JUDGEMENT:

In the appeal of Mr. Steven Mohr against the Wildlife Act—
Decision of the Deputy Director, dated July 24th, 1985. The
decision of the Deputy Director was to allocate the Wildlife
Management Unit No. 2-02 to Mr. Leo Ouellet, to be included
in his existing guiding area, which was comprised of Manage-
ment Units 3-14, 3-15 and 3-16.

The historical events leading up to this appeal were as follows:

Mr. Mohr had appealed a former decision made by the
Director of the Fish and Wildlife Branch, Ministry of
Environment, to allocate Management Unit 2-02 to Mr. Leo
Ouellet, on the grounds that he had not been given sufficient
and proper consideration during the allocation process. The
Environmental Appeal Board heard that appeal on October 30,
1984, and found "that through no fault of his own, Mr. Mohr
had been deprived of a chance to obtain guiding rights in MU
2-02." The decision of the Board on that appeal was to send
the matter to the Deputy Director of Wildlife with a
directive to review fully the allocation of Management Unit
2-02. The Board also gave the Deputy Director specific
instructions concerning the review. Once the Deputy Director
had made his review, he was then to make a new decision.

The Deputy Director made his new decision on July 24th,
1985, which was essentially to confirm the original decision
of the Director of the Fish and Wildlife Branch. Mr. Mohr
then appealed this decision to the Environmental Appeal Board
on the basis that the Deputy Director had erred when making
his decision because he had not considered certain vital
information.

APPELLANT:

Mr. James Steven Mohr,
Yarrow, B. C.
DECISION:

This Panel of the Environmental Appeal Board, authorized under the Wildlife Act and the Environment Management Act to hear the new appeal of Mr. Steven Mohr against the decision of the Deputy Director of the Wildlife Act of July 24th, 1985, in which he confirmed the assignment of Management Unit 2-02 as part of Mr. Ouellet's guiding area, has considered all of the relevant evidence submitted to it at the hearing on November 20th, 1985, and the evidence in subsequent correspondence from all parties to the appeal, and has decided that the Deputy Director did follow the direction of the Environmental Appeal Board of December 20th, 1984, in all respects, and has properly considered all of those things which Mr. Mohr said that he had not considered.

The appeal is, therefore, dismissed.

Comments of the Board:

1) Two issues were involved in this hearing, which were as follows:

a) Did the Deputy Director consider all of those things which he was supposed to consider when he made his decision?

b) Did the Deputy Director give proper and fair consideration to all of those things when he made his decision?

2) In connection with Item 1(a) above, the appellant, by his own admission, said that "he was not going to suggest that Mr. Halladay had not considered what was put before him". Mr. Halladay was very positive in that what had been put before him was the "Summary of Evidence" from the Appeal Board hearing of October 30th, 1984, and the submissions of Mr. Mohr and Mr. Ouellet - exactly what the Appeal Board had directed him to consider.
3) It was, therefore, very obvious that Mr. Halladay had considered everything that he was supposed to consider.

4) Also, based on the specific grounds for the appeal, the appellant had no direct evidence to give in support of his grounds. He even went so far as to say "it's obvious that there is no way that I can prove that the Deputy Director did not consider certain evidence".

5) The main point that Mr. Mohr sought to bring to the attention of the Panel was that the Deputy Director had not given fair or proper consideration to those things he was supposed to consider; otherwise, how did Leo Ouellett end up with Management Unit 2-02, when he already had Units 3-14, 3-15, 3-16, and some measure of control or guiding rights in Units 8-05, 8-06, 3-32 and 3-33, while he (Mohr) had only been able to obtain control of Management Units 2-09 and 2-10.

6) Mr. Mohr's statements in this regard were disturbing to the Panel, and it should be noted that the matter was not addressed at the formal hearing. This fact subsequently led the Panel to carry on an investigation into Mr. Mohr's allegations; hence, the correspondence following the hearing.

7) From the correspondence and other information put forth at this hearing and at the previous hearings, the Panel found the following:

   a) Mrs. Ouellet holds a guiding certificate for Management Units 8-05 and 8-06 in her own right. She is a licenced guide. Mr. Ouellet, therefore, has no legal means or rights whatsoever to allow him to guide in his wife's territory.

   b) Four other persons have guide outfitters licences in the general area of Management Units 3-32 and 3-33. These four guides are Bryson, Christy, Coldwell and Garrard. Leo Ouellet is not a guide outfitter licenced in an area coincidental with Management Units 3-32 and 3-33.
c) Mr. Ouellet, however, has obtained permits in Management Units 3-32 and 3-33 to guide for cougar only for limited periods in 1982, 1983, 1985 and 1986. The Panel considers this activity in a different category than that allowed in a guide outfitter's certificate.

d) Mr. Ouellet, at substantial expense to himself, was responsible in having Management Unit 2-02 opened up to guiding activity.

