



Province of
British Columbia

Environmental Appeal Board

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DECISION NO. 2005-WIL-028(a)

In the matter of an appeal under section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488.

BETWEEN: Richard Webster **APPELLANT**

AND: Regional Wildlife Manager **RESPONDENT**

BEFORE: A Panel of the Environmental Appeal Board
Alan Andison, Panel Chair

DATE: Conducted by way of written submissions
concluding on March 29, 2006

APPEARING: For the Appellant: Richard Webster
For the Respondent: N. A. Carmichael

APPEAL

Richard Webster appeals the October 21, 2005 decision of N. A. Carmichael, Regional Manager, Environmental Stewardship Division (the "Regional Manager"), Okanagan Region, Ministry of Environment, refusing Mr. Webster the issuance of a permit. Specifically, Mr. Webster applied for a permit exempting him from the prohibition against motor vehicle use for the purpose of hunting in Management Units ("MU") 8-4 and MU 8-5 because of his medical condition. The Regional Manager refused that application.

The Environmental Appeal Board has the authority to hear this appeal under section 93 of the *Environmental Management Act*, and section 101.1 of the *Wildlife Act*. Section 101.1(5) of the *Wildlife Act* provides that the 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.

Mr. Webster requests that the Board reverse the Regional Manager's decision, and order the Regional Manager to grant Mr. Webster a permit to use a motor vehicle as well as his All Terrain Vehicle ("ATV") in MUs 8-4 and 8-5.

This appeal was conducted by way of written submissions.

BACKGROUND

Both MU 8-4 and MU 8-5 are located within the Okanagan Region.

The *Wildlife Act, Motor Vehicle Prohibition Regulation*, B.C. Reg. 196/99 (the "*MVP Regulation*"), makes it an offence for a person to use or operate a motor vehicle in certain specified areas and/or on specified roads within an area for the purpose of hunting. These areas are closed to vehicles and are sometimes referred to as "vehicle access closures". However, under section 19 of the *Wildlife Act* and section 3(2)(a) of the *Wildlife Act Permit Regulation*, B.C. Reg. 253/2000 (the "*Permit Regulation*"), a regional manager may issue a permit exempting a person from any part of the *MVP Regulation*.

On October 4, 2005, Mr. Webster applied to the Regional Manager for a permit to exempt him from the *MVP Regulation* for the purposes of using a motor vehicle and his ATV, for hunting in MU 8-4 and 8-5. Under the heading on the General Permit Application form "Proposed Activity", he states:

NEED TO USE MY VEHICLE + ATV. WILL NOT SHOOT IF THE AREAS ARE CLOSED TO NO SHOOTING OR WILL NOT GO IF THE AREAS ARE CLOSED TO NO TRESPASSING OR WILL NOT DISTURB ANY WATERSHED.

WILL FOLLOW THE 2005 HUNTING REGULATIONS SYNOPSIS FOR THE GAMES TO HARVEST [deer, moose, elk, bear].

In the spaces provided for the proposed start and end dates of the activity, Mr. Webster advises that the start date is October 7, 2005, and the end date is December 10, 2005.

In addition to the application form, Mr. Webster provided the Regional Manager with two hand-written notes from Dr. M. Frankel, M.D., each dated October 3, 2005. Both notes are on prescription forms. The first states, "The above person [Rick Webster] is deaf"; the second states, "The above [R. Webster] is suffering with an inflammation of the heel".

By a letter dated October 21, 2005, the Regional Manager denied Mr. Webster's permit application. The Regional Manager's decision letter states, in part:

The general permit issued to individuals who wish to be exempt from any provisions of the *Motor Vehicle Prohibition Regulation* is issued under section 3(2)(a) of the *Wildlife Act Permit Regulation*. However, section 5(1)(a) of the *Permit Regulation* states that a Regional Manager must be satisfied that the applicant meets the specific requirements, if any, for the permit as set out in this regulation.

Upon review of your application and the doctor's note that you sent with your application does not [sic], in our opinion, provide sufficient justification to allow for an exemption to the *Motor Vehicle Prohibition Regulation* in Management Unit 8-4 and 8-5. Therefore, we are not able to grant your request.

