



Oil and Gas Appeal Tribunal

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DECISION NO. 2019-OGA-001(a)

In the matter of an appeal under section 72 of the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36.

BETWEEN:	Richard Graham	APPELLANT
AND:	BC Oil and Gas Commission	RESPONDENT
AND:	Tourmaline Oil Corp.	APPLICANT/THIRD PARTY
BEFORE:	A Panel of the Oil and Gas Appeal Tribunal Alan Andison, Chair	
DATE:	Conducted by way of written submissions concluding on April 16, 2019	
APPEARING:	For the Appellant: Self Represented For the Respondent: Claire Bond, Counsel For the Third Party: Daron Naffin, Counsel	

APPLICATION FOR SUMMARY DISMISSAL

[1] Tourmaline Oil Corp. ("Tourmaline") applies to the Oil and Gas Appeal Tribunal (the "Tribunal") for summary dismissal of an appeal filed by Richard Graham (the "Appellant"). The appeal concerns Permit No. 100105356 (the "Permit"), issued by the British Columbia Oil and Gas Commission (the "Commission") to Tourmaline to construct and operate a pipeline, a portion of which is to be located on the Appellant's land.

[2] Tourmaline applies the Tribunal to summarily dismiss the appeal on the basis that the Appellant has raised no appealable grounds under section 72 of the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36 (the "OGAA"), and therefore the Tribunal lacks jurisdiction to hear the appeal and order the remedy sought.

[3] This application was conducted by way of written submissions.

BACKGROUND*The Permit Application*

[4] In February 2018, a representative of Tourmaline approached the Appellant and sought access to his land in order to undertake surveying work. The Appellant granted access to his land, though the Appellant and Tourmaline disagree as to the nature of the request and the context of the Appellant's grant of access.

[5] Subsequent to the survey work, in April 2018 Tourmaline initiated consultation with the Appellant and two other landowners regarding construction of a pipeline which would affect each of their properties. During this consultation process, the Appellant raised several concerns with Tourmaline regarding the proposed construction on his land.

[6] On May 29, 2018, Tourmaline submitted an application to the Commission to construct and operate a three segment pipeline across three parcels of privately held land located 20 kilometres north of Dawson Creek BC. One parcel of the land described in the application is owned by the Appellant.

[7] After the application was submitted, the Appellant made two written submissions to the Commission, dated July 3, 2018 and July 13, 2018, regarding his opposition to the proposed activity on his land.

[8] While there appears to be some dispute between the parties regarding whether proper consultation took place prior to issuance of the Permit, it is clear that the Appellant was able to make submissions to the Commission, and that the Commission considered those submissions prior to issuing the Permit.

[9] On July 9, 2018 and July 17, 2018, Tourmaline provided the Commission with written responses to each of the Appellant's submissions.

[10] The Appellant's July 3, 2018 submission was made via the Commission's standard *Form 74*, and raised issues under each of four headings titled *Item 1*, *Item 2*, *Item 3*, and *Item 4*.

[11] Under Item 1, the Appellant raised the issue of the slope of his property and the possibility of "major erosion issues with the soil disturbed as a good portion of water will drain across the pipeline area". Under this same heading, the Appellant proposed to the Commission that Tourmaline use an alternate route to construct the pipeline which, the Appellant submitted, would avoid the issue of erosion.

[12] Under Item 2, the Appellant raised the issue of the impact of the proposed construction on a potential building site on his property, and the possibility of boring under the greenspace rather than cutting it down. Erosion was mentioned under this heading as well, insofar as the Appellant stated that if trees were cut down, "the erosion issue will be aggravated further".

[13] Under Item 3, the Appellant raised the issue of his general opposition to the pipeline being constructed on his property.

[14] Under Item 4, the Appellant raised the transparency of the consultation process, as well as his suggestion that the pipeline be built on a different property.

