ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – August 28, 2018

IN THE MATTER OF sections 91, 92, 95, and 97 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12;

-and-

IN THE MATTER OF an appeal filed by Bevan Janzen with respect to the decision of the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, to issue *Environmental Protection and Enhancement Act* Approval No. 382974-01-00 to Alberta Agriculture and Forestry.

Cite as: *Janzen* v. *Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks*, re: *Alberta Agriculture and Forestry* (28 August 2018), Appeal No. 17-064-D (A.E.A.B.).

BEFORE: Mr. Alex MacWilliam, Board Chair.

SUBMISSIONS BY:

Appellants:	Mr. Bevan Janzen.
Approval Holders:	Alberta Agriculture and Forestry, represented by Ms. Nicole Kimmel.
Director:	Mr. Muhammad Aziz, Director, Red Deer North Saskatchewan Region, Alberta Environment and Parks, represented by Ms. Lana Robins, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued an Approval under the *Environmental Protection and Enhancement Act* to Alberta Agriculture and Forestry to apply pesticides and the herbicide Diquat for research and control of flowering rush plants growing in the waters and on the bed and shore of Lake Isle.

Mr. Bevan Janzen (the Appellant) filed an appeal with the Environmental Appeals Board (the Board) of AEP's decision to issue the Approval.

AEP asked the Board to dismiss the appeal on the grounds the Appellant was not directly affected. After reviewing the submissions provided by the Appellant and AEP, the Board found the Appellant did not demonstrate he was directly affected by AEP's decision to issue the Approval. Although the Appellant was genuinely interested in the protection of the waters in Lake Isle, his interests were too general in nature to show he was directly affected by the Approval.

Therefore, the Board dismissed the appeal.

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I. INTRODUCTION

[1] These are the Environmental Appeals Board's (the "Board") decision and reasons regarding the preliminary motions raised in respect of the appeal of the issuance of Approval No. 382974-01-00 (the "Approval"), under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA"), by the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks (the "Director"). The Approval was issued to Alberta Agriculture and Forestry (the "Approval Holder"). Mr. Bevan Janzen (the "Appellant") appealed the decision to issue the Approval.

[2] The Approval permitted the application of pesticides in or within 30 metres of an open body of water, specifically Lake Isle and any islands located within sections 25, 26, 27, 35, and 36-53-6 W5M in Lac Ste. Anne County, Alberta. The application of the pesticides under the Approval is restricted to applications for research and control of flowering rush plants growing in the waters and bed and shore of Lake Isle.

[3] The Director filed a preliminary motion asking the Board to dismiss the Appellant's appeal on the grounds the Appellant was not directly affected by the Director's decision to issue the Approval.

[4] The Board received and reviewed written submissions from the Appellant and Director on this preliminary motion and determined the Appellant was not directly affected by the issuance of the Amending Approval. Therefore, pursuant to section 95(5)(a)(iii) of EPEA,[1] the Board dismissed the appeal.

II. BACKGROUND

[5] On August 29, 2017, the Director issued the Approval to the Approval Holder.

[6] On September 12, 2017, the Board received a Notice of Appeal from the Appellant appealing the issuance of the Approval.

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[1] Section 95(5)(a)(iii) of EPEA states: "The Board may dismiss a notice of appeal if…for any reason the Board considers that the notice of appeal is not properly before it…."

[7] On September 18, 2017, the Board acknowledged the Notice of Appeal and notified the Director and Approval Holder of the appeal.

[8] On September 27, 2017, the Board asked the Appellant, Approval Holder, and Director (collectively, the "Participants") for their available dates for a mediation meeting.

[9] On October 6, 2017, the Director filed a motion to dismiss the appeal on the basis the Appellant was not directly affected by the issuance of the Approval. The Board set a schedule to receive submissions from the Participants on this motion. On October 23, 2017, the Board provided a revised schedule because the Appellant did not provide his initial submission by the date previously set.

[10] On November 1, 2017, the Director filed a second motion to dismiss the appeal on the basis the Appellant failed to file his submissions in accordance with the initial schedule and the revised schedule.

[11] On November 2, 2017, the Approval Holder notified the Board it was not making any submissions with respect to the directly affected motion.

