Province of British Columbia

Environmental Appeal Board

Fourth Floor 747 Fort Street
Victoria British Columbia
**Telephone:** (250) 387-3464
**Facsimile:** (250) 356-9923

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9V1

## DECISION NO. 2005-WIL-008(a)

In the matter of an appeal under the *Wildlife Act*, R.S.B.C. 1996, c. 488.

| | | |
|---|---|---|
| **BETWEEN:** | Leslie Clifford Loring | **APPELLANT** |
| **AND:** | Deputy Director of Wildlife | **RESPONDENT** |
| **BEFORE:** | A Panel of the Environmental Appeal Board<br>Robert Wickett, Panel Chair | |
| **DATE:** | July 12, 2005 | |
| **PLACE:** | Prince George, BC | |
| **APPEARING:** | For the Appellant: George Leven, Counsel<br>For the Respondent: Joseph G. McBride, Counsel | |

### APPEAL

This is an appeal by Leslie Clifford Loring (the "Appellant") of the March 23, 2005 decision of T.J. Ethier, Deputy Director of Wildlife (the "Deputy Director") to cancel the Appellant's hunting and angling licences and to impose a period of ineligibility, during which the Appellant will be ineligible to hunt or to fish or to obtain or renew a British Columbia hunting or angling licence. The cancellation of the Appellant's hunting and angling licences was made effective March 18, 2005, and the period of ineligibility was set at 25 years, expiring on 23:59 hours on March 18, 2030.

The Deputy Director undertook this action pursuant to section 24 of the *Wildlife Act*, R.S.B.C. 1996, c. 488.

The Environmental Appeal Board has authority to hear this appeal under Part 8 of the *Environmental Management Act* and section 101.1 of the *Wildlife Act*.

Section 101.1(5) of the *Wildlife Act* provides:

> (5) On an appeal, the appeal board may
>
> (a) send the matter back to the regional manager or director, with directions,
>
> (b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

The Appellant asks the Board to reduce the period of ineligibility.

## BACKGROUND

The Appellant called no evidence at the hearing of this appeal. The Appellant was content to rely upon the documents submitted by the Respondent and included in its Book of Documents. The Respondent called only one witness, the Deputy Director. The Respondent also submitted the conservation office investigation file, various reasons for judgment and various documents submitted to the Deputy Director at the opportunity to be heard.

The Convictions Leading to the Licensing Action

On January 26, 2001, the Appellant was convicted in Provincial Court in Prince George, B.C., of 27 violations of the *Wildlife Act* and two violations of the *Waste Management Act*, R.S.B.C. 1996, c. 482. The specific convictions were as follows:

1. Being the operator of a meat-cutting plant, failing to keep a proper record of wildlife or fish received therein (section 71(1)(a) of the *Wildlife Act*);

2. Having unlawfully in his possession wildlife, to wit: moose, black bear, beaver, caribou, duck, grizzly bear, sheep and bison (section 33(2) of the *Wildlife Act*);

3. Unlawfully hunting wildlife, to wit: grizzly bear, while not being the holder of a grizzly bear species licence (section 11(1)(a)(iv) of the *Wildlife Act*);

4. Unlawfully hunting wildlife, to wit: grizzly bear, while not being the holder of a limited entry hunting authorization (section 16(1)(b) of the *Wildlife Act*);

5. Unlawfully having in his possession bear genitalia, separate from the carcass or hide (section 2.01(1)(b) of the *Wildlife Act Commercial Activities Regulation*, B.C. Reg. 338/82);

6. Depositing and leaving beer cans in a public place, contributing to the defacement of those places by litter (section 9.1(2) of the *Waste Management Act)*;

7. Unlawfully trafficking in wildlife meat, to wit: bear and moose (section 22 of the *Wildlife Act*)

8. Unlawfully trafficking in bear paws, separate from the carcass or hide (section 2.08(2) of the *Wildlife Act Commercial Activities Regulation*);

9. Unlawfully trafficking in bear gall bladders (section 2.08(1)(a) of the *Wildlife Act Commercial Activities Regulation*);

