However, by a letter also dated July 6, 2010, the Regional Manager advised the First Nation and Mr. Roe that he had issued the Licence to Mr. Roe. That letter states:

Further to my letter of May 28, 2010 encouraging both parties to reach an agreement on the operation of the guide area, I have decided today to issue a guide outfitter licence to Dustin Roe. I am mindful that clients have been booked and reasonable time is required for a guide to prepare for these hunts. The moose hunting season opens in approximately 6 weeks. I also understand that clients have made travel plans, booked flights and making changes at this point is problematic.

I am also aware that the guide territory was purchased by the Blueberry River First Nation and that Dustin Roe was nominated by Chief Yahey to hold the guide territory certificate and operate on behalf of the Blueberry First Nations (letter of July 26, 2006). The terms of this third party business agreement [are] outside the administration of the Wildlife Act. A Regional Manager may issue a guide outfitter licence under sec. 51 of the Wildlife Act provided that the holder of the guide territory certificate provides consent. The territory certificate is held by Dustin Roe (issued to him on August 15, 2006) and he has provided consent to issue the guide outfitter licence.

I understand that negotiations are ongoing and a resolution may be forthcoming. If a new operator is mutually agreed to then that person would need to become an assistant guide to Dustin Roe and could then apply for a sec. 2(q) permit to act as a guide for this year. I cannot issue two guide licenses for the same certificated area.

[24] On July 14, 2010, the Board received the First Nation's Notice of Appeal. The First Nation's grounds for appeal may be summarized as follows:

- a) The Regional Manager's decision was based on an incorrect and unreasonable interpretation of section 51 of the *Act*. Specifically, he read the *Act* strictly so as to wholly disregard the wishes and interests of the First Nation, which is the owner of the Certificate, the territory and its assets.
- b) The Regional Manager's decision was made in a context that denied procedural fairness to the First Nation.

[25] The First Nation requests that the Board "quash" the Regional Manager's decision to issue the Licence to Mr. Roe. The Board notes that it has no jurisdiction under section 101.1(5) of the *Act* to quash a decision, but the Board may reverse a decision that has been appealed.

[26] Both the Regional Manager and Mr. Roe submit that the Regional Manager's decision should be confirmed and the appeal should be dismissed.

ISSUES

1. Whether the Regional Manager's decision was based on an incorrect and unreasonable interpretation of section 51 of the *Act*.
2. Whether the Regional Manager's decision was made in a context that denied procedural fairness to the First Nation.

RELEVANT LEGISLATION

Under section 51(1) of the *Act*, a regional manager has the discretion to issue a guide outfitter's licence, as follows:

51 (1) A regional manager may

- (a) may issue a guide outfitter licence to a person if all of the following apply:
- (i) the person is a citizen of Canada or a permanent resident of Canada;
 - (ii) the person has public liability insurance prescribed by regulation;
 - (iii) the person has other qualifications prescribed by regulation, and
- (b) must issue a guide outfitter licence to a person if the person is a person to whom the regional manager is obliged under the *Labour Mobility Act* to issue a guide outfitter licence.

- (2) A guide outfitter licence authorizes the holder to guide persons to hunt only for those species of game and in the area described in the licence.
- (3) If an area is part of a guiding territory assigned in a guiding territory certificate, the regional manager may not issue a guide outfitter licence under subsection (1) authorizing a person to guide in the area unless the person provides proof, satisfactory to the regional manager, that the person has the consent of the holder of the guiding territory certificate.

[27] Under section 59 of the *Act*, a regional manager also has the discretion to issue a guiding territory certificate:

- 59** (1) A regional manager may issue a guiding territory certificate to a person who, or to a group of persons each of whom,
- (a) is a citizen of Canada or a permanent resident of Canada,
 - (b) is 19 years of age or older, and
 - (c) has other qualifications prescribed by regulation.
- (2) The director may specify the form of and conditions contained in a guiding territory certificate.
- (3) Subject to a permit issued under section 70 (1) (b), a guiding territory certificate grants to the holder the exclusive control over guiding privileges in the area described in the certificate for the period stated in the certificate, which may not exceed 10 years.

...