[15] In his July 13, 2018 submission the Appellant, again, raised the issue of soil erosion, and spent a large portion of that submission detailing his specific concerns about erosion. He reiterated his proposal that the pipeline be built on a different property where erosion would not be an issue. He objected to Tourmaline's position that adjusting the proposed construction of the pipeline would not be possible due to what Tourmaline described as "sensitive timelines". The Appellant also raised two other issues having to do with Tourmaline's potential lack of responsiveness to future concerns on his property. At the end of his July 13, 2018 submission, the Appellant requested that the Commission attend his property to:

... look at both properties and rule in my favour so I can put this issue to rest, and they can get on with making needed adjustments in a timely manner to run the pipeline on the next property to the east.

[16] On July 26, 2018, Commission staff conducted a site visit to the Appellant's property, which resulted in the Commission requesting that Tourmaline provide an "Erosion Mitigation Plan" with respect to the proposed work on the Appellant's land.

The Decision

[17] On January 11, 2019, the Commission issued the Permit to Tourmaline. Along with the Permit, the Commission provided a brief "decision rationale document" explaining the Commission's reasons for issuing the Permit (the "Decision").

[18] In the Decision, the Commission found that Tourmaline had consulted with each of the three affected landowners prior to submitting its application, and that two of the three had successfully negotiated surface agreements with Tourmaline with respect to the portions of the pipeline project proposed to take place on their respective properties. The Commission further indicated that the Appellant had not negotiated such an agreement, and had outstanding concerns with the proposed project.

[19] The Decision listed three issues raised by the Appellant, which it characterized as follows:

1. Erosion/location of pipeline;
2. Devaluation of property and compensation issues, and
3. Consultation.

[20] In the course of six paragraphs, the Commission addressed each of the above issues, and ultimately determined that "the proposed project is consistent with current regulatory requirements under the *Oil and Gas Activities Act*, the *Pipeline Regulations* and the *Consultation and Notification Regulation*", and approved the application.

The Appeal

[21] On January 28, 2019, the Appellant filed a Notice of Appeal against the Permit (the "NoA"). In his NoA the Appellant objects to the construction of the

pipeline on his property, and asks the Tribunal to amend the Permit to exclude his property.¹ At the same time that the Appellant filed his NoA, he applied for a stay of the Permit pending a decision on the merits of his appeal.²

[22] In an email dated January 31, 2019, the Appellant amended his NoA (the "NoA Amendment"). The NoA Amendment will be discussed in more detail below.

ISSUES

[23] In order to determine whether this appeal should be summarily dismissed on the basis of lack of jurisdiction, the Tribunal must decide whether the appeal is based on an appealable ground under section 72(2) of the *OGAA*.

RELEVANT LEGISLATION

[24] This Tribunal is established under section 19 of the *OGAA*, and its purpose, set out in section 19(2), is "to hear appeals under section 72".

[25] Section 72(1) of the *OGAA* sets out the types of appeal to this Tribunal, and section 72(2) specifically limits the grounds of appeal for land owners as follows:

72(2) A land owner of land on which an operating area is located may appeal a determination under this section **only on the basis that the determination was made without due regard to**

- (a) a submission previously made by the land owner under section 22(5) or 31(2), or
- (b) a written report submitted under section 24 (1)(c) or 31 (6).

[Emphasis added]

[26] With respect to the limitation set out in section 72(2), section 22 of the *OGAA* describes the consultation and notification process regarding applications for permits as follows:

Consultation and notification

22(1) In subsection (3), "prescribed applicant" means a person who intends to submit an application under section 24 and who is in a prescribed class of persons.

¹ In his NoA the Appellant requested the alternative remedy of a variation of the Permit to ensure that greenspace on his property is not destroyed. Subsequently, the Appellant and Tourmaline reached an agreement on the greenspace issue, and the Appellant withdrew his request to have the Tribunal deal with the greenspace issue.

² Although some submissions on the stay application had been exchanged, the Tribunal suspended the stay application on March 12, 2019, pending its consideration of the summary dismissal application.