10. Unlawfully transporting or engaging another to transport wildlife (section 37 of the *Wildlife Act*);

11. Unlawfully trafficking in gall bladders (section 2.08(1)(a) of the *Wildlife Act Commercial Activities Regulation*);

12. Unlawfully transporting wildlife (section 37 of the *Wildlife Act*);

13. Unlawfully possessing bear gall bladders (section 2.08(1)(a) of the *Wildlife Act Commercial Activities Regulation*);

14. Unlawfully trafficking in bear gall bladders (section 2.08(1)(a) of the *Wildlife Act Commercial Activities Regulation*);

15. Unlawfully hunting migratory birds, to wit: mallard ducks and Canada geese, at a time not within the open season (section 26(1)(c) of the *Wildlife Act*);

16. Hunting with a firearm during prohibited hours (section 26(1)(d) of the *Wildlife Act*);

17. Hunting by use or with the aid of an illuminating light or illuminating device (section 26(1)(e) of the *Wildlife Act*);

18. Unlawfully possessing bear gall bladders (section 2.08(1)(a) of the *Wildlife Act Commercial Activities Regulation*);

19. Counselling another person after killing big game, to wit: black bear, and before handling the big game to fail to immediately cancel the person's appropriate species licence, in accordance with the instructions in that licence (section 1.04 of the *Firearm and Hunting License Regulation*);

20. Unlawfully hunting wildlife, to wit: bull moose, while not being the holder of limited entry hunting authorization *(Limited Hunting Regulation* and section 16(1)(b) of the *Wildlife Act*);

21. Unlawfully possessing gall bladders (section 2.08(1)(a) of the *Wildlife Act Commercial Activities Regulation*);

22. During the course of carrying on a business, unlawfully introducing waste into the environment (section 3(2) of the *Waste Management Act*);

23. Unlawfully engaging another to transport wildlife and parts of wildlife, to wit: moose meat (section 37 of the *Wildlife Act*);

24. Unlawfully hunting wildlife, to wit: cow moose, while not being the holder of a limited entry hunting authorization (*Limited Hunting Regulation* and section 16(1)(b) of the *Wildlife Act*);

25. Unlawfully discharging a firearm and killing or wounding wildlife, to wit: grouse, from a motor vehicle (section 27(1) of the *Wildlife Act*);

26. Unlawfully transporting wildlife, to wit: bear and moose (section 37 of the *Wildlife Act*);

27. Unlawfully having dead wildlife, to wit: moose or part of it, in their possession (section 33(2) of the *Wildlife Act*);

28. Unlawfully possessing bear gall bladders (section 2.08(1)(a) of the *Wildlife Act Commercial Activities Regulation*); and

29. Unlawfully hunting wildlife, to wit: black bear, grizzly bear, by using dead wildlife as bait and by placing bait (section 17(1)(m) of the *Wildlife Act*).

In addition, on March 7, 2001, the Appellant pled guilty to two counts of breach of the Federal *Fisheries Act*, R.S., 1985, c. F-14, in relation to the unlawful offering and sale of fish.

The *Wildlife Act*, *Waste Management Act*, and *Fisheries Act* convictions all arose from the same set of transactions recorded during an undercover operation undertaken by members of the Conservation Office. Other persons were also charged and convicted in respect of these transactions; namely, Paul Bruggeman and Douglas Neal.

The undercover operation was mounted primarily against the Appellant as a consequence of a history of complaints made by confidential informants against him. Between April of 1997 and July of 1998, there were approximately 20 complaints that had been received by the Prince George Conservation Office about the Appellant in relation to various alleged wildlife infractions.

As a consequence of these complaints, in February of 1998, the Conservation Office commenced an undercover operation in an effort to observe the activities of the Appellant and Mr. Bruggeman.

The evidence that resulted in the convictions described above resulted from the observations of the undercover operatives who went on a number of hunting trips with the Appellant, Mr. Bruggeman and Mr. Neal, between May and October of 1998. In Reasons for Judgment, the Provincial Court judge found that the Appellant was the primary instigator in the variety of poaching activities described in the evidence.