[12] On November 2, 2017, the Board notified the Appellant that, if he did not contact the Board by November 9, 2017, the Board would consider the Director's request to dismiss the appeal for failure to comply with a written notice pursuant to section 95(5)(a)(iv) of EPEA, being the notices to the Appellant of the initial and revised dates for filing his written submissions.[2]

[13] On November 14, 2017, in response to a request from the Appellant, the Board granted the Appellant an extension of time to provide his written submission.

[14] On November 16, 2017, the Director asked for an extension to provide his submission given the time extensions granted to the Appellant to file his submissions. The Board granted the time extension to the Director.

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[2] Section 95(5)(a)(iv) states:

"The Board

(a) may dismiss a notice of appeal if

(iv) the person who submitted the notice of appeal fails to comply with a written notice under section 92…."

[15] The Board received submissions from the Appellant and Director between November 15, 2017, and December 6, 2017.

III. SUBMISSIONS

A. Appellant

[16] The Appellant stated the proposed project allowed by the Approval will affect the greater public and indigenous peoples' rights to sustenance.

[17] The Appellant believed the Approval was issued without comprehensive consultation with surrounding communities, and information provided at information sessions was incomplete, biased, and there was no representation from First Nations. He said questions regarding long term impacts could not be answered.

[18] The Appellant requested the Board consider granting him public interest standing.

[19] The Appellant stated existing processes and policies are outdated. The Appellant said it the responsibility of the community to ensure integrity in the process and to look out for neighbours who may not have the advantage of legal representation and funding resources to engage on the same level as the provincial government.

[20] The Appellant stated the Approval was based on a very narrow focus, included only a few residents, and had no regard to the larger population and potential long term consequences of the proposed project.

[21] The Appellant expressed concern that no long-term research was provided with respect to the effect using Diquat could have on future generations.

[22] The Appellant noted a First Nation Community gets their drinking water from Lake Isle.

[23] The Appellant expressed concern about the responsible handling of tax dollars and whether this project was a wise use of tax dollars.

[24] The Appellant explained he lives on the southwest side of Lac Ste. Anne with a vested interest in the health of the water. He said he was concerned the public was not educated

on this issue from all perspectives, and unbiased language should be used when presenting the facts.

[25] The Appellant asked that further research be conducted to address concerns of all parties, including recreational users and sustenance users of the lake and surrounding area.

[26] The Appellant hoped indigenous peoples and scientists could work collaboratively to restore the quality of the water.

[27] The Appellant asked the Approval be reversed.

B. Director

[28] The Director explained flowering rush is a prohibited aquatic invasive species under the *Fisheries (Alberta) Act*, R.S.A. 2000, c. F-16 and is a prohibited noxious weed under the *Weed Control Regulation*, Alta. Reg. 19/2010, and is required to be destroyed in accordance with the *Weed Control Act*, S.A. 2008, c. W- 5.1. The Director further explained flowering rush is controlled through repeated cutting or hand digging for smaller infestations or chemically through the application of the herbicide Diquat. The Director stated Diquat is registered for use in Alberta to eradicate flowering rush in lakes, ponds, irrigation canals, and slow moving streams subject to appropriate approvals being obtained from AEP.

[29] The Director said the Approval allows the Approval Holder to apply Diquat on four islands and along certain portions of the bed and shore of Lake Isle to control the spread of and eradicate flowering rush.

[30] The Director noted the onus is on the Appellant to prove, on a balance of probabilities and on a *prima facie* basis, the Appellant is directly affected by the decision.

[31] The Director said the Appellant submitted a Statement of Concern but was found by the Director to not be directly affected.

[32] The Director stated the Appellant did not provide any information regarding how he is personally and directly affected by the Approval, whether potential harm or impairment was actual or imminent, and how the Appellant had a substantial interest that surpassed the generalized interest of all residents who are affected by the Approval.

[33] The Director noted the Appellant does not live on property adjacent to Lake Isle but lives on the southwest side of Lac Ste. Anne, a lake located northeast of Lake Isle.

[34] The Director stated that, since the Appellant does not live adjacent to or within sufficiently close proximity to Lake Isle to be within the area of environmental impact from the project, there is no actual, imminent, or direct effect on him and, therefore, the Appellant cannot claim standing based on geographic proximity.

[35] The Director stated the effect of the Approval on the Appellant as a taxpayer does not establish a direct effect on the Appellant since the concern with taxes was too remote and too speculative.[3]

[36] In response to the Appellant's claims the Approval was issued without comprehensive consultation with surrounding communities, the Director explained that four First Nations, including the Alexis Nakota Sioux Nation, were notified of the proposed Approval and were provided with an opportunity to provide input through a consultation process.