[28] "Person" is defined in section 1 of the *Act* as follows:

"person", for the purpose of issuing a licence, limited entry hunting authorization, or guiding territory certificate or a registration of a trapline, means a natural person;

[29] A guiding licence or certificate may be transferred, provided that the transfer is authorized by the regional manager:

- 62** The following may not be transferred without the authorization of the regional manager:

- (a) the privileges conferred in a guide outfitter licence;
- (b) the privileges conferred in a portion of the guiding area described in a guide outfitter licence;
- (c) the privileges conferred in a guiding territory certificate;
- (d) the privileges conferred in a portion of the guiding territory held under a guiding territory certificate;
- (e) a guiding territory certificate or an interest in a guiding territory certificate.

DISCUSSION AND ANALYSIS

1. Whether the Regional Manager's decision was based on an incorrect and unreasonable interpretation of section 51 of the *Act*.

Parties' submissions

[30] The First Nation argues that the Regional Manager misinterpreted the *Act*, resulting in a failure to consider the First Nation's interests and wishes. The First Nation submits that the failure to consider its wishes is contrary to the Board's finding in *Winger v. Regional Manager* (Appeal No. 2006-WIL-018(a), issued April 12, 2007) ("*Winger*"), that a regional manager should consider the interests and wishes of a beneficial interest holder of a certificate. The First Nation submits that it is also contrary to the BC Supreme Court's findings in *Turnagain Holdings Ltd. v. Environmental Appeal Board et al.*, 2001 BCSC 795 ("*Turnagain*").

[31] Specifically, the First Nation submits that the Regional Manager interpreted section 51 of the *Act* too narrowly, and without regard to the decision in *Winger*, by finding that Mr. Roe's consent was the only requirement he needed to consider in deciding whether to issue the Licence. The First Nation submits that Mr. Roe's name appears on the Certificate only because the *Act*'s requirements before June 2009 prevented the First Nation from being named on the Certificate. The First Nation submits that the Regional Manager was obliged, based on *Turnagain* and *Winger*, to look beyond the plain meaning of section 51, and to consult with and consider the interests and wishes of the First Nation as the beneficial owner of the Certificate.

[32] The Regional Manager submits that the First Nation is "very likely" the beneficial owner of the Certificate. He acknowledges that arrangements whereby certificates are issued in the name of a natural person "nominee" arise because the *Act* requires that a certificate be held by a natural person. The Regional Manager submits that this limitation in the *Act* has, in this case, been addressed over the years by issuing the Certificate in the name of a natural person nominee of the First Nation, and by the Ministry following a policy of ensuring that the First Nation has input on any dealings involving the Certificate. He further submits that the Ministry is generally aware of the practice of guiding territory certificates being held "in

trust" for beneficial owners to avoid the *Act's* requirements, although the Ministry does not condone this practice.

[33] The Regional Manager submits that he had no documentary evidence objectively describing the relationship between the First Nation and Mr. Roe or MVP Outfitters, or establishing whether the First Nation has any enforceable right to require Mr. Roe to relinquish the Certificate or to otherwise affect the legal relationship between the Ministry and Mr. Roe. The Regional Manager submits that all he had was a bare, albeit uncontested, assertion that the First Nation is the beneficial owner of the Certificate.

[34] In addition, the Regional Manager submits that the facts in the present appeal are distinguishable from those in *Winger*. Specifically, Mr. Roe is currently the person named on the Certificate, whereas in *Winger* the guide was no longer named on the certificate when he applied for a licence for the area covered by that certificate. In *Winger*, the certificate was valid for only one year and it had expired.

[35] The Regional Manager submits that he was well aware of the First Nation's objections before he issued the licence to Mr. Roe. He submits that he provided the First Nation with ample opportunity to show that it had the right to "trump" Mr. Roe's request for a licence, or trump Mr. Roe's consent to the issuance of a licence, and the First Nation's response was that its wishes should prevail because it is the beneficial owner of the Certificate. The Regional Manager argues that the First Nation's beneficial ownership of the Certificate does not necessarily give it the right to override the wishes of the holder of the Certificate. The Regional Manager submits that, absent a compelling reason not to abide by the wishes of Mr. Roe, as the "legal interest holder" of the guiding privileges, it was reasonable to issue a licence to Mr. Roe.

[36] Mr. Roe submits that he is the holder of the Certificate, and the Regional Manager acted correctly under section 51 of the *Act* in issuing him the Licence. He submits that, in April 2010, he expressed to the Regional Manager the importance of issuing a licence to him because MVP Outfitters had booked clients for the 2010 hunting season, and it would be contrary to the interests of all parties if booked hunts were cancelled. He submits that MVP Outfitters has continued preparing for and organizing the hunts booked for 2010, and if the Board reverses the Regional Manager's decision, then MVP Outfitter's clients will be unable to fulfill their hunts and it will be too late for another guide to arrange any hunts in the territory.