In finding the Appellant guilty of the offences noted above, the Court stated that:

> Both the accused Loring and Neal were repetitive, apparently incorrigible poachers who regularly flaunted the *Wildlife Act*. Both acknowledged in conversations with CO's Anderson and Zukewich, night hunting, poaching, bear-baiting and trafficking poached game. They frequently did so in consort with one another. Both were seen hunting illegally by the undercover conservation officers.

The Court also noted that the Appellant and Mr. Neal showed little respect for the environment "by the way they threw out their beer cans while hunting."

The Court also found that the Appellant repeatedly trafficked in bear gall bladders, a particularly egregious offence in light of the particular vulnerability of bear populations to poaching activities.

In Reasons for Sentencing, the Court noted that the "incorrigible poaching" must be specifically deterred because Canada's wildlife must be protected and defended. It noted that general deterrence and denunciation were paramount in the sentencing of the Appellant, that a severe custodial sentence was required, particularly because the Appellant was motivated by greed. As a consequence, the Court imposed a 15-month term of imprisonment upon the Appellant. It also ordered forfeiture of all of the Appellant's firearms and his meat-cutting equipment.

The *Fisheries Act* convictions were entered on March 7, 2001, following a guilty plea by the Appellant. Crown counsel and Defence counsel made a joint submission that the appropriate sentence for the *Fisheries Act* offences was three-months imprisonment on each count. It was submitted that the three-month term of imprisonment on each count should run concurrently with each other, and with the 15-month term of imprisonment imposed in respect of the *Wildlife Act* offences. The Court accepted this joint submission.

By contrast with the Appellant, Mr. Neal was given a custodial sentence of 45 days and a fine of $20,000.

In respect of both the Appellant and Mr. Neal, the Court recommended that they receive a lifetime hunting ban.

Licensing Action

On April 29, 2002, the then-acting Deputy Director of Wildlife, Elizabeth McMillan, wrote to the Appellant to give him the opportunity to be heard in respect of potential licensing action to be taken by the Deputy Director. Specifically, the Deputy Director was contemplating the imposition of a period of ineligibility to hunt and to angle for a period of time as a consequence of his various convictions in Provincial Court. The letter to the Appellant required the Appellant to respond, in writing, with any submission he may have, on or before June 13, 2002.

On June 10, 2002, the Appellant hand-delivered a letter to the Deputy Director with respect to his opportunity to be heard. The Appellant submitted that the Deputy Director should take the following matters into account in imposing a period of ineligibility upon him:

1. He had lost everything as a consequence of his conviction in Criminal Court, including his camper, boat, and other assets. These monies were required to pay lawyers' fees and fines. He also noted that he had lost meat cutting equipment worth approximately $30,000 and rifles worth approximately $15,000.

2. He had been sentenced to 15 months in jail, and this was a sufficient penalty.

3. He had served his entire jail term and, during that time, had taken every program offered by the Correctional Service; specifically, health relations, Alcoholics Anonymous, and John Howard follow-up programs on substance abuse management, and WHMIS First Aid Level 1.

4. He had learned much from his mistakes and from various programs he had taken while in prison, and that these problems would never arise again.

5. His marriage was thrown into disarray. He is now taking counselling.

6. He is embarrassed and ashamed by his actions and has to face the censure from members of the public in Prince George where he has lived since 1968.

7. Many of the firearms he lost were family keepsakes and heirlooms.

Following receipt of the Appellant's submission, the Deputy Director issued the decision that forms the basis of this appeal, some two years and 9 months after receipt of the Appellant's submission.

In imposing the 25-year period of ineligibility to obtain a hunting or angling licence, the Deputy Director considered the following factors in reaching his decision:

1. The Court recommended a lifetime hunting ban.

2. Mr. Loring's actions show a complete disregard for the wildlife and for the law.

3. Mr. Loring's actions were reprehensible.

4. The Court imposed upon Mr. Loring the longest jail sentence ever imposed related to wildlife offences in Canada. This demonstrated the reprehensibility of Mr. Loring's actions.

5. Mr. Loring showed some remorse.

6. Mr. Loring's violations were serious and including killing bears and other wildlife without cancelling licences, killing wildlife on other's licences, baiting grizzly bears, trafficking in salmon and bear gall bladders, using Aboriginal people to "tag" wildlife, and keeping unsecured guns and ammunition.

