



Forest Appeals Commission

Citation: *Jaikle Contracting Limited v. Government of British Columbia*, 2025 BCFAC 4

Decision No.: FAC-WFA-24-A004(a)

Decision Date: 2025-05-22

Method of Hearing: Conducted by way of written submissions concluding on October 10, 2024

Decision Type: Preliminary Decision

Panel: Ian Miller, Panel Chair

Appealed Under: *Wildfire Act*, S.B.C 2004, c.31

Between:

Jaikle Contracting Limited

Appellant

And:

Government of British Columbia

Respondent

Appearing on Behalf of the Parties:

For the Appellant: Dan Richardson

For the Respondent: Marina Goodwin

APPLICATION FOR EXTENSION OF TIME TO APPEAL

INTRODUCTION

[1] On August 14, 2024, the Forest Appeals Commission (the “Commission”) received a notice of appeal filed by Mr. Kevin Durack, the owner of Jaikle Contracting Limited (the “Appellant”). The Appellant seeks to appeal a Contravention Order and the associated Penalty Order (the “Orders”) issued on July 12, 2024, by Laurence Bowdige, a delegated decision maker (“DDM”) with the BC Wildfire Service of the Ministry of Forests (the “Ministry”). The Contravention Order was issued under section 26 of the *Wildfire Act*, S.B.C. 2004, c. 31 (“*Wildfire Act*”) and the Penalty Order was issued under section 27(1) of that *Act*.

[2] On receiving the notice of appeal, the Commission noted that the Orders were not appealed within the 30-day statutory time limit to appeal. The Commission may extend the time to file a notice of appeal if satisfied special circumstances exist. This decision addresses whether such special circumstances exist, and whether the Commission should extend the time to appeal the Orders.

BACKGROUND

[3] In the determination that led to the Orders, the DDM found that the Appellant contravened section 6(3)(b)(ii) of the *Wildfire Regulation*, B.C. Reg. 38/2005, while harvesting timber near Mackenzie, BC on August 11, 2021. Specifically, that the Appellant did not keep an adequate fire suppression system at the activity site while carrying out a high-risk activity within 300 metres of forest land or grass land while there was a risk of fire starting or spreading.

[4] The DDM found that none of the defences in the *Wildfire Act* applied. The DDM levied an administrative penalty of \$17,000 against the Appellant for the contravention. The DDM also ordered the Appellant to pay the Province \$1,805,095.38 as compensation for its fire suppression costs, reforestation costs, and for damage to Crown timber.

[5] In the notice of appeal, the Appellant requested an extension of time to appeal since they had to obtain legal representation to assist the Appellant in their case. The statutory appeal period is 30 days from the date the Orders were issued. In this case, the appeal was filed 32 days after the Orders were issued. Under the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the “ATA”) the Commission has the authority to extend the time to file an appeal, even if the time to file has expired, if satisfied that “special circumstances” exist.

[6] In a letter dated August 20, 2024, the Commission asked for submissions on whether the Appellant’s request for an extension of time should be granted.

[7] The Appellant asks the Commission to extend the time to appeal; the Respondent, the Government of British Columbia, opposes the extension of time.

ISSUE

[8] The issue in this appeal is whether there are special circumstances in this case, such that the Commission should grant an extension of time to file the appeal.

LEGAL CONTEXT

[9] Section 24(2) of the *ATA* applies to the Commission pursuant to section 40.1 of the *Wildfire Act* together with section 140.2 of the *Forest and Range Practices Act*, S.B.C. 2002, c. 69.

[10] Section 24(2) of the *ATA* provides:

Time limit for appeals

24 (1) A notice of appeal respecting a decision must be filed within 30 days of the decision being appealed, unless the tribunal's enabling Act provides otherwise.

(2) Despite subsection (1), the tribunal may extend the time to file a notice of appeal, even if the time to file has expired, if satisfied that special circumstances exist.

[emphasis added]

[11] The Commission may consider various factors to determine whether an extension is justified. The Commission's Practice and Procedures Manual (the "Manual") provides details of the factors to be considered in adjudicating whether "special circumstances" are present:

The Commission will take into consideration the length of the delay, whether there is a reasonable and credible explanation for the delay, and the prejudice to those affected by the delay. Other factors not identified could be relevant depending on the circumstances of the particular case.