[37] He submits that *Winger* is distinguishable from the present appeal on the basis that the guide in *Winger* had signed an agreement to hold the certificate for one year only, which is not the case here.

[38] In reply, the First Nation submits that there is no evidence that the Regional Manager sought proof of the First Nation's rights or authority in relation to the guiding territory. The First Nation argues that the Regional Manager is in no position to fault the First Nation for not providing evidence of the details of its business arrangement with Mr. Roe.

Panel's findings

[39] Based on the evidence presented by the parties, the Panel finds that the First Nation is very likely the beneficial owner of the Certificate. The documentary evidence shows that the First Nation purchased the Certificate in 1999, and since then, it has 'nominated' a guide outfitter to hold the Certificate on behalf of the First Nation, and to operate a guiding business in the territory for the benefit of the First Nation. The other parties do not challenge the First Nation's claim that it is the beneficial owner of the Certificate.

[40] The parties also do not dispute that Mr. Roe was, at the time of the Regional Manager's decision to issue the Licence, the person named on the Certificate. There is no evidence before the Panel that Mr. Roe has ceased to be the person named on the Certificate, either by way of a transfer under section 62 of the *Act* or some other means.

[41] Although there is no documentary evidence before the Panel establishing the terms of the arrangement between the First Nation and Mr. Roe or MVP Outfitters, the issues of statutory interpretation and procedural fairness in this appeal can be decided without evidence of the details of their arrangement. Those issues can be decided based on the evidence that the First Nation is the beneficial owner of the Certificate, and Mr. Roe is the person named on the Certificate.

[42] The parties' submissions suggest that they have differing views on who is the "holder" of the Certificate, and what the word "holder" means in this context. The First Nation submits that it is the owner and "beneficial interest holder" of the Certificate, whereas the Regional Manager submits that Mr. Roe is the "holder" of the Certificate and the "legal interest holder" of the guiding privileges.

[43] The parties did not provide submissions on the meaning of the word "holder" in the context of section 51 of the *Act*. However, the statutory interpretation issue requires the Panel to consider the meaning of that word, in the context of the relevant section of the *Act*.

[44] The *Merriam-Webster Dictionary* defines "holder" as follows:

- 1: a person that holds: as
 - a (1) : OWNER 2) : TENANT
 - b : a person in possession of and legally entitled to receive payment of a bill, note, or check

[45] *Black's Law Dictionary* (7th ed., 1999) defines "holder" as follows:

1. A person who has legal possession of a negotiable instrument and is entitled to receive payment on it. 2. A person with legal possession of a document of title or an investment security. 3. A person who possesses or uses property.

[46] Based on those definitions, the Panel finds that legal possession of a thing is a key characteristic of being the "holder" of that thing. It is also clear that, in general, the holder of a thing may be either the thing's owner or another person with legal possession of the thing, such as a tenant or a nominee of the owner. The

Panel next turns to the relevant provisions of the *Act* to determine the intended meaning of the word "holder" in relation to a guiding territory certificate.

[47] According to section 59(3) of the *Act*, "a guiding territory certificate grants to the holder the exclusive control over guiding privileges in the area described in the certificate for the period stated in the certificate, which may not exceed 10 years" [underlining added]. In this case, the Certificate was issued to Mr. Roe in 2006, at which time the First Nation's Chief advised the Ministry that it had no concerns about Mr. Roe operating in the territory, and the Certificate remains valid until August 2016. This means that Mr. Roe has "exclusive control" over guiding privileges in the area described in the Certificate until August 2016. The Panel finds that this amounts to possession of the privileges granted under the Certificate, albeit for a limited period of time, and for the benefit of the First Nation as the beneficial owner of the Certificate.

[48] In addition, section 51(3) of the *Act* clearly states that the Regional Manager may not issue a guide outfitter licence authorizing a person to guide in the area covered by a certificate unless the person provides proof, satisfactory to the Regional Manager, that the person has the consent of the "holder" of the certificate. This requirement for the certificate holder's consent is consistent with the fact that the "holder" of a certificate has exclusive control over guiding privileges in the area described in a certificate.