8) Having considered all of the information available to it, in the final analysis, the Panel has come to the same conclusion as the Deputy Director. Management Unit 2-02 should be allocated to Mr. Leo Ouellet. In the opinion of the Panel, the Deputy Director has considered all of those things that he was supposed to consider, and has done so in a fair and proper manner.

F.A. Hillier, P. Eng.,
Chairman,
Environmental Appeal Board

Victoria, B. C.
March 26th, 1986
SUMMARY:

The following pages of this Judgement contain a summary of the hearing details and the principal points advanced in the testimony of all parties to the appeal.

F. A. Hillier, P. Eng.,
Chairman
Environmental Appeal Board

Victoria, B. C.
March 26th, 1986
HEARING INFORMATION:

The hearing was held on November 20th, 1985, at 10:30 a.m. in Conference Room No. 2, Robson Square, Vancouver, B. C.

The Board consisted of a Panel of One.

Mr. Frank A. Hillier, P. Eng., Chairman of the Board, was the member of the Board in attendance.

Miss Shirley Mitchell, Executive Secretary to the Board, acted as the recorder for the proceedings.

DECISION OF THE ENVIRONMENTAL APPEAL BOARD OF DECEMBER 20, 1984

"To return this matter to the Director of the Fish and Wildlife Branch (The authority of this position concerning the matter under appeal, was amended April 16, 1985, and vested with the Deputy Director of Wildlife - See Exhibit "A"), and to direct him to review fully the allocation of Management Unit 2-02; such review to include consideration of all the evidence presented at this appeal as summarized in the following pages, and also to include consultation with the Appellant and the Ouellets". (Hearing of October 30th, 1984)


"I have fully reviewed the matter of the allocation of Management Unit 2-02, and I have included in my review all the evidence presented at the appeal board hearing held in Vancouver on October 30, 1984. I have reviewed the comments offered to me by Mr. L.A. MacDonald on behalf of Mr. Mohr (7/3/85; 19/3/85) and by Mr. T. L. Robertson on behalf of Mr. Ouellet (4/4/85). I have also reviewed comments provided in a letter to me by Mr. Wright, a guide outfitter whose guiding territory adjoins MU 2-02. I also contacted, by registered letter, Mrs. Ouellet, another guide whose area adjoins MU-2-02, to determine her interest.
Having considered fully my authority under the Wildlife Act, and all facts and information on this matter before me, it is my decision to confirm the assignment of Management Unit 2-02 as part of Mr. Ouellet's guiding area. My decision is based largely on the evidence showing that Mr. Ouellet and not Mr. Mohr has a long-standing tradition of commercial use of MU-2-02 and that in balance, it would be unfair to remove Mr. Ouellet's opportunity to continue this use in favour of the interests of Mr. Mohr."

THE GROUNDS FOR THE APPEAL:

(1) The Director erred in not considering the issue of economic viability as set out in the evidence for the Environmental Appeal Board on October 30th, 1984.

(2) The Director erred in not reviewing all the evidence taken at the Environmental Appeal Board hearing on October 30th, 1984, but relying only on the summary of the evidence given by the Environmental Appeal Board.

(3) The Director erred in not considering the historical treatment of the Management Unit 2-02, 2-09 and 2-10 as one unit for guiding purposes, and the reasons for such treatment by the Ministry of Environment and its predecessors.

(4) The Director erred in not considering that the use of Management Unit 2-02 by the Respondent, Leo Ouellet, was under an annual permit initially including Management Unit 2-09 and 2-10.

(5) The Director erred in not considering that the annual permits given the Respondent, Leo Ouellet, were often for nuisance animals only.

(6) The Director erred in not considering that the annual permits given for Management Unit 2-02, 2-09 and 2-10 were for the maximum of a one-year period only, and that the Wildlife Branch was under no legal obligation to renew the annual permits with Leo Ouellet.
(7) The Director erred in not considering the intentions of the Appellant for his future employment as a full-time guide operator.

THE ORDER REQUIRED:

No order was requested in the appeal application.