7. Actions such as Mr. Loring's have a drastically negative impact on the wildlife resource.

8. It is important to deter such actions.

9. Mr. Loring has previous convictions.

10. Mr. Loring clearly had intent to violate the law.

The Appeal

The Appellant appealed the decision of the Deputy Director on April 28, 2005. He submits that the 25-year period of hunting and angling ineligibility is excessive, and that he is entitled to a remedy for the 4- year delay between the criminal convictions and the Deputy Director's decision.

At the hearing of this appeal, the Deputy Director advised that it is now his position that the 25-year period of hunting ineligibility should be cumulative, commencing from the date of his conviction in Provincial Court on January 26, 2001. The Deputy Director stated that the Appellant received an automatic seven-year hunting ban following his conviction in Provincial Court and, therefore, the period of hunting ineligibility pursuant to the *Wildlife Act* should run for 18 years, commencing January 26, 2008 and expiring January 26, 2026. From this submission, it is clear that the Deputy Director is conceding that the appeal should be allowed to the limited extent that the period of ineligibility to obtain a hunting licence expire January 26, 2026, instead of March 18, 2030.

The Deputy Director also submitted that an appropriate period of ineligibility with respect to the Appellant's angling licence was not the 25 years he imposed, but rather a period of 15 years commencing March 18, 2005 and expiring March 18, 2020.

## ISSUES

This appeal raises the following issues:

1. Whether the licence cancellations, the 25-year period of hunting ineligibility and the 15-year period of angling ineligibility are excessive in the circumstances.

2. Whether the delay in imposing the licence cancellation and period of ineligibility warrant a reduction in the periods of ineligibility.

## RELEVANT LEGISLATION

Section 24(2) of the *Wildlife Act* provides:

**24** (2) If a person holding a licence or limited entry hunting authorization issued under this Act or the regulations is convicted of an offence under:

(a) this Act, other than section 22, subsection (6), (7), or (14) of this section, sections 26(1)(a), (e), (f) and (g), 28, 81 and 82,

(b) section 9 of the *Firearm Act*,

(c) the *Migratory Birds Convention Act*, 1994 (Canada) or its regulations,

(d) the *Fisheries Act* (Canada) or its regulations, or

(e) the *Criminal Code* respecting the use or possession of firearms while the person in hunting,

or for any other cause considered sufficient by the director, and after providing an opportunity for the person to be heard, the director may suspend the licence or limited entry hunting authorization and all rights under it for a period, within any prescribed limits, or may cancel it.

Section 24(5) of the *Wildlife Act* provides:

**24** (5) If a licence or limited hunting entry authorization is cancelled, the director may order that the person is ineligible to obtain or renew a licence or limited entry hunting authorization for a period, within the prescribed limits, and the director must inform the person of the period of ineligibility.

The maximum period of ineligibility with respect to section 24(5) of the *Wildlife Act* is 30 years (section 7.05 of the *Wildlife Act General Regulation*, B.C. Reg. 304/82).

## DISCUSSION AND ANALYSIS

### 1. Whether the licence cancellations, the 25-year period of hunting ineligibility and the 15-year period of angling ineligibility are excessive in the circumstances.

As noted, the Appellant called no evidence at the hearing of this appeal and was content to rely upon the various documents put into evidence by the Deputy Director in the Deputy Director's book of documents, marked as Exhibit #1 in this appeal.

The Appellant framed his submission on this issue in four ways:

1. The Deputy Director made a number of errors in his findings of fact; he was not familiar with the facts of the case and that these errors resulted in an excessive penalty.

2. The Deputy Director erred in considering a previous period of ineligibility imposed upon the Appellant in November of 1998, in violation of Lord Cokes' Rule. Lord Coke's Rule provides that before a person faces a more severe penalty for subsequent offences, he should have been convicted and sentenced for those offences before the subsequent penalty is imposed. The Appellant submits that Lord Coke's rule applies to administrative decisions resulting in the suspension or cancellation of licenses and, in the context of this case, that the Deputy Director should not have considered a previous licence suspension and imposition of period of ineligibility as an aggravating factor in determining the appropriate period of ineligibility.