- (2) Before submitting an application under section 24, a person must notify the land owner of the land on which the person intends to carry out an oil and gas activity of the person's intention to submit the application, and the notice must advise the land owner that he or she may make a submission to the commission under subsection (5) of this section with respect to the application or proposed application.
- (3) Subject to subsection (4), before submitting an application under section 24, a prescribed applicant must carry out the prescribed consultations or provide the prescribed notices, or both, as applicable, with respect to the oil and gas activities and related activities, if any, that will be the subject of the prescribed applicant's application.
- (4) The commission, on written request, may exempt a person from one or more of the applicable consultation or notification requirements under subsection (3) and, on making an exemption, substitute other consultation or notification requirements than those prescribed for the purposes of subsection (3).
- (5) A person, other than the applicant, may make a written submission to the commission with respect to an application or a proposed application under section 24.
- (6) If a person makes a submission under subsection (5), the commission must send a copy of the submission to the applicant or to the person intending to apply for a permit, as the case may be.

[Emphasis added]

[27] Section 24(1) of the *OGAA* sets out the requirements for an application for a permit as follows:

- 24(1)** Subject to subsection (4), a person may apply to the commission for a permit by submitting, in the form and manner the commission requires,
- (a) a description of the proposed site of the oil and gas activity,
 - (b) the information, plans, application form and records required by the commission,
 - (c) a written report, satisfactory to the commission, regarding the results of the consultations carried out or notification provided under section 22, if any,
 - (d) the prescribed information,
 - (e) the prescribed records, and
 - (f) the security required under section 30.

[Emphasis added]

[28] Section 69 defines “determination”, as it applies to land owners, as follows:

“**determination**” means

...

(b) with respect to a land owner of land on which an operating area is located,

(i) a decision made by the commission

(A) under section 25 to issue a permit to carry out an oil and gas activity on the land of the land owner, and

(B) under section 31 to amend a permit, if the amendment changes the effect of the permit on the land of the land owner ...

[Emphasis added]

[29] Section 72(6) of the *OGAA* sets out the Tribunal’s remedial authority as follows:

72(6) On an appeal under subsection (1), the appeal tribunal may

(a) confirm, vary, or rescind the decision made under section 71 or the determination, or

(b) send the matter back, with directions, to the review official who made the decision or to the person who made the determination, as applicable.

[30] Section 31 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the “*ATA*”), made applicable to the Tribunal by section 20(d) of the *OGAA*, sets out the Tribunal’s jurisdiction to order summary dismissal of an appeal as follows:

Summary dismissal

31(1) At any time after an application is filed, the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:

(a) the application is not within the jurisdiction of the tribunal;

(b) the application was not filed within the applicable time limit;

(c) the application is frivolous, vexatious or trivial or gives rise to an abuse of process;

(d) the application was made in bad faith or filed for an improper purpose or motive;

(e) the applicant failed to diligently pursue the application or failed to comply with an order of the tribunal;

(f) there is no reasonable prospect the application will succeed;

(g) the substance of the application has been appropriately dealt with in another proceeding.

- (2) Before dismissing all or part of an application under subsection (1), the tribunal must give the applicant an opportunity to make written submissions or otherwise be heard.
- (3) If the tribunal dismisses all or part of an application under subsection (1), the tribunal must inform the parties and any interveners of its decision in writing and give reasons for that decision.

DISCUSSION AND ANALYSIS

[31] In the present case, the Appellant is an owner of land on which an operating area is located. Further, his appeal is properly brought under section 72(1), insofar as he has appealed the Commission's "determination" under section 25 of the *OGAA* to issue Tourmaline the Permit.

[32] The question raised in this application for summary dismissal is whether the appeal falls within the narrow grounds of appeal applicable to land owners under section 72(2).

