

Environmental Appeal Board

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DECISION NO. 2006-WIL-003(a)

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

BETWEEN:	Erwin Adolf Klapper	APPELLANT
AND:	Deputy Director of Wildlife	RESPONDENT
BEFORE:	A Panel of the Environmental Appeal Board Alan Anderson, Panel Chair	
DATE:	November 8, 2006	
PLACE:	Prince George, BC	
APPEARING:	For the Appellant: George Leven, Counsel For the Respondent: Joseph G. McBride, Counsel	

APPEAL

Erwin Adolf Klapper appeals the February 23, 2006 decision of T.J. Ethier, Deputy Director of Wildlife (the "Deputy Director"), Ministry of Environment (the "Ministry"), to cancel Mr. Klapper's hunting licence effective February 21, 2006, to declare Mr. Klapper ineligible to hunt or to obtain or renew a British Columbia hunting licence until 23:59 hours on February 21, 2017, and to require him to successfully complete the Conservation and Outdoor Recreation and Education (CORE) program before becoming eligible to obtain a hunting licence again.

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* (the "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.

Mr. Klapper asks the Board to reduce or eliminate the period of ineligibility.

BACKGROUND

Mr. Klapper is 67 years old and a permanent resident of Canada. In 1998, he emigrated from Germany and settled in the Fraser Lake area with his wife. Fraser Lake is in Northern British Columbia, approximately 160 km west of Prince George. Other members of Mr. Klapper's family, including his son, daughter, and grandchildren, regularly visit or have taken up residence near his home in Fraser Lake.

The circumstances which led to the licensing action arose out of an undercover operation in 2000, and the subsequent convictions entered against Mr. Klapper for various offences in 2001.

The Convictions

The events which arise to this appeal took place over a period of several days in September 2000. Mr. Klapper was suspected of committing wildlife offences as a result of an advertisement he had placed in a German hunting magazine and tips that had been received by the Ministry. The Ministry decided to investigate.

A Deputy Conservation Officer (the "Undercover Officer") posed as a Swiss tourist who was interested in hunting bears in Canada. The Undercover Officer stayed with, and was guided by, Mr. Klapper from September 11 to 15, 2000. During this time, he observed Mr. Klapper committing a number of wildlife and firearms offences. At the conclusion of the undercover operation, Mr. Klapper was arrested and his home was searched to collect further evidence.

As a result of the investigation, Mr. Klapper was charged in Provincial Court with 23 counts of various offences under the *Wildlife Act*, the *Firearm Act*, the *Fisheries Act*, the *Criminal Code*, and the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*. Mr. Klapper pled guilty in Provincial Court to five counts of violating the *Wildlife Act*, and one count of violating the *Firearm Act*. The Crown stayed the remaining charges. Consequently, on July 9, 2001, the following convictions were entered against Mr. Klapper:

1. Between September 12, 2000 and September 15, 2000, guiding for game without a licence, contrary to section 48(1) of the *Wildlife Act*.
2. Between September 12, 2000 and September 15, 2000, possessing a loaded firearm in a vehicle, contrary to section 9 of the *Firearm Act* (Prov.).
3. On September 13, 2000, hunting from a vehicle, contrary to section 27(1) of the *Wildlife Act*.

4. On September 13, 2000, hunting moose without a limited entry hunting authorization, contrary to section 11(1)(a)(ii) of the *Wildlife Act*.
5. On September 14, 2000, hunting from a vehicle, contrary to section 27(1) of the *Wildlife Act*.
6. On September 14, 2000, allowing his hunting licence to be used by another person, contrary to section 81(a) of the *Wildlife Act*.

Mr. Klapper and the Crown made a joint submission to the Court regarding the sentence. The Court accepted their joint submission and imposed a fine of \$30,000, ordered that firearms and hunting equipment seized by the Crown be forfeited, and imposed a four-month conditional sentence.

Licensing Action

On March 13, 2003, some 20 months after the convictions, Mr. Klapper received a notice from the Ministry that Elizabeth MacMillan, the then Deputy Director, was considering taking licensing action. The letter stated that Mr. Klapper may be ordered ineligible to obtain a hunting licence for up to 30 years. On April 29, 2003, Mr. Klapper's counsel made written submissions arguing that any period of ineligibility imposed should be decreased on the grounds that the consequences Mr. Klapper had already suffered were significant, and because of the delay in commencing the licensing action. On February 23, 2006, the current Deputy Director issued a decision cancelling Mr. Klapper's licence and declaring him ineligible to hunt for 11 years.