3. The Deputy Director erred in that the period of ineligibility was not proportional to the period of ineligibility imposed upon other persons involved in the same set of transactions for which the Appellant was convicted in Provincial Court.

4. The Deputy Director erred in imposing a 25-year period of ineligibility for angling when the vast majority of the Appellant's convictions were for offences unrelated to fishing.

The Deputy Director testified that although he considered age and health issues in respect of the Appellant, he did not give them any weight because of the egregious facts of the case. The Deputy Director testified that the Appellant had expressed remorse but he also noted that the Appellant (in his written submission) tended to focus the blame on others and that he still felt that he had been entrapped.

In cross-examination, counsel for the Appellant asked the Deputy Director to explain the reason for his conclusion that the Appellant had committed a number of offences for which he had neither been charged (or in some cases, charged but not convicted). In particular, the Deputy Director found that the Appellant had set traps in violation of the regulations, possessed bear genitalia separate from the carcass and trafficked in bear genitalia, all matters for which the Appellant was not convicted. The Deputy Director explained that he knew that the Appellant had not been convicted for those offences but that he found, upon a review of the conservation officer's notes and the Reasons for Judgment that, although not guilty in criminal court, the Appellant had in fact committed those offences. In this regard, it is also to be noted that the Appellant did not deny the commission of these additional offences in his submissions in the opportunity to be heard.

Counsel for the Appellant also cross-examined the Deputy Director in respect of his finding that the Appellant had been previously convicted of *Wildlife Act* offences and that, as a result of those convictions, the Deputy Director had cancelled his hunting licence and imposed upon him a 3-year period of ineligibility to obtain or renew his hunting licence. The Appellant was sentenced in Provincial Court on those previous *Wildlife Act* charges on March 2, 1998, and the Deputy Director's decision to cancel his hunting licence and impose a period of ineligibility was rendered on November 5, 1998. In the present proceedings, the Deputy Director stated that he was aware of the previous conviction and administrative sanction and took them into account as an aggravating factor in the period of ineligibility to be imposed upon the Appellant, irrespective of the fact that the offences at issue in this case occurred before the Appellant received his licence suspension and period of ineligibility in November, 1998.

The Panel accepts that Lord Coke's rule applies to the imposition of an administrative sanction such as the imposition of a period of ineligibility to obtain or renew a hunting or angling licence. In this regard, the decision of the Supreme Court of British Columbia in *Mitran v British Columbia (Superintendent of Motor Vehicles)*, [2001] B.C.J. No. 693 is binding on the Panel.

In the context of appeals to the Board under the *Wildlife Act* there is, however, one critical distinction. The Board exercises *de novo* jurisdiction to consider the appropriate period of ineligibility and is not bound to allow an appeal merely because the Deputy Director exercised his discretion upon an incorrect principle of law. The Board is required to consider the period of ineligibility anew. The Board must determine the appropriate period of ineligibility based on the evidence before it and allow or reject the appeal based on that analysis. The focus is not upon errors made by the Deputy Director but rather upon an appropriate period of ineligibility.

In this case, the Panel is obliged to consider all of the circumstances surrounding the convictions and any other offences proved on a balance of probabilities. The Panel must then alter or confirm the period of ineligibility imposed by the Deputy Director, based upon an analysis of those matters. The question, then, is not whether the Deputy Director would have made a different decision had he only considered matters for which the Appellant was convicted in criminal court, or not considered the previous licence cancellation and period of ineligibility as an aggravating factor, but rather whether the Appellant's actions, as established on the evidence, were such as to warrant the 25-year period of ineligibility for hunting and a 15-year period of ineligibility for angling.

In this case, the primary consideration in imposing a period of ineligibility is protection of the wildlife resource. General and specific deterrence and punishment are of lesser concern in these proceedings because the Appellant has received and served a 15-month term of imprisonment for these offences, the longest jail term ever imposed for wildlife offences in Canada.

The Panel concludes that protection of the wildlife resource requires the imposition of a 25-year period of hunting ineligibility.