[33] In order to fall within these grounds, the appeal must be on the basis that the Commission's determination to issue the Permit to Tourmaline was made without "due regard" to either a submission made by the Appellant to the Commission under sections 22(5) or 31(2) of the *OGAA*, or a written report submitted under sections 24(1)(c) or 31(6) of the *OGAA*. The present appeal has to do with the issuance of a permit, and not a permit amendment, and therefore sections 31(2) and 31(6) of the *OGAA* are not relevant to the analysis.

[34] As part of its application for the Permit, Tourmaline submitted a written report to the Commission under section 24(1)(c). Further, the Appellant made submissions to the Commission under section 22(5) on July 3 and 13, 2018. Therefore, if the appeal either explicitly or implicitly raises the issue of whether the Commission gave due regard to Tourmaline's section 24(1)(c) report, or whether the Commission gave due regard to the Appellant's July 3 and 13, 2018 submissions, then the Tribunal has jurisdiction to consider the appeal.

[35] To be clear, on this application for summary dismissal the Tribunal need not decide whether due regard was, in fact, given to Tourmaline's report or the Appellant's submissions; that is a matter to be decided at the hearing of this appeal on the merits, should the appeal proceed to such a hearing. At this preliminary stage the only question is whether the appeal properly raises these issues.

Positions of the Parties

Tourmaline

[36] In its March 6, 2019 application for summary dismissal, Tourmaline takes the position that the Appellant has raised no appealable grounds under section 72 of

the OGAA, and therefore the Tribunal lacks jurisdiction to hear the appeal and order the remedy sought.³

[37] Tourmaline also argues that the appeal has no reasonable prospect of success. The only submission Tourmaline makes which specifically references this point is as follows:

Even if the Appellant had specifically claimed in the Appeal that the OGC did not have due regard for his two written submissions filed with the OGC, such a concern would be completely undermined by the detailed and specific findings of the OGC in its Decision Rationale. In this regard, Tourmaline submits that there is no reasonable prospect the Appeal will succeed such that it should be dismissed without further process. [Emphasis added]

[38] With regard to its position that the Appellant has raised no appealable grounds under section 72 of the OGAA, Tourmaline submits that the Appellant has “failed to provide any indication that the [Commission] did not adequately or appropriately consider” his submissions under the relevant sections of the OGAA, and that “none of the issues raised in the appeal represent enumerated grounds of appeal under the OGAA”. Tourmaline summarizes its position as follows: “[s]imply put, there is nothing in the Appeal to suggest that the OGC did not have due regard for the submissions of the Appellant provided in respect of Tourmaline’s application for the Permit”.

[39] In support of this position, Tourmaline refers to the NoA Amendment. Tourmaline argues the NoA Amendment limited the appeal to two issues, one of which the Appellant has now expressly withdrawn. Tourmaline says that, as a result of the NoA Amendment, “the only remaining issue before the OGAT, as confirmed by the Appellant, is whether Tourmaline obtained consent of the Appellant to access the lands to conduct survey activities and other examinations”. Tourmaline further submits that the issue of access to the Appellant’s lands was not raised before the Commission, and therefore cannot be considered as a ground of appeal under section 72(2) of OGAA.⁴

[40] Tourmaline argues additionally that the Appellant’s allegations about a lack of survey consent are not accurate. Tourmaline states that the record shows that the Appellant gave consent subject to two conditions, and that even if he didn’t give consent, Tourmaline had a right to enter the land to conduct the survey pursuant to section 23 of OGAA.

[41] Tourmaline submits that “the Appeal relies on the presumption that the legislation grants a landowner a veto over the construction of pipelines on their

³ The summary dismissal application also addressed the stay application which was suspended pending the Tribunal’s decision on this summary dismissal application.

⁴ In its final reply submissions Tourmaline accepts that this issue was raised before the Commission when it states: “Moreover, the affidavit of Mr. Anderson demonstrates that the decision maker had specific regard for correspondence between the Appellant and Tourmaline on the issue of permission for survey access”.

land, which is incorrect"; however, Tourmaline does not expand on this point or explain how the appeal relies on such a presumption.