[37] The Director noted the Appellant did not represent others in the appeal as his Notice of Appeal was filed in his personal capacity and not as a representative of a group or community.

[38] The Director said the Appellant did not provide any evidence to support his claim that Lake Isle is a source of drinking water or that he personally gets drinking water from Lake Isle.

[39] The Director noted Alberta Health Services has issued warnings against drinking untreated water directly from any lake, and it has issued advisories regarding severe blue-green algae conditions in Lake Isle every year since 2011, a condition that renders the water unfit for human consumption.

[40] The Director stated the Appellant's "vested interest in the health of the water" does not translate into a personal direct affect arising from the Approval.

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[3] The Director referred to a previous Board decision. See: *Blodgett* v. *Director, Northeast Boreal Region, Regional Services, Alberta Environment re: Genstar Development Company* (28 December 2001), Appeal No. 07-074-D (A.E.A.B.) at paragraph 60.

[41] The Director noted the Board has decided, and the Court has upheld, the Board does not have jurisdiction to grant standing on the basis of public interest.

[42] The Director summarized the reasons why the Appellant is not directly affected:

1. the Appellant did not establish a direct causal effect to him personally;
2. having interest in a matter does not translate into a personal direct affect arising from the Approval;
3. the Appellant is not located within sufficiently close proximity to Lake Isle to be within the area of environmental impact associated with the Approval;
4. the statements provided relate to broad groups and communities rather than demonstrating a personal and direct effect on the Appellant, and failed to demonstrate a substantial interest that surpasses the common interest of all residents affected by the Approval;
5. the Appellant did not demonstrate a potential or reasonable probability that he would be actually or imminently harmed by the Approval; and
6. the Board does not have jurisdiction to grant the Appellant standing on the basis of public interest.

[43] The Director submitted the Board previously held an appellant must be directly affected in order to have standing, stating the decision must have an effect on the person and the effect must be direct. The Director stated that for a decision to have an effect on a person there must be a demonstrated personal interest that surpasses the common interests of all residents. The Director said the effect caused must be actual, and not merely speculative.

[44] The Director submitted the Appellant has not provided any information indicating how he is directly affected and has not established a substantial interest in the Approval. The Director noted the Appellant does not reside on property adjacent to Lake Isle, but on Lac St. Anne, which is a separate lake located northeast of Lake Isle. The Director stated the Appellant did not provide any evidence to demonstrate he gets his drinking water from Lake Isle, and noted severe blue-green algae conditions in Lake Isle makes the water unfit for human construction.

[45] The Director said the Board had previously held concerns regarding taxes were too remote to find the Appellant directly affected.[4]

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[4] See: *Blodgett* v. *Director, Northeast Boreal Region, Regional Services, Alberta Environment*, re: *Genstar Development Company* (28 December 2001) Appeal No. 01-074-D (A.E.A.B.).

[46] The Director noted four First Nations in the area were notified of the proposed Approval and had an opportunity to provide input.

[47] The Director submitted the Board previously held it had no jurisdiction to grant standing on the basis of public interest, a position upheld by the Court.[5]

[48] The Director submitted the Appellant did not meet the onus of showing he is directly affected by the Approval and, therefore, the appeal should be dismissed for lack of standing.

C. Appellant's Rebuttal Submission

[49] The Appellant stated Lake Isle is part of an ecological system which provides drinking water and sustenance to area residents.

[50] The Appellant expressed concern about the lack of full community representation and the availability of research documents for surrounding lake and watershed users.

[51] The Appellant stated indigenous perspectives were not considered, and they were not made fully aware of the details and possible side effects of the Director's decision to issue the Approval.

[52] The Appellant argued public interest standing should be granted because there is a serious issue to consider given the actions cannot be reversed. The Appellant said the current processes and definitions do not consider all perspectives, and legal representation is not freely available to individuals or indigenous peoples who wish to address outdated policy and laws.

[53] The Appellant requested the Board reverse the Director's decision to issue the Approval allowing the herbicide be applied to Lake Isle. The Appellant suggested including indigenous perspectives to collectively find solutions to ensure safe access to water and food.