[49] Given the language in those provisions, and given the facts in this case, the Panel finds that Mr. Roe is the "holder" of the Certificate for the purposes of sections 51 and 59 of the *Act*. Based on the evidence, the Panel finds that the First Nation, as the beneficial owner of the Certificate, has nominated Mr. Roe to be the "holder" of the Certificate for the purpose of meeting the requirements in the *Act*.

[50] The Panel further finds that the Regional Manager did not interpret section 51 in an incorrect or unreasonably narrow manner. Mr. Roe is the "holder" of the Certificate, and he consented to being issued a licence to guide in the area covered by the Certificate, which meets the requirement in section 51(3) of the *Act*. Although the First Nation's practice of nominating a natural person to hold the Certificate on its behalf is not uncommon, and was known to the Regional Manager, such arrangements are not contemplated or recognized in the *Act*. Whatever the actual arrangement or agreement between the First Nation and Mr. Roe may be, it is a private agreement between those two parties. There is no indication, either express or implied, in the *Act*, that the Regional Manager was required to consider the interests and wishes of the beneficial interest holder of a certificate when exercising his discretion under section 51. Accordingly, the Panel finds that the Regional Manager's decision to issue the Licence to Mr. Roe was not based on an incorrect or unreasonable interpretation of section 51 of the *Act*.

[51] That is not to say that the Regional Manager did not have an obligation, in accordance with the common law principles of procedural fairness, to consider the First Nation's interest in the Certificate and their views regarding who should be licensed to operate in the Certificate area. Accordingly, the Panel turns to the issue of procedural fairness.

2. Whether the Regional Manager's decision was made in a context that denied procedural fairness to the First Nation.

Parties' submissions

[52] The First Nation submits that the Regional Manager denied procedural fairness to the First Nation in at least two respects:

- he failed to consider their wishes, which they had a legitimate expectation that he would consider; and
- he failed to provide adequate reasons for his decision.

[53] The First Nation submits that they had a legitimate expectation that they would be consulted and their views would be considered by the Regional Manager, given: his knowledge that Mr. Roe operated on behalf of the First Nation; his request for the First Nation's input on the licence application; and, his consideration and deference to their wishes in his April 29, 2010 letter.

[54] In addition, the First Nation submits that the Regional Manager was obliged by the principles of procedural fairness to provide adequate reasons for his decision, and he failed to explain his reason for concluding that he need not consider the First Nation's wishes. The First Nation further submits that the Regional Manager's July 6, 2010 letter provides no justification or explanation for his decision to issue the Licence to Mr. Roe, contrary to his earlier position, implicit in his April 29, 2010 letter, that the First Nation's objection provided a sufficient basis for denying Mr. Roe's licence.

[55] The Regional Manager submits that he considered the First Nation's views before he issued the Licence. He maintains that he recognized the First Nation's beneficial interest in the territory as a direct interest, based on the Court's decision in *Turnagain*, and he contacted the First Nation and requested their input on Mr. Roe's licence application. The Regional Manager submits that the First Nation advised him that they objected to the issuance of a licence to Mr. Roe, and consequently, he decided on April 29, 2010 not to issue a licence at that time, and to give the First Nation and Mr. Roe time to negotiate. He further submits that, on May 28, 2010, he advised them that he was giving them 30 more days to negotiate and recommend to him who should be licensed to guide in the territory during the 2010 season, as the hunting season was approaching and clients were booked. He submits that it was not his responsibility to resolve the dispute between the First Nation and Mr. Roe, but he tried to be fair and give the parties time to negotiate a solution for the 2010 hunting season.

[56] Further, the Regional Manager submits that the reasons in his July 6, 2010 decision were adequate in the context, and he did not reverse his earlier position. He argues that the First Nation's submissions confuse procedural rights with substantive rights. He submits that when a party does not get what it wants, that does not equate to an unfair process. He submits that he considered the First Nation's interests, and he held the licence application in abeyance to give the parties time to settle their differences, but with the hunting season approaching and no resolution forthcoming, he decided to issue a licence to the incumbent guide as the best solution in the circumstances.

[57] Mr. Roe submits that the Regional Manager considered the interests of all parties before he issued the licence.

[58] In reply, the First Nation submits that the evidence does not support the Regional Manager's contention that he seriously considered the First Nation's wishes, and the reasons for his decision do not indicate such.