[42] In its final reply submission, Tourmaline reiterates its position that "the only remaining issue being pursued by the Appellant before the OGAT" is the issue of permission for survey access.

[43] While Tourmaline concedes that the Appellant "makes reference to certain aspects of the OGC's Decision Rationale with which he is not satisfied", it argues that his submissions fail to provide any credible information to indicate that the Commission did not have due regard for issues he raised in his submissions.

[44] Tourmaline's response to the Appellant's argument regarding the Commission's handling of his suggestions about pipeline rerouting - and what Tourmaline calls "conflicting testimony" - is that the Appellant is wrong, and that the Commission correctly characterized the adjacent landowners as being resistant to having a pipeline routed through their land.

Appellant

[45] The Appellant's NoA specifically references his July 3, 2018 submission to the Commission, and raises appeal issues relating to each of the headings in that submission. In his NoA, the Appellant expressly references issues having to do with erosion, tree clearing as opposed to boring, alleged dishonesty by Tourmaline, compensation issues, consultation issues, and the possible alternate placement of the pipeline on adjacent property.

[46] In his NoA Amendment, the Appellant states that his original NoA raised two issues: Tourmaline's entrance onto his property under what he termed "false pretenses"; and the issue regarding whether greenspace on his property would be cleared or bored. The NoA Amendment went on to state that the issue regarding boring versus clearing of greenspace had been resolved between the parties, and that the Appellant no longer wished to pursue that portion of his appeal. The NoA Amendment also indicated that the Appellant's concern with inadequate information being forwarded to him by Tourmaline regarding the 15-day deadline to appeal the Permit to the Tribunal had been cleared up, and he did not wish to pursue that issue further.

[47] In submissions relating to his stay application⁵, the Appellant, again, brings up the issue of current and future erosion, location of the pipeline and the Commission's ability to "require a proponent to apply for a particular location or route", the clarity of Tourmaline's documentation, and Tourmaline's alleged dishonesty. The Appellant also quotes the Commission's finding in the Decision that "I also note that the Landowners that would be impacted by such a reroute are not receptive to having the Pipeline rerouted through their land", and argues that that finding is erroneous.

⁵ These submissions appear to be erroneously dated January 20, 2019, as they were submitted on February 20, 2019.

[48] The Appellant filed written submissions, dated April 9, 2019, in response to Tourmaline's application for summary dismissal. In these submissions the Appellant expressly denies abandoning the rest of his grounds of appeal through his NoA Amendment document, and points to the opening words of that document which highlight his concerns with soil erosion. The Appellant further points to his stay submissions, and argues that Tourmaline's application for summary dismissal did not address any of the specific issues he raised in those submissions.

[49] In his April 9, 2019 submissions on the summary dismissal application, the Appellant specifically references the language of "due regard" and section 72 of the OGAA in the context of the erosion and pipeline location issues that he raised before the Commission:

In Paragraph 18 of [Tourmaline's Summary Dismissal Application] the first bullet point regarding the Erosion Mitigation plan. It would be completely unnecessary if the Pipeline was on the east side of the road as the roadway would act as a natural dam.

This is where I challenge back in Paragraph 11 [of Tourmaline's Summary Dismissal Application] Pursuant to section 72(2) the decision by the OGAA was not made with due regard to myself on the basis of no erosion would happen on the eastern property compared to the fact that after viewing my property they (OGC members) saw the need for an Erosion Mitigation Plan on my property on the west side of the road. [Emphasis added]

[50] He raises the issue of "due regard" again with respect to his contention that Tourmaline's agent was uncooperative and did not readily share information: "[Tourmaline] is very uncooperative in sharing information which may have led [the Commission] to not show me due regard as per section 72" [Emphasis added].