The Deputy Director's written decision indicates that he arrived at the length of the suspension by considering a number of factors. For the five *Wildlife Act* convictions, the Deputy Director decided that a 12-year suspension would be appropriate. However, because Mr. Klapper had also demonstrated a "full intent to break the law", a "complete disregard for sustainability of the wildlife resource", and "very unsafe firearm practices", the Deputy Director increased the length of the suspension by an additional three years. The Deputy Director then took into consideration some mitigating factors. He noted Mr. Klapper's age, the remorse he had demonstrated, the large fine he had paid, and the four-year delay before the decision was made. Based on these factors, the Deputy Director reduced the period of ineligibility by four years. This reduction resulted in a total hunting ban of 11 years.

The Appeal

Mr. Klapper appeals the decision of the Deputy Director on the basis that the 11-year ban is excessive in all of the circumstances. In particular, Mr. Klapper submits that the Deputy Director failed to properly take into account the following circumstances:

- He had no previous wildlife record.
- He had already paid a huge financial and personal price including a four-month conditional sentence and forfeiture of equipment valued at between \$35,000 and \$40,000.

- The offences were committed over a three-day period and should be treated as a first offence.
- He moved to Canada largely because of "hunting privileges in British Columbia and his ability to pursue that recreation here."
- As a result of the convictions, he lost his franchise agreement with UniGlobe Travel Inc.
- Since 2001, Mr. Klapper had invested much time and money in a new company which he incorporated on April 22, 2004. Had the Deputy Director's decision been made more promptly, he would have moved to another province and invested his time and money there.
- He incurred costs defending a Canada Customs and Revenue Agency action that began as a result of the search warrant carried out by conservation officers.
- The investigation and arrest had a significant impact on his family.

Mr. Klapper requests that the period of ineligibility be reduced or eliminated completely.

The Deputy Director submits that Mr. Klapper was convicted of multiple serious wrongs that are deserving of a significant penalty. The Deputy Director submits that he adequately considered the following circumstances in reaching his decision:

- Mr. Klapper's age and lack of record.
- The offences were first offences, though very serious ones.
- The large fine, conditional sentence, property forfeiture, business loss, and negative publicity suffered by Mr. Klapper.
- Specific and general deterrence are required.
- Mr. Klapper's remorse.
- The delay in making his decision.

As a result of these factors, the Deputy Director reduced the suspension by four years. The Deputy Director submits that the suspension should be reduced by one more year because Mr. Klapper was subject to a mandatory one-year suspension as a result of his convictions and the Deputy Director failed to account for this suspension in his decision. Thus, he submits that the period of ineligibility should be reduced to ten years.

The Deputy Director submits that the Appellant's dispute with the Canada Customs and Revenue Agency (the "CCRA") is not sufficiently related to the convictions to merit consideration in reducing the penalty.

ISSUES

This appeal raises the following issues:

1. Whether the Deputy Director took into account all relevant factors when imposing the period of ineligibility.

2. In all the circumstances, whether the period of ineligibility should be reduced.

RELEVANT LEGISLATION

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

- (2) After providing an opportunity for the person to be heard, the director may, for any cause considered sufficient by the director, do any of the following:
 - (a) prohibit, for a period within prescribed limits, the person from hunting, angling or carrying a firearm;
 - (b) cancel or suspend, for a period within prescribed limits, any limited entry hunting authorization or licence that is issued to the person under this Act.

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

- (5) If a licence or limited entry hunting 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.

DISCUSSION AND ANALYSIS

1. Whether the Deputy Director took into account all relevant factors when imposing the period of ineligibility.

Mr. Klapper argues that there were a number of relevant factors which the Deputy Director failed to consider when determining the period of ineligibility. First, the Deputy Director did not take into account the effects of a dispute that Mr. Klapper had with the CCRA. Second, the Deputy Director did not take into account the effects that the investigation and conviction had on Mr. Klapper's family.