[12] Although not bound by its precedent, the Commission also takes guidance from *Gary Andrew Brammer v. Government of British Columbia* 2016 BCFAC 1 ("*Brammer*"), in which the Commission considered an application to extend the appeal deadline. In that case, the Commission addressed the consideration of "special circumstances" as follows:

[19] The Panel finds that "special circumstances" is not defined in the *Administrative Tribunals Act*. However, in the context of an administrative

appeal under forestry legislation, the Commission finds that special circumstances may include the reasons for the delay and the degree to which the appellant was (or was not) diligent in pursuing the matter. If the delay was caused by the appellant, the Commission may consider whether there were extenuating circumstances. The Commission may also consider the consequences to the appellant if an extension is denied and the appellant loses their right of appeal, as well as the consequences to the Respondent's interest and the environment if an extension is granted.

[20] The Commission's power to extend the time to appeal should not be exercised lightly. The purpose of an appeal period is to bring finality to a proceeding. Appellants are expected to be diligent in pursuing an appeal. This is especially so under this legislation where an appeal acts as a stay. With the passage of time, the risk of prejudice to the Respondent's interests increases. For example, as more time passes, granting an extension to file an appeal may result in the Respondent being delayed in recovering costs it has incurred or being compensated for losses to Crown resources. In addition, as time passes, it may become more difficult for all parties to gather reliable evidence. This is why an extension will only be granted in special circumstances.

[13] The Panel finds that the excerpted paragraphs 19 and 20 from *Brammer* (included immediately above) are persuasive, and will be adopted in this decision regarding the extension of time to file the appeal.

DISCUSSION AND ANALYSIS

Whether there are special circumstances in this case, such that the Commission should grant an extension of time to file the appeal.

[14] Based on the guidance in the Manual and in *Brammer*, to assess whether there are special circumstances in this case, the following analysis will consider:

- the length of the delay;
- reasonable and credible explanation and reasons for the delay, including the Appellant's diligence in pursuing the matter;
- prejudice to those affected by the delay, including the Appellant's loss of further right of appeal; and
- other factors or extenuating circumstances relevant to the circumstances of this case.

The length of the delay

Appellant's submissions

[15] The Appellant submitted an affidavit from Mr. Durack, in which he swears that he was working in a remote camp in Alberta on July 12, 2024, and that he did not see the Orders until "some point during the following week." After receiving the Orders, Mr. Durack sought to obtain legal counsel, with limited success, as discussed in more detail below. Mr. Durack then contacted the BC Wildfire Service and the Commission and was advised to submit a notice of appeal. That notice was submitted on August 14, 2024.

Respondent's submissions

[16] The Respondent contends that the Appellant received clear instructions in the Contravention Order regarding the deadline to appeal the DDM's determination. That Order states that an appeal must be filed with the Commission within 30 days of the date of the Order. The Respondent also notes that the Appellant did not set out a specific timeframe for the requested extension and has not provided an estimate of when it may be ready to proceed with its appeal.

Panel's findings

[17] The Orders were issued by the DDM on Friday July 12, 2024. The Orders were emailed to Mr. Durack at 11:20 am that day. The Orders state that a request to appeal must be submitted to the Commission within 30 days of the date of the Orders. In this case, the 30th day was Sunday, August 11, 2024. Therefore, the actual deadline for submitting a request to appeal was the end of the first business day following, that is Monday, August 12, 2024, in accordance with Commission Rule 4 and section 25 of the *Interpretation Act*, R.S.B.C. 1996, c. 238. Mr. Durack submitted the notice of appeal by email on or about 4:11 pm on Wednesday, August 14, 2024, just over 40 hours past the deadline, for filing an electronic version of the notice of appeal, which was midnight on August 12, 2024.

[18] Regarding the length of the delay, the Panel finds that the delay was less than 2 days (i.e. 40 hours) and was therefore not substantial.

Explanation and reasons for the delay, including the appellant's diligence in pursuing the matter

Appellant's submissions

[19] The original Orders were e-mailed to Mr. Durack on July 12, 2024. At that time, Mr. Durack was working in a remote camp in Alberta, and he believes he did not see the Orders until sometime the following week. A slightly revised version of the Orders,

correcting a typographical error, was sent to Mr. Durack on July 24, 2024. Mr. Durack initially sought legal assistance from his corporate counsel towards the end of July 2024.

[20] The Appellant submits that, based on the legal advice that Mr. Durack received from his corporate counsel on July 31, 2024, he was operating on the understanding that an application for review of the Orders needed to be submitted by August 14, 2024 (3 weeks after receiving the revised notice on July 24, 2024). The Appellant also submits that, after the initial advice, it had a difficult time obtaining legal counsel due to lack of availability.