[54] The Appellant stated the appeal was in reference to inadequate processes and policies and the need to properly consult with First Nations communities, per Article 27 of the United Nations Declaration on the Rights of Indigenous Peoples. The Appellant submitted the

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[5] See: *Alberta Wilderness Association et al.* v. *Director, Southern Region, Environmental Management, Alberta Environment*, re: *Eastern Irrigation District* (30 August 2011), Appeal No. 10-038-043-ID1 (A.E.A.B.); and *Alberta Wilderness Association et al.* v. *Alberta* (*Environmental Appeals Board)*, 2013 ABQB 44.

issue was not properly presented to the communities and concerns raised by the communities had not been addressed.

[55] The Appellant requested the Board grant him public interest standing, referencing three decisions of the Supreme Court of Canada in which public standing was granted: *Thorson* v. *Attorney General of Canada*, [1975] 1 SCR 138, 1974 CanLll 6 (SCC); *Minister of Justice (Can.)* v. *Borowski*, [1981] 2 SCR 575; and *Canadian Council of Churches* v. *Canada (Minister of Employment and Immigration)*, [1992] 1 SCR 236.[6]

D. Analysis

[56] The Board has discussed the issue of "directly affected" in numerous decisions. The Board received guidance on this issue from the decision of the Court of Queen's Bench in *Court* v. *Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) ("*Court*").

[57] In the *Court* decision, Justice McIntyre summarized the following principles regarding standing before the Board:

> "First, the issue of standing is a preliminary issue to be decided before the merits are decided. See Re: Bildson, [1998] A.E.A.B. No. 33 at para. 4. …
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> Second, the appellant must prove, on a balance of probabilities, that he or she is personally directly affected by the approval being appealed. The appellant need not prove that the personal effects are unique or different from those of any other Albertan or even from those of any other user of the area in question. See Bildson at paras. 21-24. …
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> Third, in proving on a balance of probabilities, that he or she will be harmed or impaired by the approved project, the appellant must show that the approved project will harm a natural resource that the appellant uses or will harm the appellant's use of a natural resource. The greater the proximity between the location of the appellant's use and the approved project, the more likely the appellant will be able to make the requisite factual showing. See Bildson at para. 33:

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[6] The Appellant introduced a test from *Minister of Justice (Can.)* v. *Borowski*, [1981] 2 SCR 575, referred to as the "Borowski test:"

(1) Is the issue raised a serious one?;

(2) Does the party bringing the case have a personal stake in the matter, or have a genuine interest in the validity of the legislation?; and

(3) Is there no other reasonable or effective way to bring the issue before the court?

> What is 'extremely significant' is that the appellant must show that the approved project will harm a natural resource (e.g. air, water, wildlife) which the appellant uses, or that the project will harm the appellant's use of a natural resource. The greater the proximity between the location of the appellant's use of the natural resource at issue and the approved project, the more likely the appellant will be able to make the requisite factual showing. Obviously, if an appellant has a legal right or entitlement to lands adjacent to the project, that legal interest would usually be compelling evidence of proximity. However, having a legal right that is injured by a project is not the only way in which an appellant can show proximity between its use of resources and the project in question.

Fourth, the appellant need not prove, by a preponderance of evidence, that he or she will in fact be harmed or impaired by the approved project. The appellant need only prove a potential or reasonable probability for harm. See Mizera at para. 26. In Bildson at para. 39, the Board stated:

> [T]he 'preponderance of evidence' standard applies to the appellant's burden of proving standing. However, for standing purposes, an appellant need not prove, by a preponderance of evidence, that he will in fact be harmed by the project in question. Rather, the Board has stated that an appellant need only prove a 'potential' or 'reasonable probability' for harm. The Board believes that the Department's submission to the [A]EUB, together with Mr. Bildson's own letters to the [A]EUB and to the Department, make a prima facie showing of a potential harm to the area's wildlife and water resources, both of which Mr. Bildson uses extensively. Neither the Director nor Smoky River Coal sufficiently rebutted Mr. Bildson's factual proof.

