

SAHTÚ RENEWABLE RESOURCES BOARD RULING



IN THE MATTER OF: Public Hearing on the Management of Bluenose East ʔekwé (Barren Ground Caribou)

REGARDING: Motion on Conflict of Interest, Bias and Adjournment Issues

HEARD: February 25, 2016
Based on Written Motion and Parties' Submissions

HEARD BY: Paul Latour, Vice-Chair
Lesley Allen, Member
George Barnaby, Member

BASED ON THE WRITTEN SUBMISSIONS OF:

Jennifer Duncan, Legal Counsel	Colville Lake Renewable Resources Council, Ayoni Keh Land Corporation and Behdzi Ahda First Nation (together "Colville Parties"), Applicant
Sarah Kay, Legal Counsel	Department of Justice, Government of the Northwest Territories, Party
Wilfred McNeely Jr. Chief	K'asho Got'ine Community Council, Party

DECISION ON RELIEF (DECISION REASONS TO FOLLOW)

1. Introduction

These are the findings of the Sahtú Renewable Resources Board ("the Board") on the February 23, 2016 motion brought by the Colville Lake Renewable Resources Council, Ayoni Keh Land Corporation And Behdzi Ahda" First Nation (together "Colville Parties").

The Colville Parties are bringing a motion on conflict of interest and bias issues regarding, and requesting an adjournment of, the Public Hearing on the Management of Bluenose East ʔekwé (Barren-Ground Caribou) ("the Hearing"). The Hearing is scheduled to commence on March 1, 2016 in Déłıne, NWT.

The subject matter of the motion deals with concerns about potential conflict of interest or bias on the part of the Board Chair (Michael Neyelle) and two Board Members (Jeff Walker and Leonard Kenny). These three Board Members are therefore recused from the decision on the Motion. The full reasons for decision regarding these findings will be released on March 4, 2016 (or earlier) for the reasons outlined below.

The Colville Parties brought their motion in writing late on February 23, 2016 and asked that the Board consider the motion and render a decision on February 25, 2016. The Board notified other Parties in the Hearing about the motion and invited Parties to make submissions on the motion by 8:30 AM on February 25, 2016.

The Board received submissions from the Government of the Northwest Territories at 7:50AM on February 25. The Board also received a late submission from the K'asho Got'ine Community Council ("K'asho Got'ine") at 12:15 pm. The Board had, by that time, already met to consider the motion but reopened its proceeding to accept and consider the K'asho Got'ine submission in making the Board's decision on the motion.

The Board wishes to avoid further prejudice to the Parties, the Board and all participants created by lack of certainty about whether the Hearing will proceed as scheduled on March 1, 2016. The Board is therefore releasing its disposition on the relief sought by the Colville Parties (including the request for adjournment of the Hearing) and will release its full Reasons for Decision by March 4, 2016 (or earlier).

2. The Relief Sought by the Colville Parties

The Colville Parties seek relief under section 15 and 16.1 of the Board's *Rules for Hearings*, section 4.13 of the Board's *Operating Procedures*, and section 13.8 of the Sahtú Dene and Metis Comprehensive Land Claim ("SDMCLCA").

The Colville Parties' contend that the Board Chair (Michael Neyelle) and two Board Members (Jeff Walker and Leonard Kenny) are in a conflict of interest in the Hearing, and that their participation in the Hearing could give rise to a reasonable apprehension of bias. The Colville Parties request that Michael Neyelle, Jeff Walker and Leonard Kenny recuse themselves from the Hearing. The Colville Parties also request that, if the Board finds that Michael Neyelle, Jeff Walker and Leonard Kenny are in a conflict of interest or their participation could give rise to a reasonable apprehension of bias, that they recuse themselves and the Board adjourn the Hearing until such time as Canada appoints new Board Members or Alternates to fill currently vacant Board positions.

The motion brought by the Colville Parties requests, specifically, the following relief:

1. A determination concerning whether the Board Members named in the Motion are in or are likely to be in a conflict of interest on matters before the Board for decision in the Public Hearing on Management of Bluenose East ʔekwé (Barren-Ground Caribou) convened by the Board on January 11, 2016 and to be held in Délı̨nę on March 1-3;
2. A determination concerning whether the participation of the Board Members named in this Motion on matters before the Board for decision the Délı̨nę Hearing gives rise to a reasonable apprehension of bias;
3. If it is determined that the participation of Board Members named in this Motion on matters before the Board for decision in the Délı̨nę Hearing amounts to a conflict of interest and/or gives rise to a reasonable apprehension of bias, a decision by the Board on whether the Délı̨nę Hearing should be adjourned until such time as alternate Board members can be appointed to the Board in accordance with the SDMCLCA; and
4. Such other determinations, decisions or relief as the Board may grant.

3. The Board's Findings

The Board met on February 25, 2016 to consider the motion brought by the Colville Parties, and the submissions of the Government of the Northwest Territories and K'asho Got'ine.

The Board has decided the following, based on a review of the Motion materials, Parties' submissions and an analysis of the facts and applicable law:

1. The Board finds that Michael Neyelle, Leonard Kenny and Jeff Walker are not currently in a conflict of interest on matters before the Board for decision in the Hearing.
2. The Board finds that Michael Neyelle, Leonard Kenny and Jeff Walker's participation to date in the Hearing does not give rise to a reasonable apprehension of bias.
3. Based on the above findings, it is not necessary for the Board to rule on the Colville Parties' request that the Hearing be adjourned until such time as Board Members or Alternates are appointed by Canada.
4. The Board will allow Parties to bring a motion at any time during the course of the Hearing, should any Party have concerns about whether the conduct of any Board Member gives rise to a concern about a potential conflict of interest or a reasonable apprehension of bias, and the Board will consider the matter at that time.
5. The Board will take the following additional steps to ensure that the Hearing remains procedurally fair:
 - a. During that portion of the Hearing where Délı̄ne's management proposal is presented to the Board, Michael Neyelle will step aside as Chair and the proceedings will be chaired by Vice-Chair Paul Latour.
 - b. During that portion of the Hearing where Délı̄ne's management proposal is presented, Michael Neyelle and Leonard Kenny will not participate in the Délı̄ne panel to present, nor take questions about, the Délı̄ne plan but will remain in the room to hear the evidence and will participate in the Board's final deliberations regarding all evidence in the Hearing.
 - c. During that portion of the Hearing where ENR's management proposal is presented, Jeff Walker will not participate in the ENR panel to present, nor take questions about, the ENR plan but will remain in the room to hear the evidence and will participate in the Board's final deliberations regarding all evidence in the Hearing.

The full Reasons for Decision in this matter will follow by March 4, 2016 or earlier.

DATED this 26th day of February, 2016
SAHTÚ RENEWABLE RESOURCES BOARD



Paul Latour, Vice-Chair
On behalf of the Board: Lesley Allen, George Barnaby