[21] The initial legal advice given to Mr. Durack by his corporate counsel also included a referral to another lawyer, Mr. Garth Wright. Mr. Durack spoke with Mr. Wright on August 6, 2024, and found that Mr. Wright could not take Mr. Durack's case. Mr. Wright then referred Mr. Durack to three other lawyers. After unsuccessfully trying to secure legal counsel, Mr. Durack then contacted Ms. Meena Khela of the BC Wildfire Service, and the Commission to ask about the appeal process. Mr. Durack was advised to file a notice of appeal, which he submitted on August 14, 2024. At that time, Mr. Durack was under the impression, based on the advice of his counsel, that he had submitted the form on time.

[22] The Appellant submits that Mr. Durack is not sophisticated or experienced in administrative proceedings or appeal deadlines. It says that, in the circumstances, it was reasonable for Mr. Durack to rely on the advice of a lawyer, and his reliance constitutes a reasonable explanation for filing the notice of appeal two days late.

Respondent's submissions

[23] The Respondent contends that the Appellant has not provided a reasonable and credible explanation for the delay.

[24] The Respondent argues that difficulty in finding counsel in the summer does not constitute a reasonable explanation for not meeting the time limit set out in the ATA and in the Orders. The Respondent contends that the appropriate step in this circumstance is to file a notice of appeal within the legislated time limit, and then request further time to retain counsel and consider whether an amendment to the notice of appeal is needed.

[25] The Respondent notes that the Commission's website provides guidance on how to submit a notice of appeal to assist prospective appellants without counsel.

[26] The Respondent also notes that the Appellant has not provided any specifics of its attempts to secure counsel. Further, the Appellant has not set out a specific timeframe for the requested extension, nor has the Appellant provided an estimate as to when it may be able to proceed with the appeal.

[27] The Respondent contends that the Appellant's reliance on inaccurate advice from his counsel, while unfortunate, was not reasonable, given the instructions provided in the Orders regarding the deadline to appeal.

[28] The Respondent states that Mr. Durack waited until what he understood was the last possible date to contact the Wildfire Branch and the Commission, and filed his notice of appeal.

[29] The Respondent acknowledges that, despite poor cell reception and/or e-mail access, Mr. Durack did communicate with various individuals on various occasions during the 30-day appeal period. However, Mr. Durack still failed to meet the deadline to file the notice of appeal.

[30] The Respondent notes that the chronology provided by Mr. Durack does not specify when Mr. Durack began contacting other lawyers. Assuming these contacts occurred sometime after Mr. Durack's August 6, 2024, conversation with the initial counsel he contacted, the Respondent contends that Mr. Durack waited until about one week before the 30-day deadline to take steps to secure counsel.

[31] The Respondent contends that his pattern of conduct does not constitute diligence, but rather demonstrates a lukewarm approach to the appeal process and the deadlines.

Appellant's Reply

[32] In his affidavit, Mr. Durack specifically denies he had a "lukewarm approach" to the appeal process and deadlines, as has been suggested by the Respondent. Mr. Durack intended to appeal the determinations as soon as he realized the implications of the determinations.

[33] At that time, Mr. Durack was trying to save his business which had been his life's work. Starting in December 2023, the Appellant was having a dispute with the sawmill it was working for, resulting in the mill withholding a significant sum of the Appellant's earnings. Since that time, Mr. Durack has been "working around the clock" to try and save his business. Ultimately, the Appellant shut down and restructured its operations, including selling off machinery.

[34] Mr. Durack says he made diligent efforts to obtain counsel to assist him in filing an appeal. Once those efforts proved unsuccessful, Mr. Durack filed the appeal himself, prior to what he believed to be the deadline.

Panel's findings

[35] Regarding the explanation and reasons for the delay in filing a notice of appeal, the Panel finds it reasonable and credible that Mr. Durack did not personally receive the Orders for as much as a week after it was sent on July 12, 2024. This was due in part to the fact that Mr. Durack was working in a remote location in Alberta at the time and had limited cell reception.

[36] The Panel finds that Mr. Durack's explanation of his efforts and diligence to find and retain legal counsel to assist in defending his case to be reasonable and credible. Between receiving the Orders and filing the notice of appeal, Mr. Durack took efforts to

retain counsel, starting with his corporate lawyer, and including three other lawyers, none of whom were able to take him on as a client. This process was exacerbated by Mr. Durack's work schedule and the communication difficulties he experienced.

[37] The Panel finds it reasonable for Mr. Durack to have relied on the advice of a lawyer, and that reliance constitutes a reasonable and credible explanation for filing the notice of appeal nearly two full days late. The Appellant's corporate counsel misunderstood the review and appeal process and gave Mr. Durack erroneous advice regarding the deadline to file the appeal notice. Mr. Durack subsequently relied upon that advice and filed the notice of appeal within what he believed to be the deadline.