The Appellant has shown a complete and wanton disregard for the wildlife resource. He was motivated by greed to repeatedly and extensively ignore the law designed to protect and regulate wildlife within the province. The Appellant was well aware that he was breaching the law and, as noted, he was facing licensing action for previous offences (for which he had been convicted and sentenced in Provincial Court in March, 1998), at the time he committed the subject offences.

The only previous case drawn to the Panel's attention which would be of assistance in respect of an appropriate period of ineligibility in circumstances similar to the Appellant's is the case of *Idalecio Mota v. Director of Wildlife*, (Environmental Appeal Board, Appeal No. 91/24, August 4, 1992) (hereinafter *Mota*). In the *Mota* case, the Appellant was convicted of 30 counts of breaching the *Wildlife Act* and its regulations in respect of hunting offences. The exact nature of the offences for which Mr. Mota was convicted is not clear from the Board's decision, but he had received a number of previous convictions for like-offences. A panel of the Environmental Appeal Board confirmed a 30-year period of ineligibility for Mr. Mota to obtain a hunting licence.

In the subject case, the Panel concludes that a 25-year period of hunting ineligibility is required to protect the wildlife resource from the Appellant, who has demonstrated that he will not comply with wildlife laws if they conflict with his personal agenda. Given the Appellant's age (62 at the time of the hearing of this appeal), the Panel acknowledges that a 25-year period of hunting ineligibility is likely a lifetime hunting ban.

This analysis does not, however, apply in the same way in respect of a period of ineligibility to angle. The Panel concludes that it is not appropriate to impose a 25-year period of ineligibility to angle merely because a 25-year period of ineligibility to hunt is found to be appropriate. Each period of ineligibility must reflect the circumstances applicable to the appropriate licence. The Deputy Director has conceded as much by making the submission that the appropriate period of ineligibility to angle ought to be 15 years, not the 25 years he originally imposed.

The Panel concludes that it ought to look primarily at the Appellant's actions in respect of the fisheries resource in determining a period of ineligibility to angle. The circumstances within which these offences occurred is also to be considered, but the egregious nature of the *Wildlife Act* offences ought not to be the primary consideration in imposing a period of ineligibility to angle. If it is otherwise, the period of ineligibility will be merely considered further punishment for those *Wildlife Act* offences. As previously noted, the primary consideration in determining a period of ineligibility in this case is protection of the wildlife resource, not punishment or deterrence.

The two *Fisheries Act* offences are the only offences for which the Appellant was convicted that relate to abuse of the fisheries resource. These offences relate to the illegal offering and sale of fish. These offences are aggravated by the circumstances within which they occurred; specifically, the flagrant disregard of wildlife laws for personal gain. For these particular offences, the Appellant received two concurrent 3-month terms of imprisonment.

Considering the nature of the fisheries-related offences for which the Appellant was convicted, the Panel concludes that the 25-year period of ineligibility to obtain an angling licence imposed by the Deputy Director, and the proposed (by the Deputy Director on this appeal) 15-year period of ineligibility, are excessive in that they are not necessary to protect the fisheries resource.

The Panel has considered two previous decisions of the Environmental Appeal Board in respect of the appropriate period of ineligibility to obtain an angling licence. In the case of *Traverse v. Deputy Director of Wildlife* (2004-WIL-038(a), November 23, 2004) (unreported), the panel reduced a five-year period of ineligibility to four years. The Panel found that Mr. Traverse had participated in illegal fishing activity that had a significant impact upon Duck Lake, in British Columbia. In particular, Mr. Traverse was found to have possessed more than twice the daily quota for fish as permitted by his licence and to have dressed fish in a manner that the species, number and or/length of the fish could not be determined. In Provincial Court sentencing proceedings, the Court found that Mr. Traverse had treated Duck Lake

as “a large meat-producer” and that Mr. Traverse had taken steps to conceal his over-fishing. The period of ineligibility was reduced to four years so that it would conform to the period of ineligibility imposed upon Mr. Traverse’s co-accused. This was Mr. Traverse’s first fishing conviction in over 50 years of fishing.