On November 25, 2005, the Board received Mr. Webster's Notice of Appeal of the Regional Manager's decision. His Notice of Appeal states in full, "The reason for this appeal is my deafness that I need safety to stay with my vehicle for hunting." He provided no further submissions or information to the Board in support of his appeal. However, Mr. Webster's Notice of Appeal was deficient as he failed to provide the mandatory filing fee to the Board. Mr. Webster subsequently perfected his appeal on January 3, 2006, with the submission of the filing fee.

The Regional Manager requests that the Board confirm his decision to deny Mr. Webster's permit application.

ISSUE

Whether Mr. Webster should be granted an exemption under section 19 of the *Wildlife Act* and section 3(2) of the *Permit Regulation*, allowing him to use a motor vehicle for the purpose of hunting within MUs 8-4 and 8-5.

RELEVANT LEGISLATION

The relevant sections of the *Wildlife Act* are:

Permits

- 19** (1) A regional manager or a person authorized by a regional manager may, to the extent authorized by and in accordance with regulations made by the Lieutenant Governor in Council, by the issue of a permit, authorize a person
- (a) to do anything that the person may do only by authority of a permit or that the person is prohibited from doing by this Act or the regulations, or
 - (b) to omit to do anything that the person is required to do by this Act or the regulations,
- subject to and in accordance with those conditions, limits and period or periods the regional manager may set out in the permit and, despite anything contained in this Act or the regulations, that person has that authority during the term of the permit.

The following sections of the *Permit Regulation* are relevant to this appeal:

Exemptions by permit

- 3** (2) A regional manager may issue a permit in accordance with this regulation, on the terms and for the period he or she specifies, exempting a person from:
- (a) any provisions of the Motor Vehicle Prohibition Regulation, B.C. Reg. 196/99, and
 - (b) ...

Restrictions on issuing permits generally

- 5 (1) Before issuing a permit under section 2, 3 or 4 the regional manager or the director, as applicable, must be satisfied
- (a) that the applicant meets the specific requirements, if any, for the permit as set out in this regulation, and
 - (b) that issuing the permit is not contrary to the proper management of wildlife resources in British Columbia.

The following sections of the *MVP Regulation* are relevant to this appeal:

Definitions

- 1 In this regulation:

“motor vehicle” means a device in, on or by which a person or thing is being or may be transported or drawn, and which is designed to be self propelled, and includes an atv or snowmobile, but does not include

- (a) a device designed to be moved by human, animal or wind power,
- (b) a device designed to be used exclusively on stationary rails or stationary tracks, or
- (c) a boat propelled by motorized power;

Motor vehicle hunting closed areas

- 3 A person commits an offence if he or she uses or operates a motor vehicle for the purpose of hunting in an area described in Schedule 2 during the period specified in that schedule for each area.

Only one road closure within MU 8-4 and 8-5 has been found in Schedule 2. It is as follows:

Schedule 2**Motor Vehicle Closed Areas****Lawless-Jacobson Lake FSR**

- 28 Effective year round, in that portion of M.U. 8-05 being the Lawless-Jacobson Lake Forest Service Road (B.C. Forest Service Project No. 5104-05) southeasterly of the point where it crosses Vuich Creek.

DISCUSSION AND ANALYSIS

Whether Mr. Webster should be granted an exemption under section 19 of the *Wildlife Act* and section 3(2) of the *Permit Regulation*, allowing him to use a motor vehicle for the purpose of hunting within MUs 8-4 and 8-5.

Under section 19 of the *Wildlife Act* and pursuant to the *Permit Regulation*, the Regional Manager has the authority to issue a permit authorizing a person to do anything that the *Wildlife Act* or its regulations prohibit the person from doing.

Section 3(2)(a) of the *Permit Regulation* authorizes the Regional Manager to issue a permit "in accordance with this regulation, on the terms and for the period he or she specifies," exempting a person from "any provisions of the *MVP Regulation*".

In this case, the Panel notes that Mr. Webster sought the permit so that he could use a vehicle to hunt between October 7, 2005 and December 10, 2005, in areas that are closed to motor vehicle use. Mr. Webster did not advise the Board of these dates. The Board only obtained a copy of his application form, which showed these dates, after it made a specific request for the form from the Regional Manager on March 28, 2006. As this hunting period has now passed it appears that Mr. Webster's appeal is moot. However, the Panel has proceeded to consider the appeal as its findings may provide some guidance to the parties should Mr. Webster choose to make an application in the future.