The CCRA Dispute

On September 15, 2000, a Conservation Officer and an RCMP Officer executed a search warrant on Mr. Klapper's home to collect evidence in relation to his *Wildlife Act* offences. In the course of the search, the officers discovered a number of watches and gold rings, coins, and figurines inside a safe. Mrs. Klapper, who was present during the search, told the officers that her husband had been involved in the import/export business before emigrating from Germany. The officers discussed their findings with a member of the RCMP's Customs and Excise Section, who initiated an investigation into Mr. Klapper. After consulting with the CCRA, the Customs and Excise officer determined that Mr. Klapper had imported these goods without declaring or paying duty on them.

As a result of the investigation, the CCRA seized Mr. Klapper's goods and held them for appraisal. Mr. Klapper was initially informed that he would have to pay approximately \$83,000 to have his goods returned; this amount was later reduced

to \$55,738.67. Mr. Klapper refused to pay either amount, and he challenged the seizure of his goods in Federal Court. Ultimately, the CCRA was unable to prove any wrongdoing on the part of Mr. Klapper. It returned Mr. Klapper's goods and paid him \$2,500 in settlement for his legal expenses. Mr. Klapper testified that his actual legal expenses had approached \$8,500.

The question that the Panel must determine is whether a collateral issue, such as the impact the CCRA dispute had on Mr. Klapper, can be taken into account when determining a period of ineligibility. Mr. Klapper characterized the issue as part of the financial and personal price he had to pay as a result of the offences he committed.

In argument, the Respondent characterized the issue as an independent one that is too remote from the wildlife convictions to merit consideration. However, the Deputy Director testified that he would have taken the CCRA dispute into account had he been aware of it when he made his decision. If he had done so, given the nature of the offences and the significant penalties that Mr. Klapper had already paid, the Deputy Director doubted that the CCRA dispute would have had much impact on the period of ineligibility.

The Panel accepts that, but for the wildlife offence investigation, the CCRA would not have seized Mr. Klapper's property and he would not have incurred costs in seeking its return. However, not every consequence of a wildlife offence investigation should be taken into account when determining a period of ineligibility. For instance, if Mr. Klapper had been guilty of the customs offences which he was charged with, it would be counter-intuitive to reduce the period of ineligibility simply because he was properly punished for the commission of an unrelated offence.

On the other hand, where a number of consequences flow out of an investigation and prosecution under the *Wildlife Act*, these consequences may be taken into account if they serve the purposes that licensing actions are intended to serve. The policy of the Director, Wildlife Branch, dated April 23 1998, provides that the purposes of licensing actions include protection of the wildlife resource and specific and general deterrence. Although this policy is not binding on the Panel, the Panel finds that, in the context of this legislation, these are valid goals of a licensing action.

The goal of specific deterrence may be met in part by consequences flowing from a wildlife investigation and prosecution. An individual who is the subject of an investigation may well discover that his or her life is disturbed in ways that could not have been anticipated. When these effects are significant, they are likely to deter an individual from committing a similar offence in the future. As a result, less emphasis needs to be placed on specific deterrence when determining the period of ineligibility.

In this case, there is no evidence that Mr. Klapper committed any wrong in respect of the goods which were seized by the CCRA. In fact, it appears that the dispute was a result of inaccurate or incomplete records kept by the CCRA. Mr. Klapper commenced an action in Federal Court to have his goods returned. The action was settled and the CCRA agreed to return Mr. Klapper's goods and pay him \$2,500 in

compensation for legal costs. The inconvenience and costs of the CCRA dispute arose directly out of the wildlife investigation, and not as a result of an independent wrong committed by Mr. Klapper. Consequently, the Panel finds that the customs dispute is a relevant factor to be taken into account when determining the period of ineligibility for Mr. Klapper.

Impact on Family Life

Mr. Klapper submits that the Deputy Director failed to take into account the impact that has been felt by him and his family as a result of his wildlife offences. Mrs. Klapper was scheduled to testify on this point, but was unable to do so for health reasons. Mr. Klapper's counsel informed the Panel what Mrs. Klapper's evidence would have been. Counsel for the Deputy Director had no objection to this evidence being entered as hearsay.