In the case of *Siclari v. Deputy Director of Wildlife* (2004-WIL-045(a), May 13, 2005)(unreported), the panel confirmed a three-year period of ineligibility to angle upon Mr. Siclari who had been caught fishing with a barbed hook, contrary to regulation. The aggravating factors were that the appellant had 11 previous convictions, of which six convictions were for fishing with a barbed hook. Like the Appellant in this case, there had been numerous, prior public complaints about Mr. Siclari. Further, Mr. Siclari was in his 60s and, like the Appellant, expressed remorse and his desire to be able to fish in his later years.

In confirming the three-year period of ineligibility to angle, the panel noted that Mr. Siclari had repeatedly committed the same offences over a 22-year period and had demonstrated “disregard for the fishery resource and the privilege of utilizing the resource.”

Taking account of the range of periods of ineligibility imposed in the preceding cases, and in consideration of the additional protection of the fisheries resource required as a consequence of the aggravated nature of the Appellant’s actions, this Panel concludes that an appropriate period of ineligibility for the Appellant to obtain an angling licence is a period of five years, commencing March 18, 2005 and expiring March 17, 2010.

**2. Whether the delay in imposing the licence cancellation and period of ineligibility warrant a reduction in the period of ineligibility.**

The Appellant was convicted in Provincial Court and sentenced on the *Wildlife Act* and *Waste Management Act* offences on January 26, 2001. He was convicted and sentenced on the *Fisheries Act* offences on March 7, 2001.

The period of ineligibility imposed by the Deputy Director was not imposed until March 23, 2005, over four years after the final sentencing proceedings in Provincial Court.

The Appellant submits that the period of delay is excessive and ought to result in the reduction in the periods of ineligibility imposed upon him. He further submits that the delay ought not to lead to dismissal of the allegations but, that as there is some prejudice to him in the sense that being forced to wait weighed heavily on his mind, that there ought to be a reduction in the period of ineligibility. He further submitted that a 25-year period of hunting ineligibility is really a lifetime ban and this has been exacerbated by the delay.

In reply to the Appellant’s submission with respect to delay, the Deputy Director testified with respect to the reasons for the delay. The Deputy Director stated that he had no explanation for the one-year period of delay from the March 7, 2001

sentencing to February 14, 2002, when the Conservation Officer sent a letter to the Deputy Director recommending the licence action be taken against the Appellant.

The Deputy Director testified that the reason for the three-year delay between the letter of April 29, 2002, and his decision rendered on March 23, 2005, was that in the spring of 2001 there was a change in the provincial government. Immediately after the election, the new government instructed all ministries to review their structures and to allocate resources to the highest priorities of government. The government imposed new staffing reduction targets within a year of its election. Some departments were completely restructured or eliminated and some functions were moved to other ministries. The Deputy Director also testified that once this review was completed in January of 2002, the Wildlife Branch was notified of a new structure and large staffing reductions. In particular, the Wildlife Branch was combined with the Fisheries Branch and 89 full-time jobs were reduced to 36 full-time jobs.

This massive restructuring effort consumed management time. As this was a substantial priority, the restructuring consumed most of the management time of the Deputy Director.

As a consequence of these massive changes, a decision was made that licensing actions would be set aside as not constituting an immediate government priority. The Deputy Director testified that when he finally arrived into the position of Deputy Director in the summer of 2003, the change had been completed and the Wildlife Branch restructured. As a consequence, he was then able to deal with other issues and to move forward with the licence action decisions. He further testified that he dealt with the Appellant's file in the order it was received in his office.

The law is well established that evidence of prejudice to an Appellant is required before the court (or tribunal) may consider a remedy for excessive delay in an administrative process occasioned without the fault of the Appellant. In this regard, *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307 (hereinafter *Blencoe*), a 2000 decision of the Supreme Court of Canada is the leading authority.

In *Blencoe*, the Supreme Court of Canada found that the *Charter of Rights and Freedoms* applied to the actions of the British Columbia Human Rights Commission, and, by implication, other administrative tribunals. The Court held that section 7 of the *Charter of Rights and Freedoms* provides protection only in exceptional cases where the state interferes in profoundly intimate personal choices of an individual such that a state caused delay could trigger the section 7 security of the person interest. Section 7 states:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

The Court further held that there are remedies available in the administrative law context to deal with state-caused delay; however, there must be proof of significant prejudice resulting from that unacceptable delay. In this regard, the Court held that unacceptable delay may amount to an abuse of administrative process where prejudice has been demonstrated so as to impact the fairness of the hearing. Further, unacceptable delay may amount to an abuse of process even where the fairness of the hearing has not been impacted. Where there is no prejudice to the fairness of the hearing, the delay must be unacceptable and have directly caused a significant prejudice to the appellant so as to bring the administrative process into disrepute.