Mr. Webster applied for an exemption from the prohibition in section 3 of the *MVP Regulation* in relation to both MU 8-4 and MU 8-5. The Panel has reviewed the *MVP Regulation* and can find no motor vehicle closures within MU 8-4. Consequently, the Panel finds that Mr. Webster is not prohibited from using a motor vehicle for the purposes of hunting within MU 8-4, and does not require a permit under the *Wildlife Act*. The Regional Manager has now confirmed this with the Board.

With respect to MU 8-5, there is only one motor vehicle prohibition established in the *MVP Regulation*. That is found in section 28, which relates solely to the Lawless-Jacobson Lake Forest Service Road, southeasterly of the point where it crosses Vuich Creek. Therefore, in relation to MU 8-5, Mr. Webster only requires a permit in order to exempt him from the road identified in section 28, and does not currently require a permit under the *Wildlife Act* for the other roads within that MU.

Section 5 of the *Permit Regulation* provides that the Regional Manager "must be satisfied that the applicant meets the specific requirements, if any, for the permit as set out in this regulation" and that "issuing the permit is not contrary to the proper management of wildlife resources in British Columbia" before issuing a permit. The Panel notes that there are no "specific requirements" set out in the *Permit Regulation*. Further, the only information regarding management of wildlife resources is the Regional Manager's submission that the intent of vehicle access closures is "to protect vulnerable populations of game animals by restricting hunter access to non-motorized travel (walking and bicycle)". However, the Regional Manager provided no evidence regarding the impact on vulnerable populations should Mr. Webster use a motor vehicle as requested. The Board considered a similar question in *Larry Hall v. Regional Wildlife Manager*, (Decision No. 2003-WIL-31, December 9, 2003) (unreported), and stated as follows:

... nor has the Panel been provided with site-specific information about the sensitivity of soil and vegetation in those areas to motor vehicle use, or how Mr. Hall's use of those roads may affect wildlife or other hunters. Consequently, the Panel is unable to properly determine whether issuing a Disabled Hunter Special Access Permit to Mr. Hall would adversely affect the Ministry's valid objectives in establishing road closures.

The Panel has also considered Mr. Webster's evidence. In his Notice of Appeal, Mr. Webster states "the reason for this appeal is my deafness that I need safety to stay with my vehicle for hunting". The Panel does not know whether Mr. Webster intended to use the road that is subject to the prohibition – the Lawless-Jacobson Lake Forest Service Road, southeasterly of the point where it crosses Vuich Creek. Assuming that he did, there is still a lack of information in support of his application.

In addition, the doctor's notes do not assist the Panel as they do not provide sufficient information to enable the Panel to appreciate the extent of Mr. Webster's disabilities, or to determine how using an ATV or motor vehicle would be necessary for him to hunt safely.

Considering that the Government has chosen to prohibit all forms of motor vehicle use for the purpose of hunting on the Lawless-Jacobson Lake Forest Service Road, southeasterly of the point where it crosses Vuich Creek, the Panel accepts that this particular area has been targeted for special protection and, therefore, a compelling argument that the wildlife resource will not be jeopardized must be met in order to obtain an exemption from such a prohibition.

The Panel finds that Mr. Webster has not established a sufficient basis for granting such a permit in the circumstances of this case. Despite the lack of information provided by the Regional Manager on the reasons for the particular closure of a portion of the Lawless-Jacobson Lake Forest Service Road, and a lack of information on the potential impact of vehicular use for hunting purposes, the Panel finds that the onus is on the Appellant, to provide some detail and support for a permit application. Mr. Webster's information is insufficient to warrant a permit in this case.

The Panel finds that Mr. Webster has not established a sufficient basis for granting a permit to exempt him from the closure set out in section 28 of Schedule 2 of the *MVP Regulation*.

Accordingly, the Panel finds that the Regional Manager properly refused the permit.

DECISION

In making this decision, the Panel has carefully considered all of the evidence before it, whether or not specifically reiterated here.

For the above reasons, the appeal is dismissed.

"Alan Andison"

Alan Andison, Panel Chair
Environmental Appeal Board

April 13, 2006