Mrs. Klapper would have testified that there had been a terrible impact on her family. When Mr. Klapper was arrested, Mrs. Klapper was waiting for him to pick her up at a shopping centre. On the day of the arrest, Mr. and Mrs. Klapper were shopping in Vanderhoof, which is some distance from their home in Fraser Lake. Mr. Klapper asked the Conservation Officers to tell his wife where he was. The Officers agreed to do so. However, the Conservation Officers did not do as they said and, as a result, Mrs. Klapper was left waiting for five hours at the shopping centre without knowing what had happened to her husband.

In addition, during the execution of the search warrant, Mr. Klapper's then eight-year old granddaughter arrived at his home after school. Because the Klappers were not home at the time, the Officers reported the situation to the Ministry of Social Services, which then apprehended the granddaughter. Although the granddaughter was returned to their care, the Ministry of Social Services performed several home visits to ensure that adequate care was being provided. The entire experience was extremely stressful for Mrs. Klapper, and she advised her counsel that it very nearly caused the end of her marriage to Mr. Klapper.

A certain degree of stress and inconvenience is to be expected when someone is investigated, charged, and convicted of *Wildlife Act* offences. As a result, it is not necessary for every stress and inconvenience to be taken into account by the Deputy Director during a subsequent licensing action. However, where the impact on an individual's personal life is extreme, it may properly be taken into account as a mitigating factor when determining the period of ineligibility as it is relevant to the level of specific deterrence that is appropriate.

In this case, the impact on Mr. Klapper's personal life was far greater than would normally be expected. As a result, it would be appropriate to consider these facts in determining the length of the hunting prohibition. There was no indication in the oral or written evidence available to the Panel that the Deputy Director was aware of these facts or took them into account.

2. In all the *circumstances*, whether the period of ineligibility should be reduced.

Mr. Klapper submits that such a lengthy period of ineligibility is excessive. Although he acknowledges and takes responsibility for the serious offences that he

committed, he argues that his unique circumstances should result in a far shorter ban. His unique circumstances are as follows:

1. As a recent immigrant from Germany, he was unaware of the consequences of violating British Columbia's wildlife laws. Hunting is far more strictly regulated in Europe than it is in Canada, and, as a result, he overestimated the freedom that he had to hunt in British Columbia.
2. Mr. Klapper has already suffered enough financial and personal harm to deter him from committing offences in the future. As a result, a hunting ban is unnecessary for the purposes of deterrence and amounts to "piling on".
3. There was a significant delay between Mr. Klapper's conviction and the Deputy Director's decision. This delay prejudiced Mr. Klapper because he would not have become as "entrenched" in British Columbia if he had known he would be banned from hunting.

Each of these arguments will be considered in turn.

Regulation of hunting in British Columbia

Mr. Klapper argues that, because hunting laws are far stricter in Germany, Germans may not be aware of the consequences of their wrongful actions in Canada. Mr. Klapper had only been a permanent resident for a few years before committing his offences, and had not had the benefit of hearing of punishments that other hunters had received for *Wildlife Act* violations. Because he miscalculated the strictness of the laws of British Columbia, he submits that his behaviour may appear more outrageous than it really was.

The Deputy Director testified that he does not believe that Germans are as naïve about the laws of British Columbia as Mr. Klapper suggests. German citizens are important clients for British Columbia's guiding industry. The Guide Outfitters Association of British Columbia does a good job of marketing hunting opportunities to Germans and making sure that laws are well understood.

The Panel does not find Mr. Klapper's evidence credible on this point.

Before being granted a hunting licence, Mr. Klapper passed the CORE examination, which includes a segment on the law and regulations of British Columbia. This fact demonstrates that Mr. Klapper was familiar with the laws of British Columbia, and should have appreciated the consequences of his wrongful actions.

Even if Mr. Klapper was not familiar with the consequences of breaking these laws, the Panel would not consider this a mitigating factor. An individual's actions are not any less wrong or harmful because he believes the enforcement or penalties are not as severe as in another country.

The facts demonstrate that Mr. Klapper had some actual knowledge of the laws of British Columbia. He violated the law, and the Deputy Director properly took this factor into account when determining the period of ineligibility.