The Supreme Court of Canada further held that a stay is not the only remedy available for an abuse of process in administrative law proceedings, and that other remedies may be considered.

The Supreme Court of Canada held further that a determination about whether any particular delay is inordinate is not based only upon the length of the delay, but upon the context within which the case and the decision occurred. In this regard, the decision-maker is to consider the nature of the case, its complexity, the purpose and nature of the proceedings and whether the appellant has contributed to or waived any objections to the delay.

In other cases, it has been held that the discretion to provide a remedy for delay is limited to circumstances where there has been both an unreasonable delay, and serious prejudice to an appellant as a consequence of the delay such that there has been a breach of the duty to afford natural justice (*Nisbett v. Manitoba (Human Rights Commission)* (1993), 101 D.L.R. (4th) 744 (Man. C.A.) and *Crown Packaging Ltd. v. British Columbia (Human Rights Commission)*, [2002] 4 W.W.R. 242 (B.C.C.A.)).

From these authorities, it appears clear that there must be some evidence of either specific prejudice to the appellant's ability to defend him or her self, resulting in a finding that the hearing cannot be conducted fairly (i.e. unavailability of witnesses etc.) or, in cases of extreme delay, evidence linking the inordinate delay to psychological harm or damage to the person's reputation.

In this case, there is no evidence with respect to any prejudice that may have attached to the Appellant as a consequence of the delay in imposing the period of ineligibility. Indeed, the Appellant only argued that the extreme length of the delay, standing alone, warranted a remedy as an abuse of process.

The Deputy Director submitted that there should be no presumption of prejudice and no remedy is warranted without direct evidence of prejudice to the Appellant. He further submitted that the delay here, although excessive, was (as he explained) reasonable in the context of government's right to prioritize and allocate limited resources.

The Panel concludes that the delay in this case, although inordinate, is explained. The Panel attaches significance to the Deputy Director's evidence that the delay

resulted from a re-organization and downsizing of the Wildlife Branch. This evidence is important because the Panel concludes that this delay is not systemic or grounded in a disregard for the fair process rights of the Appellant (or other appellants). This was a delay based upon a unique set of facts resulting from a change in government.

Government operates with finite financial resources and it must have the authority and flexibility to make decisions allocating those finite resources between various objectives. Having said this, the Panel also concludes that government priorities cannot "trump" the fair process rights of the Appellant. While the government must be given latitude in making spending decisions, there may reach a point where serious prejudice attaches to an appellant, and a remedy for delay must result.

The Panel concludes that, although there has been lengthy delay in these proceedings, in light of the uncontradicted reasonable explanation for that delay, it is not prepared to grant a remedy to the Appellant in the absence of evidence of extreme prejudice to him. The Panel specifically rejects the Appellant's submission that the four-year delay in these proceedings warrants a remedy, irrespective of the reasons for the delay and the absence of prejudice to him.

As there is no evidence of prejudice accruing to the Appellant as a consequence of the delay, the Panel concludes that the Appellant is not entitled to any remedy for delay.

## DECISION

In making this decision, this Panel of the Environmental Appeal Board has considered all of the evidence and arguments provided, whether or not they have been specifically reiterated here.

The period of ineligibility to obtain a hunting licence is confirmed at 25 years, but should be calculated to begin on the date of the Appellant's conviction in Provincial Court, January 26, 2001, and expiring on January 26, 2026.

The period of ineligibility to obtain an angling licence is reduced from 25 years (expiring March 18, 2030) to 5 years, commencing March 18, 2005 and expiring March 17, 2010.

The appeal is allowed, in part.

"Robert Wickett"

Robert Wickett, Panel Chair
Environmental Appeal Board

November 29, 200