In Re: Vetsch, [1996] A.E.A.B.D. No. 10 at para. 20, the Board ruled:

> While the burden is on the appellant, and while the standard accepted by the Board is a balance of probabilities, the Board may accept that the standard of proof varies depending on whether it is a preliminary meeting to determine jurisdiction or a full hearing on the merits once jurisdiction exists. If it is the former, and where proof of causation is not possible due to lack of information and proof to a level of scientific certainty must be made, this leads to at least two inequities: first that appellants may have to prove their standing twice (at the preliminary meeting stage and again at the hearing) and second, that in those cases (such as the present) where an Approval has been issued for the first time without an operating history, it cannot be open to individual appellants to argue causation because there can be no injury where a plant has never operated."[7]

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[7] *Court* v. *Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134 at paragraphs 67 to 71, 2 Admin. L.R. (4d) 71 (Alta. Q.B.). See: *Bildson* v. *Acting Director of North Eastern Slopes Region, Alberta Environmental Protection,* re: *Smoky River Coal Limited* (19 October 1998), Appeal No. 98-230-D (A.E.A.B.) ("*Bildson*"); *Mizera et al.* v. *Director, Northeast Boreal and Parkland Regions, Alberta*

Justice McIntyre concluded by stating:

> "To achieve standing under the Act, an appellant is required to demonstrate, on a prima facie basis, that he or she is 'directly affected' by the approved project, that is, that there is a potential or reasonable probability that he or she will be harmed by the approved project. Of course, at the end of the day, the Board, in its wisdom, may decide that it does not accept the prima facie case put forward by the appellant. By definition, prima facie cases can be rebutted…."[8]

[58] When the Board assesses the directly affected status of an appellant, the Board looks at how the person uses the area where the project will be located, how the project will affect the environment, and how the effect on the environment will affect the person's use of the area. The closer these elements are connected (their proximity), the more likely the person is directly affected. The onus is on the appellant to present a *prima facie* case that he or she is directly affected.[9]

[59] In determining whether a person has standing to bring forward an appeal, the Board relies on the principles articulated in the *Court* decision.[10] The onus is on appellants to demonstrate to the Board that there is a reasonable possibility they will be directly affected by the decision of the Director. The effect must be plausible and relevant to the Board's jurisdiction in order for the Board to consider it sufficient to grant standing.

[60] As stated, the effect must be reasonably probable. It is not sufficient to show an appellant is possibly affected, they must also show the possibility is reasonably probable to occur. An affect that is too remote, speculative, or is not likely to impact an appellant's interests will not form the basis to find an appellant directly affected. Both the reasonableness and the possibility of the affect must be shown.

Environmental Protection, re: *Beaver Regional Waste Management Services Commission* (21 December 1998), Appeal Nos. 98-231-98-234-D (A.E.A.B.) ("*Mizera*"); and *Vetsch* v. *Alberta (Director of Chemicals Assessment & Management Division)* (1997), 22 C.E.L.R. (N.S.) 230 (Alta. Env. App. Bd.), (*sub nom. Lorraine Vetsch et al.* v. *Director of Chemicals Assessment and Management, Alberta Environmental Protection*) (28 October 1996), Appeal Nos. 96-015 to 96-017, 96-019 to 96-067 (A.E.A.B.).

[8] *Court* v. *Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134 at paragraph 75, 2 Admin. L.R. (4d) 71 (Alta. Q.B.).

[9] *Court* v. *Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R.(3d) 134 at paragraph 75, 2 Admin. L.R. (4d) 71 (Alta. Q.B.).

[10] *Court* v. *Alberta (Director, Bow Region, Regional Services, Alberta Environment)*, 1 C.E.L.R. (3d) 134, 2 Admin. L.R. (4d) 71 (Alta. Q.B.).

[61] The effect on an appellant does not have to be unique in kind or magnitude.[11] However, the effect required by the Board needs to be more than an effect on the public at large (it must be personal and individual in nature), and the interest which an appellant is asserting as being affected must be something more than the generalized interest that all Albertans have in protecting the environment.[12] Under the *Environmental Protection and Enhancement Act* and the *Water Act*, the Legislature chose to restrict the right of appeal to those who are directly affected by the Director's decision. If the Legislature had intended for any member of the public to be allowed to appeal, it could have used the phrase "any person" in describing who has the right to appeal rather than "any person…who is directly affected by the Director's decision." It did not; it chose to restrict the right of appeal to a more limited class. The Legislature, in using the more restrictive language, also did not intend for the Board to provide a general right of review for the Director's decision; it intended it be something narrower.