Deterrence

Mr. Klapper submits that he has already suffered enough financial and personal harm to deter him and others from committing similar offences in the future. He submits that, as a result, there is no need for the period of ineligibility to be as long as 11, now 10, years.

The Respondent argues that specific deterrence is not a particularly important factor in this case and that more weight should be given to general deterrence and the impact of Mr. Klapper's actions on the wildlife resource. He notes that, while other decisions made by the Deputy Director have discussed the importance of specific deterrence, it was not mentioned in the decision under appeal. As a result, he asks the Panel to infer that specific deterrence was not an important consideration for the Deputy Director.

This argument is not consistent with the evidence given by the Deputy Director at the hearing. On cross-examination, the Deputy Director indicated that he had a very strong interest in deterring Mr. Klapper from committing a similar offence in the future because he felt that Mr. Klapper was at risk of re-offending. Although the Deputy Director did not rank the significance of specific deterrence against the significance of general deterrence and the impact on the wildlife resource, it is apparent that specific deterrence was an important factor in his decision.

Mr. Klapper has already paid a high price for his behaviour. He was subject to a four-month conditional sentence, he paid a large fine and forfeited valuable equipment, he has received negative publicity, he lost his business franchise when the franchisor became aware of his convictions, he became involved in a dispute with the CCRA, and there has been a significant impact on his family. These consequences alone should be sufficient to deter Mr. Klapper. In the Panel's view, further licensing action will, in these circumstances, have minimal value as a specific deterrent. Consequently, specific deterrence need not be given much weight.

On the other hand, more weight ought to be given to general deterrence. Other hunters who become aware of Mr. Klapper's case would likely focus on the conditional sentence, fine, and period for which Mr. Klapper is ineligible to hunt. As a result, it is important that the period of ineligibility reflects the seriousness of Mr. Klapper's offences.

Delay

Mr. Klapper submits that the significant delay between his conviction and the cancellation of his hunting privileges has been prejudicial to his interests. He does not seek the equivalent of a stay because of this prejudice, but he submits that the delay should be taken into account when determining the period of ineligibility.

Mr. Klapper was convicted on July 9, 2001. On March 13, 2003, the then Deputy Director notified Mr. Klapper that she was considering suspending his hunting privileges and she offered him an opportunity to be heard. At this time, Mr. Klapper indicated his surprise at the delay, but did not claim to have been prejudiced. After Mr. Klapper made submissions to the then Deputy Director, no

action was taken on his file until February 23, 2006, when the Deputy Director issued the decision under appeal.

The Deputy Director testified that the delay between the conviction and his decision was largely a result of a restructuring of the Ministry that occurred after the change of government in 2001. The Fisheries and Wildlife Branches were combined into a single branch. Whereas the former Wildlife Branch had 89 staff, the combined branch was reduced to only 36 staff. The government instructed all ministries to devote resources to the government's highest priorities. The former Deputy Director was focused on restructuring issues and was unable to devote time to issues such as licensing actions.

The Deputy Director testified that he took over the position in July of 2004. At this time, there was a backlog of 80 or 85 licensing decisions to be made. Although the Deputy Director attempted to address the most serious cases first, he did not examine Mr. Klapper's case until shortly before issuing his decision.

In *Loring v. Deputy Director of Wildlife* (Decision No. 2005-WIL-008(a), November 29, 2005) (unreported), the Board examined the leading cases and determined that, where a delay is clearly unacceptable and has directly caused significant prejudice, it may amount to an abuse of process for which a remedy can be provided.

Mr. Klapper submitted that he was prejudiced by the delay, and the Respondent conceded in argument that there had been some prejudice. Mr. Klapper was informed that the Deputy Director was considering taking licensing action 20 months after the conviction. Mr. Klapper indicated surprise at this time, and hoped that the delay would be taken into account when determining the length of the suspension. Mr. Klapper now claims prejudice because he and his family have become entrenched in British Columbia and it would be difficult for him to move to a jurisdiction where he is permitted to hunt. Had the Deputy Director made his decision more quickly, Mr. Klapper submits that it would have been far easier for him to move.

The Deputy Director recognized that the delay was unacceptable and accounted for this by taking into account the delay when reducing the period of ineligibility by four years. The Panel accepts that Mr. Klapper suffered some prejudice as a result of the delay. However, the prejudice is not significant.