[51] Additionally, the Appellant focuses a large part of his submissions on the discrepancy between his and Tourmaline's positions regarding the problems with possible rerouting of the pipeline, and how this discrepancy may have affected the Commission's decision to issue the Permit. In particular, he argues that Tourmaline's position that it couldn't reroute the pipeline because other landowners were resistant to having a pipeline located on their property was not consistent with his discussions with the other landowners. He implies in his argument that Tourmaline was inaccurate in its representations to the Commission:

This is what Mr. Hanson [the Commission decision-maker] was told by Brett [Tourmaline's agent], but the Janzen's story is completely different. I think both the OGC and the OGAT should get a list of the email correspondences from Tourmaline and Prospect energy to see what was really said. Possibly even asking the Janzen's directly, you have their address and phone number and in Paragraph 5 their permission for me to use this email.

...

Back to the fact that Tourmaline's agent was in contact with the Janzen's for almost a year in case I did get the Pipeline location moved, really undermines Brett's comments that it could not have ran straight down the

east side of the road, negating the wrap around design Brett said would be necessary but supplied absolutely no proof .

[52] With respect to the issue of pipeline location, the Appellant further implies that the Commission did not make the Decision with regard to all of the available facts:

Because of the Conflicting testimony between the Janzen's and Brett Norrie which was given to Mr. Hanson which lead him to dismiss my appeal. I think it would be wise for Mr. Hanson to get in contact with the Janzen's himself and get the Emails in question, he may reverse his decision, if he does not want to find the rest of the facts, then I feel the OGAT should hear my case based on the evidence presented above.

...

Based on Mr. Hanson's comments, and that the Mention of the Janzen Email was not even referred to once I doubt that he even saw or read it, which means he based his findings on only one side, and if true all the more reason to allow the appeal to proceed.

Commission

[53] The Commission takes no position on whether the Tribunal should grant the summary dismissal application, but it does provide some background submissions and additional evidence pertaining to the issue of what was before the Commission when it was making the Decision.

[54] In particular, the Commission provided an affidavit of one of its employees. This affidavit attaches certain correspondence between the Appellant and Tourmaline (which was copied, and in some cases addressed to the Commission) pertaining to the issue of Tourmaline's access to the Appellant's land for the purpose of conducting a survey. This documentation was not included in the appeal record provided to the Tribunal, despite it having been before the decision-maker.

[55] The Commission also confirms that the Appellant provided submissions directly to the Commission "identifying concerns regarding the Pipeline route, erosion, removal of trees, property devaluation and compensation, and the consultation process undertaken by Tourmaline".

[56] Although it states that it takes no position on the application for summary dismissal, the Commission submits that the issue raised by the Appellant regarding Tourmaline accessing his land for surveying purposes does not constitute a proper ground for appeal to the Tribunal. It argues that the proper forum to bring a complaint regarding trespass onto the Appellant's land is in the courts, or through a complaint to the Commission's Compliance and Enforcement Branch.

The Tribunal's Findings

Grounds for summary dismissal

[57] First, on the issue of the grounds upon which Tourmaline brings this summary dismissal application, the Tribunal finds that Tourmaline has not

meaningfully pursued its argument that this appeal has no reasonable prospect of success.

[58] Tourmaline only references this ground once in its submissions⁶ when it argues that, even if the Appellant had specifically claimed that the Commission did not have due regard for his submissions, “such a concern would be completely undermined by the detailed and specific findings of the OGC in its Decision Rationale”. Tourmaline does not explain which of the findings of the Commission support this proposition, or how the findings do so. More than this bare assertion is needed to support Tourmaline’s argument concerning reasonable prospect of success.

[59] Accordingly, this ground for summary dismissal fails.

[60] Tourmaline’s second ground for summary dismissal is that the issues raised by the Appellant do not represent appealable grounds under the OGAA and, therefore, are beyond the jurisdiction of the Tribunal. Specifically, Tourmaline submits that the Appellant has failed to provide any indication that the Commission did not give due regard to the issues he raised.