Panel's findings

[59] The Panel has considered this Board's previous decision in *Winger*, and the Court's decision in *Turnagain*. Although the facts in those decisions are somewhat different from those in the present appeal, and the relevant legislation has been amended since those decisions were issued, the Panel finds that the principles in those decisions are instructive.

[60] In *Winger*, the Board applied the principles set out in *Turnagain* and found that a regional manager "can and should consider the interests and wishes of a beneficial owner" of a certificate (page 13 of *Winger*). The Panel agrees with the approach in *Winger*, and finds that it is relevant to the present appeal.

[61] The Panel further finds that the Regional Manager did have an obligation, in accordance with the common law principles of procedural fairness, to consider the First Nation's interests and their views regarding who should be licensed to operate in the Certificate area. Similar to *Turnagain*, it is clear that the First Nation has made a significant investment in the Certificate, the First Nation is the beneficial owner of the Certificate, and decisions affecting the Certificate may affect the interests of the First Nation. Consequently, the Panel finds that the Regional Manager, and now this Board, should consider the interests and wishes of the First Nation in regard to the issuance of a licence to guide in the territory covered by the Certificate during the 2010 hunting season.

[62] However, in terms of the level of procedural fairness owed to the First Nation in the circumstances, there are some important differences between the facts in the present appeal and those in *Turnagain*. In the present case, the appealed decision's effects on the beneficial owner are different from those of the appealed decision in *Turnagain*. In *Turnagain*, the Ministry's Deputy Director had decided to cancel the certificate due to misconduct by the guide named on the certificate, and the Board confirmed that decision. On review, the Court held that the refusal to allow the beneficial owner to call evidence and make a final submission in those circumstances amounted to denying it "the right to make full answer and defence" (para. 25). In contrast, in the present case, there has been no suspension or cancellation of the Certificate, and the Regional Manager was not considering whether to issue an administrative penalty. Rather, he was considering whether to issue a licence to operate under the Certificate, and the Licence was issued so that the privileges granted by the Certificate could be exercised this season. The First Nation does not object to the issuance of a licence *per se*; rather, it objects to the Licence being issued to Mr. Roe. While the issuance of a licence to Mr. Roe may affect the First Nation's private negotiations with Mr. Roe and MVP Outfitters, the decision did not affect the First Nation's beneficial ownership of the Certificate or the exercise of the guiding privileges granted under the Certificate.

[63] In these circumstances, the level of procedural fairness owed to the First Nation may not be as high as that which was owed to the beneficial owner in *Turnagain*.

[64] The Panel finds that the evidence and submissions of the parties establish that the Regional Manager recognized that the First Nation was the beneficial owner of the Certificate, and he considered the First Nation's interests and wishes before he issued the licence to Mr. Roe. The First Nation was given an opportunity to make submissions to the Regional Manager regarding Mr. Roe's application, and it is clear from the correspondence that the Regional Manager was aware of the First Nation's objections and took them into account, in accordance with the principles in *Turnagain*. The Regional Manager's letters dated April 29, 2010 and May 28, 2010 indicate that he took the First Nation's wishes into account by delaying his decision, in order to give the parties time to settle their differences and negotiate how to accommodate clients who had booked guided hunts for the 2010 season. The Panel finds that the Regional Manager's decision-making process met the requirements of procedural fairness in the circumstances.

[65] Furthermore, even if there were any procedural defects in the Regional Manager's decision-making process, the hearing of this appeal before the Board has cured those defects. The Board conducted the appeal as a new hearing under section 101.1(4) of the *Act*, and the First Nation, as the Appellant in this proceeding, had an opportunity to make submissions, present evidence, and make reply submissions. In contrast, the beneficial owner of the certificate in *Turnagain* did not have an opportunity to call evidence or make final submissions, and was denied either party or intervenor status.

[66] In addition, the Panel finds that, although the reasons in the Regional Manager's July 6, 2010 decision are brief and succinct, they are adequate reasons in the circumstances. He explains the basis for his exercise of discretion under section 51 of the *Act*.

DECISION

[67] In making this decision, the Panel has considered all of the evidence and arguments provided, whether or not they have been specifically reiterated here.

[68] For the reasons provided above, the Panel confirms the Regional Manager's decision to issue a guide outfitter licence to Mr. Roe.

[69] Accordingly, the appeal is dismissed.

"Alan Andison"

Alan Andison, Chair
Environmental Appeal Board

October 27, 2010