The Panel finds that it was unreasonable of Mr. Klapper to expect that the problem had gone away simply because he had not heard from the Deputy Director in a timely manner. Mr. Klapper had actual knowledge that a licensing action was being considered within 20 months of his conviction. Although the delay after this date was lengthy, Mr. Klapper chose to become further entrenched in British Columbia with the knowledge that he may be declared ineligible to hunt.

Thus, the prejudice suffered by Mr. Klapper is far less than if he had not received notice 20 months after his conviction. However, the delay was significant enough that it should be taken into account when deciding the period of ineligibility.

In all the circumstances, was the period of ineligibility imposed by the Deputy Director appropriate?

The Deputy Director's decision was that Mr. Klapper would be ineligible to apply for a licence for 11 years. The Deputy Director advised the Panel that the period should be further reduced to 10 years because he failed to deduct one year for the mandatory prohibition imposed by the court which resulted from Mr. Klapper's conviction.

The Board has *de novo* jurisdiction over appeals from decisions of the Deputy Director. As a result, it must determine whether the period of ineligibility is an appropriate one, not whether errors were made by the Deputy Director. However, the reasoning that the Deputy Director used in reaching his decision can be helpful in determining whether the period of ineligibility is an appropriate one.

The Deputy Director cancelled Mr. Klapper's hunting licence for 12 years because of the five *Wildlife Act* offences. The Deputy Director noted that his decision only mentioned the five *Wildlife Act* violations, however, that was an oversight, as it was also intended to cover the additional violation of the *Firearm Act*. He increased the period to 15 years because Mr. Klapper had demonstrated a "full intent to break the law", a "complete disregard for sustainability of the wildlife resource", and "very unsafe firearm practices". Mitigating factors, including age, remorse, the large fine, and the lengthy delay, led the Deputy Director to reduce the period by four years, for a total period of ineligibility of 11 years.

As discussed above, it appears that the Deputy Director gave more weight to specific deterrence than was necessary in the circumstances. However, this does not mean that the period of ineligibility that he arrived at is necessarily inappropriate. There are a number of factors which are considered when making decisions concerning licence actions. The most important of these are the seriousness of the violations, the impact on the wildlife resource, and deterrence, both specific and general.

In this case, Mr. Klapper's violations were very serious. Although not licensed to do so, Mr. Klapper guided the Undercover Officer for big game over a period of several days. During this period, Mr. Klapper demonstrated unsafe firearm practices by possessing loaded firearms in his vehicle and firing from his vehicle. Mr. Klapper did not possess a Limited Entry Hunting authorization. However, he shot a bull moose in a region which required a Limited Entry Hunting authorization. Finally, Mr. Klapper allowed the Undercover Officer to shoot a black bear from his vehicle, and Mr. Klapper cancelled his own bear tag for this kill, contrary to the legislation.

For these violations, Mr. Klapper received a four-month conditional sentence, which is unusual for *Wildlife Act* offences. Most violations of this nature only result in a monetary fine. He also paid a \$30,000 fine and forfeited valuable equipment that he testified was worth between \$30,000 and \$50,000. Although Mr. Klapper agreed to this punishment in part to avoid the possibility of deportation proceedings, it is indicative of the serious nature of his violations.

Other factors contribute to the need for a significant penalty. Mr. Klapper demonstrated a clear disregard for the law. He was aware of the law, but chose to disregard it because he did not believe the consequences to be significant. This is

not the attitude of a person who respects the law and what it is intended to protect, but the attitude of a person who fears punishment.