[61] From a review of the submissions, it is apparent that the Appellant raised the following issues before the Commission prior to the Commission issuing the Permit: soil erosion, alternative routing of the pipeline, impact of the proposed construction on a potential building site, general opposition to oil and gas activities on his property, survey consent and allegations of dishonesty and obfuscation on the part of Tourmaline. In particular, the Appellant highlighted fairly detailed concerns with current and future soil erosion, and proposed alternative pipeline routing.

[62] The Appellant has, again, raised these issues before the Tribunal. The Tribunal disagrees with Tourmaline that the NoA Amendment eliminated most of the Appellant’s grounds of appeal. While the NoA Amendment advised that both the greenspace and document provision issues⁷ had been resolved between the parties and were being withdrawn, it did not expressly withdraw the other concerns raised in the NoA. Further, the Appellant’s April 9, 2019 submissions on this application make clear that his NoA Amendment was not intended to abandon all other grounds of appeal.

Due regard

[63] The Tribunal has considered the submissions of each of the parties and has concluded that the appeal raises several issues concerned with the question of whether the Commission gave due regard to the Appellant’s submissions under section 22(5) of the OGAA.

⁶ The Tribunal notes that, in the excerpt of the ATA quoted in its submissions, Tourmaline has underlined both sections 31(1)(a) and (f) (summary dismissal application at para. 5).

⁷ The Appellant’s complaint that Tourmaline had not provided him with proper documentation after issuance of the Permit regarding his right to appeal to this Tribunal.

[64] The Tribunal has previously held that it will not summarily dismiss an appeal simply because an Appellant has not used the language under section 72 of the *OGAA* to describe his or her grounds of appeal. This is particularly the case where an Appellant is self-represented, as in the present appeal.

[65] The Tribunal adopts the reasoning outlined in *Rodney and Kim Strasky v Oil and Gas Commission* (Decision No. 2016-OGA-004(b), February 16, 2017):

38. Although the Appellants' Notice of Appeal does not expressly allege that the Commission's decision to issue the permit was made "without due regard to" either a submission previously made by them, or Encana's consultation and notification report, the Panel finds that it is not unusual for self-represented appellants to express their grounds for appeal using language that does not replicate the language in section 72(2) of the *OGAA*. For example, the grounds for appeal may imply, but not directly state, that the appellant is appealing because they believe that their concerns were not given due regard by the Commission. Sometimes the grounds for appeal in a Notice of Appeal are very brief, and the appellant provides further particulars on the grounds for appeal as the appeal proceeds. The Panel will not necessarily summarily dismiss an appeal simply on the basis that the appellant, especially a self-represented appellant, has articulated the grounds for appeal using language that is not parallel to the language in section 72(2) of the *OGAA*. Summarily dismissing a land owner's appeal on the basis that the grounds for appeal in the Notice of Appeal do not fall within the Tribunal's jurisdiction should only be done in clear cases.

[66] In order to arrive at a just result, the Tribunal will look to both form and substance in cases where an Appellant has not used the language of the *OGAA* to describe his or her grounds of appeal.

[67] Having said that, it appears in the present case that the Appellant has raised the issue of whether his submissions were given due regard by the Commission in both form *and* substance.

Form

[68] One of the Appellant's arguments before the Commission, and before the Tribunal, is that if the pipeline construction authorized by the Permit is to go ahead there will be significant soil erosion on his property, and that there is an alternative route for pipeline construction on a neighboring property that would not result in erosion.

[69] The Appellant submits that the "decision by the *OGAA* was not made with due regard to myself on the basis of no erosion would happen on the eastern property compared to the fact that after viewing my property they (OGC members) saw the need for an Erosion Mitigation Plan on my property on the west side of the road". This argument expressly links the issue of due regard to the issues of erosion and pipeline location.

[70] Regarding Tourmaline's rationale to not reroute the pipeline the Appellant states that, because Tourmaline was "uncooperative in sharing information", the Commission may not have shown him "due regard".

[71] In form, therefore, the Appellant has used the language of section 72 of the OGAA to frame his argument that his concerns about erosion and pipeline location were not given "due regard" by the Commission.