REGISTERED APPELLANT:

The registered appellant was Mr. James Steven Mohr of Yarrow, B.C. He appeared before the Board without legal counsel, although all previous dealings before the Board had been carried out by

Mr. L.A. MacDonald, LL.B.,
Barrister & Solicitor,
Messrs. Patten, Barrett & MacDonald,
Chilliwack, B.C.

RESPONDENT:

The respondent was the Wildlife Branch of the Ministry of Environment, represented as follows:

Mrs. Judith R. Wayte, LL.B. - Legal Counsel
Ministry of Attorney-General

Mr. D.R. (Ray) Halladay, - Witness
Deputy Director, Wildlife Branch

THIRD PARTY TO THE APPEAL:

The Board invited Mr. Leo Ouellet to the appeal and gave him full party status. He was represented as follows:

Mr. Bruce Thompson, LL.B. - Legal Counsel
Barrister & Solicitor,
Robertson, Park, Thompson, Casilio,
Vancouver, B.C.

Mr. Leo Ouellet - Witness
EXHIBITS:

"A" Letter of April 10th, 1985, from Mr. B.E. Marr, Deputy Minister of Environment to Mr. J.H.C. Walker, Director of the Wildlife Branch, appointing the Assistant Director of the Wildlife Branch to the position of Deputy Director of the Wildlife Branch (B.C. Reg. 21/82 & sec.18 Miscellaneous Statutes Amendment Act, S.B.C. 1985, c.13).

"B" Assignment and delegation of duties to Mr. D.R. Halladay by the Director of the Wildlife Branch of July 9th, 1985, concerning the powers of the Director, etc.

"C" Memorandum to the Regional Managers of Fisheries and Wildlife of July 10th, 1985, of Mr. J.H.C. Walker, concerning delegation of the powers of the Director to Mr. Ray Halladay.

"D" Letters of Mr. L.A. MacDonald to Mr. D.R. Halladay of April 7th, 19th, 1985. (Mohr).

"E" Letter of Mr. Terrence J. Robertson to Mr. D.R. Halladay of April 4th, 1985. (Ouellet).


THE APPELLANT'S PRESENTATION:

Unfortunately, Mr. Mohr appeared before the Board without legal counsel, and did not realize that he was required to restrict his evidence, cross-examination and argument to the specific charges he had made in his "Grounds for Appeal".

He felt that the decision of the Deputy Director was unfair in that his guiding area, for which he had paid a considerable sum of money ($16,000) was not economically viable, and could not be economically viable unless Management Unit 2-02 was included. He indicated that Mr. Ouellet
controlled, either directly or indirectly, guiding rights to some seven other management units and did not need Management Unit 2-02. In summary, this was his case:

He said that "he was not going to suggest that Mr. Halladay had not considered what was put before him" (i.e. the information obtained as a result of the Board's directive). He also said that "it's obvious that there is no way that I can prove that the Deputy Director did not consider certain evidence". Instead, he inferred that Mr. Halladay had not considered this information correctly and that he had, therefore come up with the wrong answer. He did not seem to realize that the question before the Board at this hearing, and the only question which the Board could consider, was whether Mr. Halladay had carried out the Board's instructions of December 20th, 1984, by securing the proper documents (i.e. the Summary of Evidence from the hearing of October 30th, 1984, and the submissions of Mohr and Ouellet), and in his deliberations, giving full and proper consideration to all the information contained therein.

On this basis, it was necessary for the Board to severely restrict Mr. Mohr's testimony and argument, which was exceedingly disappointing and frustrating to Mr. Mohr.

SUMMARY OF THE DEPUTY DIRECTOR'S PRESENTATION:

Mr. Halladay's testimony was as follows:

1) He confirmed that he was the Deputy Director, Wildlife Branch, and had the authority to rule on Mr. Mohr's application for Management Unit 2-02. He cited Exhibits A", "B" and "C" as the basis for this authority,

2) He said that in making his review and decision on Management Unit 2-02 of July 24th, 1985, he had carried out the instructions of the Appeal Board of December 20th, 1984. He had read the "Summary of Evidence" from the hearing of October 30th, 1984, several times, and had signed the document to indicate having done so on May 17th, 1985.
3) He said that in addition to reviewing the "Summary of Evidence" from the hearing of October 30th, 1984, he had also done the following:

   a) Read and reviewed written responses from Mr. Mohr and Mr. Ouellet.

   b) Contacted two other guides for their input from the other abutting guiding territories to MU 2-02.

   c) Reviewed the former decision and evidence from the original hearing on MU 2-02 by Mr. Robertson, of the Fish & Wildlife Branch.