However, a period of ineligibility of 15 years, before mitigating factors are taken into account, is inconsistent with other licensing actions considered in previous Board decisions. In *Neal v. Deputy Director of Wildlife* (Decision No. 2005-WIL-012(a), October 6, 2005) (unreported), Mr. Neal's hunting privileges were suspended for five years and 11 months for offences which appear to be as serious as, or more serious than, those committed by Mr. Klapper. Mr. Neal was convicted of 10 violations of the *Wildlife Act*, one violation of the *Waste Management Act*, and one violation of the *Firearm Act*. His wildlife offences included hunting bear using bait, failing to cancel his black bear species licence, using another person's hunting licence, hunting a muskrat, hawk, and Canada Goose at a time not within open season, hunting a cow moose without a limited hunting authorization, failing to make every reasonable effort to retrieve a black bear he had killed, and unlawfully having dead wildlife in his possession. He was also convicted of depositing beer bottles and cans in a public place and selling a shotgun to a person who did not have a Firearms Acquisition Certificate. The court stated that Mr. Neal and his co-accused "were repetitive, apparently incorrigible poachers who regularly flaunted the *Wildlife Act*" and "showed little respect for the environment". Mr. Neal was sentenced to 45-days imprisonment and fined \$20,000.

In *Johnston v. Deputy Director of Wildlife* (Appeal No. 95/45, September 4, 1996) (unreported), Dr. Johnston was prohibited from obtaining a hunting licence for a 10-year period. Dr. Johnston was convicted of two counts of hunting without a licence, one count of using another person's licence, one count of continuing to hunt after exceeding his seasonal bag limit, and one count of illegally exporting a sheep he had killed. The Board further found that Dr. Johnston was reluctant to take responsibility for his actions, had misled a conservation officer, and had killed more animals than he could recover.

With respect to Mr. Klapper's firearms offences, the Panel considered *Rema v. Deputy Director of Wildlife* (Decision No. 99-WIL-01, October 18, 1999) (unreported). Mr. Rema was observed loading his gun and shooting from his truck at a bear decoy that had been placed by conservation officers. Mr. Rema had consumed two beers and had fired from his truck in the presence of two youths. He was convicted of discharging a firearm from his vehicle, but a conviction for hunting grizzly bear without a species licence was overturned on appeal. The Board reduced a period of ineligibility from three to two years.

After considering the above cases, the Panel finds that an appropriate period of ineligibility, before taking mitigating factors into account, for the offences committed and the attitude displayed by Mr. Klapper would be 12 years, not 15. Mr. Klapper committed serious wildlife offences that demonstrated a disregard for the law and the importance of conserving the wildlife resources of British Columbia. In this respect, his offences were similar to those committed by Dr. Johnston and Mr. Neal. Mr. Klapper's firearms offences were more serious and dangerous than those committed by Mr. Rema in that Mr. Klapper drove with his weapons loaded. Accordingly, a period of ineligibility of 12 years properly reflects the seriousness of

the offences, the effect Mr. Klapper's actions have had on wildlife resources, and an appropriate level of deterrence.

There are also a number of mitigating factors present in Mr. Klapper's case that were not present to the same degree in the cases considered above. Mr. Klapper has demonstrated remorse and has suffered serious financial and personal consequences. There was a significant delay before the Deputy Director's decision was made, and Mr. Klapper is of an age where a lengthy period of ineligibility may amount to a lifetime ban. The Panel finds that the Deputy Director properly took these factors into account when reducing the period of ineligibility by four years. The Panel would reduce the period of ineligibility by a further two years to account for the one-year mandatory suspension and because of the extreme impacts of the CCRA dispute and the effects on Mr. Klapper's family that were not considered by the Deputy Director. Consequently, the Panel finds that Mr. Klapper should be declared ineligible to obtain a hunting licence for a period six years, beginning February 21, 2006.

In arriving at this period of ineligibility, it is important to note that it is based on those offences which Mr. Klapper has been convicted of, and not the numerous allegations made against him. Mr. Klapper was charged with a large number of offences based on conversations he had with the Undercover Officer during the investigation. However, Mr. Klapper disputes the truth of many of these statements and characterizes them as excessive bragging while drinking with a fellow hunter. Despite the fact that Mr. Klapper keeps extensive records of his hunting activities, no evidence that he committed these offences was obtained during the searches of his home. As a result, there is insufficient evidence to convince the Panel that Mr. Klapper has a history of committing such offences.

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.

For the reasons given above, the appeal is allowed and the period of ineligibility is reduced from 11 years to 6 years, beginning February 21, 2006. Thus, Mr. Klapper will be ineligible to obtain a hunting licence until 23:59 hours on February 21, 2012.

"AlanAndison"

Alan Andison, Panel Chair
Environmental Appeal Board.

June 11, 2007