Substance

[72] With respect to the substance of his appeal, the Appellant raises many of the same issues that he did before the Commission. Although he hasn't stated that the Commission failed to give his submissions due regard, he does so implicitly.

[73] For example, the Appellant submitted to the Commission that erosion would be a big issue on his land if pipeline construction went forward as proposed. In response to the Appellant's submissions, and after undertaking a site visit, the Commission ordered Tourmaline to provide an Erosion Mitigation Plan. Despite the provision of this plan, the Appellant continues to argue that, if the pipeline is allowed on his land, significant erosion issues will result. The Tribunal finds that these concerns implicitly raise the argument that the Commission did not give due regard to the Appellant's submissions regarding soil erosion.

[74] Further, throughout his submissions to the Tribunal, the Appellant has argued that Tourmaline did not provide the Commission with appropriate/accurate information regarding the ability of Tourmaline to construct the pipeline on other property, and the willingness of other landowners to have the pipeline cross their land. This argument, in substance, raises the question of whether due regard was given to his submissions concerning the possibility of re-routing the pipeline on adjacent property.

[75] With respect to the issues raised regarding impact of the proposed construction on a potential building site on his property, inadequate consultation, and general opposition to oil and gas activity on his property, the Tribunal finds that the Appellant has not pursued these arguments as individual grounds of appeal, but as part of his broader argument regarding pipeline routing. As each of these issues relate to the broader issue of pipeline routing, the Tribunal finds that the Appellant has implicitly raised the issue of whether the Commission gave due regard to his submissions on these points.

Survey Consent

[76] Both Tourmaline and the Commission submit that the issue of survey consent is not appealable to this Tribunal.

[77] The Commission was aware that the Appellant had raised the issue of Tourmaline accessing his property without consent. In correspondence between Tourmaline and the Appellant, which was "directed to all but especially to the OIL AND GAS COMMISSION", the Appellant raised this concern and disagreed with Tourmaline's records indicating that he had given Tourmaline's agent consent to access his land for the purpose of surveying.

[78] Although the Commission confirmed that this material was before it prior to issuance of the Permit, the Decision does not refer to the issue of survey consent at all. On the face of it, therefore, it appears as though the Commission did not give due regard to the Appellant's submissions on this issue.

[79] The Commission's submission to the Tribunal is that the Appellant has recourse to a process through the Commission's "Compliance and Enforcement Branch", and that remedies for civil trespass lie with the courts. Tourmaline argues that it was permitted to access the Appellant's land for survey purposes whether or not the Appellant gave consent.

[80] The Tribunal notes that section 23 of the OGAA prescribes conditions for land access. Neither the specific requirements of section 23, nor whether those requirements were met in the present case, have been addressed by Tourmaline in its submissions to the Tribunal, or by the Commission in its Decision. Thus, while it may be that the question of whether the Commission gave due regard to the Appellant's submissions on survey consent is, ultimately, not a proper ground of appeal, the Tribunal is not in a position to decide the matter in this preliminary application. It is a question to be answered in a hearing on the merits.

[81] Accordingly, the Tribunal finds that the Appellant has implicitly raised the issue of whether the Commission gave due regard to his submissions concerning survey consent.

Conclusion

[82] The Tribunal is satisfied that the Appellant has raised the issue of whether the Commission gave due regard to his submissions prior to issuance of the Permit. As such, the Tribunal finds that this appeal is based on an appealable ground under section 72(2) of the OGAA, and the Tribunal has jurisdiction to hear and decide the appeal.

[83] The question of whether the Commission actually gave due regard to the Appellant's submissions will be decided through a hearing on the merits.

DECISION

[84] In making this decision, the Tribunal has considered all of the relevant documents and evidence, whether or not specifically reiterated here.

[85] For the reasons outlined above, Tourmaline's application to have this appeal summarily dismissed is denied.

"Alan Andison"

Alan Andison, Chair
Oil and Gas Appeal Tribunal

June 13, 2019