Prejudice to those affected by the delay, including the appellant's loss of further right of appeal

Appellant's submissions

[38] The Appellant notes that the issue of prejudice relates to the prejudice caused by the delay, i.e., it does not relate to prejudice caused by the mere filing of a notice and the prospect of a successful appeal.

[39] As noted in *Brammer*, the Commission may consider the consequences to the Appellant if the extension is denied, and the Appellant loses their right of appeal. The Appellant argues that it is difficult to overstate the prejudice that it will suffer if the deadline to appeal is not extended.

[40] In this case, the Appellant argues that the consequences would be significant. The Appellant has been ordered to pay a total of \$1,822,095.38, which includes an administrative penalty of \$17,000. The Appellant says it ought to be allowed to appeal the considerable amount of the penalty and the stigma of penal consequences.

[41] The Appellant indicates that it may argue on appeal that the OTBH process was conducted in breach of its right to procedural fairness. In *Troy Howard Nelson v. Government of British Columbia*, 2020 BAFAC 6, the Commission found that the appeal hearing process may "cure" any procedural unfairness in the OTBH process. The Appellant argues that if they are not permitted to proceed with the appeal, there will be no opportunity to cure any procedural fairness issues.

[42] The Appellant believes it is obvious that a delay of 48 hours as a result of the late filing of the notice of appeal will not result in any prejudice to the Respondent. The Respondent does not make any suggestion that the delay will result in its suffering any prejudice. It is difficult to envision how the passage of 48 hours could cause any prejudice to the Respondent or prejudice a fair hearing of the appeal.

Respondent's submissions

[43] The Respondent submits that the Appellant is correct that the Respondent does not claim it will suffer actual prejudice because of the Appellant's delay in submitting the Notice of Appeal. However, the Respondent says the prejudice the Appellant says it will suffer if it is not allowed to appeal is not a "special circumstance" which justifies extending the limitation period to appeal.

[44] As the first basis for its prejudice argument, the Appellant points to the significant monetary amount it has been ordered to pay. The financial consequences of a significant penalty or cost recovery order do not constitute a "special circumstance", as orders to pay fire suppression costs can often involve substantial amounts of money.

[45] The Appellant also alleges procedural unfairness in the manner that the OTBH was conducted, and that it will be prejudiced if this unfairness is not corrected on appeal. The Respondent submits that even if this was the case, the fact that the Appellant "may" argue a breach of procedural fairness is not a "special circumstance" that would justify extending the deadline to appeal. The Respondent also argues that the "possible" breaches of procedural fairness identified by the Appellant are unfounded.

Appellant's Reply

[46] The Appellant submits that the Respondent's submissions regarding the merits of any procedural fairness argument is irrelevant to the extension issue and that it ought to have the right to raise issues of procedural fairness in the circumstances of this case. Whether the Appellant's argument will succeed will ultimately be a question for the Commission to decide. The real concern is that the Appellant will not have the opportunity to raise these arguments if the appeal deadline is not extended. The Appellant says this would cause significant prejudice to it.

Panel's findings

[47] Regarding the prejudice to those affected by the delay, including the Appellant's loss of further right of appeal, the Panel finds there to be no significant prejudice to the Respondent in this case for the approximately two-day delay in filing the notice of appeal.

[48] I note that I make no findings with respect to the procedural fairness arguments raised by the parties and only rely on this information about the OTBH for the purpose of determining whether the Appellant would be prejudiced if they were not able to appeal the Orders.

[49] The Panel finds there to be substantial prejudice to the Appellant should the extension application be denied. If the application to extend the appeal deadline is denied, the Appellant would be faced with having to pay a penalty and cost recovery totaling \$1,822,095.38 without further right to appeal at a time when the Appellant is having substantial difficulty in remaining solvent.

Other factors or extenuating circumstances relevant to the circumstances of this case

[50] Neither the Appellant nor the Respondent have presented other factors or extenuating circumstances that are relevant to this case beyond those discussed above.

Summary

[51] In summary, the Panel finds there to be special circumstances in this case which led to the approximately two-day delay in the Appellant filing the notice of appeal. The delay was brief, the explanations and reasons are reasonable and credible, and there would be substantial prejudice to the Appellant if the right to appeal is denied. There is no persuasive evidence of any significant prejudice to the Respondent if the extension of time is granted.

DECISION

[52] For the reasons provided above, the panel finds that there are special circumstances in this case, such that the Commission grants an extension of time to file the notice of appeal pursuant to section 24(2) of the ATA. The Appellant's notice of appeal is accepted.

"Ian Miller"

Ian Miller, Panel Chair
Forest Appeals Commission