[62] In this case the Appellant did not provide any information that indicates he is directly affected by the Approval, or that he would be harmed or impaired by the approved project. The Appellant stated he lives on the southwest side of Lac Ste. Anne, approximately 21 kilometres from Lake Isle. The distance between the Appellant's residence and Lake Isle suggests the Appellant is not directly affected. He did not provide any information or evidence to show he has a direct connection to the lake that is the subject of the approval (Lake Isle), or whether he uses the lake in a meaningful way.

[63] The Appellant stated he has a vested interest in the health of the water. The Board appreciates the Appellant taking an interest in the matter of maintaining healthy water bodies and sharing his perspective with respect to the need for comprehensive consultation. However, a genuine interest does not equate to being directly affected. The legislation did not include as potential appellants those persons with a genuine interest in the environment. The test is whether an appellant is directly affected. This requires there be a connection between an

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[11] *Bildson* v. *Acting Director of North Eastern Slopes Region, Alberta Environmental Protection re: Smoky River Coal Limited* (19 October 1998) Appeal No. 98-230-D (A.E.A.B.).

[12] *Kostuch* v. *Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (N.S.) 246 at paragraphs 34 and 35 (Alta. Env. App. Bd.), (sub nom. *Martha Kostuch* v. *Director, Air and Water Approvals Division, Alberta Environmental Protection)* (23 August 1995), Appeal No. 94-017 (A.E.A.B.). These passages are cited with approval in *Kostuch* v. *Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1997), 21 C.E.L.R. (N.S.) 257 at paragraph 25 (Alta. Q.B.).

appellant and the decision of the Director. If all that was required was a genuine interest, almost anyone could file an appeal and be granted standing. The legislators clearly intended to narrow the list of potential appellants.

[64] The Appellant argued he should be granted standing based on public interest standing. The Board's enabling legislation does not provide it with the power to determine public interest standing. In order for the Board to have the jurisdiction to hear an appeal, the legislation requires the appeal to be filed by someone who has filed a Statement of Concern and who is directly affected by the Director's decision.

[65] The Court confirmed this in *Alberta Wilderness Association* v. *Alberta (Environmental Appeals Board)*, 2013, ABQB 44, paragraph 27:

> "With respect to an appeal of the Director's decisions to amend water licenses, the Board only has the jurisdiction that was granted to it by the provisions of the *Water Act*. The *Water Act* did not grant the Board the jurisdiction to hear public interest appeals. It can only hear appeals from parties directly affected by the decisions of the Director. The Board receives its jurisdiction from the provisions of the *Water Act*. It is a legislated jurisdiction. The Board cannot exceed that jurisdiction. The Board has no inherent jurisdiction."

[66] The Appellant expressed concern First Nations, including the Alexis Nakota Sioux Nation, were not adequately consulted before the Approval was issued. The Appellant did not indicate he is a member of a First Nation impacted by this Approval.

[67] In any case, it is not within this Board's jurisdiction to consider whether there has been adequate consultation of indigenous communities, as protected by section 35 of the *Canadian Charter of Rights and Freedoms*.[13] Section 11 of the *Administrative Procedures and Jurisdiction Act*[14] sets out that administrative decision bodies do not have jurisdiction to determine a question of constitutional law unless it has been conferred by way of regulation. There are no regulations conferring constitutional jurisdiction on the Board and, as a result, the Board is not in a position to determine the effectiveness of consultation.

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[13] *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canadian Act* 1982 (UK), 1982, c. 11.

[14] *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3.

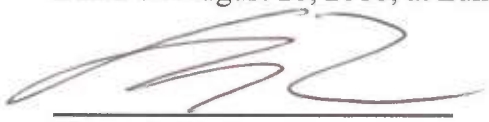
[68] The Appellant has the onus to demonstrate he is directly affected by the issuance of the Approval. Given the Appellant does not live at Lake Isle and he did not provide any information on how he uses Lake Isle or the water from Lake Isle, the Board finds the Appellant is not directly affected by the issuance of the Approval. In addition, the Board does not have jurisdiction to grant public interest standing.

[69] Therefore, the Board dismisses the appeal.

IV. CONCLUSION

[70] The Board finds the Appellant did not meet the onus of demonstrating to the Board he is directly affected by the Director's decision to issue the Approval, and the Board cannot grant public interest standing. Therefore, the Board dismisses the appeal.

Dated on August 28, 2018, at Edmonton, Alberta.



Alex MacWilliam
Board Chair