4) He said that in addition to the foregoing information, he had also reviewed the provisions of the Statutes, which included the Wildlife Act, the Environment Management Act, and the policies of the Wildlife Branch. He further said that he had also reviewed any other evidence he could find on the matter.

5) He said that in reference to the third paragraph at the bottom of the first page of his decision letter of July 24th, 1985, he wanted to clarify that his statement "all the evidence presented at the appeal hearing" meant the "Summary of Evidence". He noted that there was no transcript of the evidence for this hearing.

6) He said that in reference to the grounds for the appeal, he had the following comments:

   a) The Appeal Board had not directed him to consider the issue of economic viability of Mr. Mohr's guiding area; nevertheless, he had still given consideration to this matter in making his decision.

   b) He had given consideration to the historical treatment of the guiding areas and noted that Mr. Ouellet had used MU 2-02 with MU 2-09 and MU 2-10 some 10 years previously.

   c) He had given consideration to the fact that Mr. Mohr wished to become a full-time operator in the future.
d) He had given consideration to the fact that Mr. Ouellet had used MU 2-02 for hunting nuisance bears and other guiding activities in the past.

e) The Wildlife Branch was not legally obligated to reissue permits on an annual basis to the person already holding them.

COMMENTS MADE DURING THE CROSS-EXAMINATION:

1) Mr. Halladay said that he had given consideration in his deliberations to the fact that Mr. Ouellet had not held permits nor had any activity in Management Units 2-02, 2-09 and 2-10 from March 31st, 1977 to September 8th, 1979.

2) Mr. Halladay said that he was aware that Mr. Ouellet had his main operations in Management Units 3-14, 3-15 and 3-16.

3) Mr. Halladay said that in his deliberations, he had not considered the fact that Mr. Ouellet also held permits in Management Units 3-32 and 3-33.

4) Mr. Halladay said that he was aware that Mrs. Ouellet holds Management Units 8-05 and 8-06, and is a licenced guide. He further said that he was not aware that these management units were operated integrally with Mr. Ouellet's units, nor had it been brought to his attention.

5) Mr. Halladay again reviewed the information considered when making his decision of July 24th, 1985, which was as follows:

   a) The "Summary of Evidence" from the Appeal Board hearing and any evidence tied directly to that hearing.

   b) Submissions from Messrs. Mohr and Ouellet arising from the appeal.

   c) Submissions in writing from two additional guides in the area.
d) The directly related information provided from the earlier appeal to Mr. Robertson, Director of the Fish & Wildlife Branch.

6) Mr. Halladay indicated that Management Units 2-02, 2-09 and 2-10 had originally, together, formed the Fraser Guide Block, but because the Regional Manager had made an assessment that MU 2-02 should not continue to be used for commercial guiding, it was deleted from the guide block.

7) Mr. Halladay said that subsequent to the decision to remove MU 2-02 from the block, the remainder of the block, MU 2-09 and 2-10, was offered for public auction.

8) Mr. Halladay then said that the Regional Manager also made the decision that MU 2-02 should not be allocated to anyone because it was not a fractional unit. This decision was appealed to Mr. Robertson, who concluded that the area should be considered as a fractional unit, and allocated it to Mr. Ouellet.

9) Mr. Halladay said that economic viability was a grey area. Viability varies from person to person and, therefore, depends on the individual. In his consideration of economic viability, he concluded that both parties would benefit from the allocation of MU 2-02 to their guiding areas. He also concluded that the benefits to each were about equal. He said that in the presentations made to him from both parties, there were no dollar and cents figures, and no hard evidence on the economic worth of the unit.

10) Mr. Halladay said that Management Units 2-09 and 2-10 were auctioned off as a unit because the District Manager believed them to be economically viable. He further said, however, that there is nothing in the Act which says that Management Units, or a combination of them, have to be economically viable when offered for sale. There is no guarantee by the government that they are economically viable. The assessment of economic viability has to be made by the buyer before he makes his offer.
11) Mr. Mohr said that when he purchased Management Units 2-09 and 2-10, he knew they were not viable as a unit, with the quotas which had been set. He also said he knew, however, that the quotas which had been set did not reflect the animal populations in the area, and that he expected to have the opportunity to expand either the quotas or to obtain additional management units in the future.