

Environmental Appeal Board

DECISION NO. 2006-WIL-017(a)

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

BETWEEN: Rod Parkin **APPELLANT**

AND: Assistant Director **RESPONDENT**
Fish and Wildlife Branch

BEFORE: A Panel of the Environmental Appeal Board
David H. Searle, C.M., Q.C., Panel Chair

DATE: September 6, 2007

PLACE: Fort Nelson, BC

APPEARING: For the Appellant: Rod Parkin
For the Respondent: Timothy Leadem, Q.C., Counsel

APPEAL

This is an appeal by Rod Parkin against a decision made on August 9, 2006, though dated August 10, 2006, by T.J. Ethier, Assistant Director, Fish and Wildlife Branch, Ministry of Environment (the "Ministry"), pursuant to section 24 of the *Wildlife Act* (the "Act"). Mr. Ethier's decision was to cancel the Appellant's hunting licencing privileges for six years and require the Appellant to successfully complete the Conservation Outdoor Recreation Education (C.O.R.E.) program and to notify the Respondent's office of having done so prior to reinstatement of the Appellant's hunting licencing privileges.

The Environmental Appeal Board has authority to hear this appeal under Part 8 of the *Environmental Management Act* and section 101.1 of the *Act*. Section 101.1(5) of the *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 reverse the decision of the Respondent.

BACKGROUND

The Appellant is 41 years old and employed in the "oil patch" as a cement supervisor with Trican Well Services. He is an out-of-doors enthusiast, enjoying hunting, camping and fishing. He is not licensed as a guide outfitter. The Appellant also operates a taxidermy business.

In March of 2001, the Appellant was the subject of an investigation by the Conservation Officer Service into illegal game guiding. The Panel has summarized the Respondent's evidence about this investigation, as follows.

Acting on information from unnamed informants, undercover conservation officers approached the Appellant in March 2001, and arranged for an August 2001 hunt for which the Appellant was paid \$2,500. The Appellant agreed to do everything a guide will do, including providing a taxidermy service, except that he could not point out a specific sheep for the hunter to shoot.

The hunt proceeded between the dates of August 13, 2001 and August 18, 2001. The Appellant took two undercover conservation officers to a mountain peak where they located three rams bedded on the slope. None were shot.

On August 21, 2001, conservation officers executed a search warrant obtained for the Appellant's residence. Various animal pelts were seized, as well as documentation related to the Appellant's taxidermy business.

On August 7, 2002, an Information was sworn setting out 13 counts of illegal activity committed by the Appellant under the *Act* and/or the regulations under the *Act*.

On September 23, 2003, as a result of a plea bargain between the Appellant and Crown Counsel, the Appellant entered pleas of "guilty" to counts 2 and 13. Count 2 stated that the Appellant, between August 13, 2001 and August 18, 2001, at or near Fort Nelson, "did unlawfully act as a guide for game", contrary to section 48(1) of the *Act*. Count 13 stated that the Appellant, on or about August 21, 2001, at or near Fort Nelson, "did possess dead wildlife or a part of any wildlife to wit: coyote, Red Fox, Fisher, Pine Marten, Lynx, Muskrat without authorization under a licence or permit or as provided by regulation", contrary to section 33(2) of the *Act*.

The Court sentenced the Appellant to "pay fines and monetary payments" in the amount of \$4,000, of which \$1,000 was a fine, \$1,000 was the subject of an order pursuant to section 84.1(1)(e)(ii) of the *Act*, and \$2,000 was directed to be paid to the Habitat Conservation Trust Fund for the purposes of promoting conservation and protection of wildlife and wildlife habitat.

On March 19, 2004, Elizabeth MacMillan, Deputy Director, Wildlife Branch, acting pursuant to section 24 of the *Act*, wrote to the Appellant about his convictions for:

unlawful possession of dead wildlife and guiding without a guide outfitters licence. She noted that a Conservation Officer had recommended that licence action be taken and that she intended to consider the Appellant's conduct and decide what action to take, if any. The Deputy Director pointed out her power to prohibit the Appellant from hunting for a period not exceeding 30 years, and invited the Appellant to make a written submission to the Deputy Director by April 26, 2004, before she made her decision. Enclosed with her letter were eight "documents and submissions" which the Deputy Director had in relation to the matter, including the background information to the 13 count Information and subsequent conviction, and the Ministry's policy concerning the adjudication of licence cancellation decisions.

The Appellant responded by an undated letter on April 19, 2004, wherein he admits in respect of count 2 (unlawfully guiding) to "unfortunately I relented to the amount of money offered." And in respect of count 13 (unlawful possession of dead wildlife) he commented as follows: "[I]f I could offer an explanation as to my illegal possession of dead wildlife I am guilty."

On August 10, 2006, Mr. Ethier, the Respondent, issued the decision under appeal. He cancelled the Appellant's hunting licencing privileges for six years, but back-dated the cancellation to commence on April 20, 2004 and run to April 20, 2010. The "back dating" was done to take into account the Ministry's two-year delay in issuing its decision. The Respondent also stated in his decision that the Appellant's licensing privileges would be reinstated after April 20, 2010, provided that he successfully completed the C.O.R.E. program referred to above.

The Respondent itemized the nine documents and submissions (the ninth being the Appellant's response of April 19, 2004) that formed the basis for his decision. He then said that the following was considered in reaching his decision:

You were observed by undercover officers during the time frame of March to August 2001 committing a number of Wildlife Act offences. You were deemed guilty on two (2) of these charges:

- Guide without a Guide Outfitters licence
- Unlawful Possession of Dead Wildlife

Your observed behaviour and actions demonstrated little regard for the law and full intent to break the law. You did illegally guide for game. You received payment and provided full guiding services. I am convinced that you also flouted the rules in running your taxidermy business by obscuring where the dead wildlife originated and that you used permits in your possession to knowingly cover off illegally obtained specimens.

I have also considered factors which mitigate against the length of this penalty. I note that you did state that you accept responsibility for your actions. However, blaming the money offered by the undercover officers is your attempt to rationalize your illegal behaviour and undermines this statement in your letter. Your letter, dated April 19, 2004, did not convince me of any mitigating factors.

The Appellant appealed this decision on the grounds that the fines levied by the Court, and the stress of waiting three years for the Respondent's decision, should be punishment enough. He asks that "no further action be taken" against his licence and that he be allowed to "continue on with his life".

ISSUES

1. Should there be a cancellation of the Appellant's hunting licencing privileges and, if so, what should be the appropriate length of time.
2. Should any period of cancellation be back-dated to April 20, 2004.

RELEVANT LEGISLATION

The Appellant was convicted under section 48(1) and 33(2) of the *Act*.

Section 48(1) states:

Compulsory guide outfitter licence

48 (1) A person commits an offence if the person acts as a guide for game, or offers to act as a guide for game, unless the person

- (a) holds a guide outfitter licence,
- (b) holds an assistant guide licence,
- (c) holds another licence to guide for game, ...

Section 1 of the *Act* defines "**guide**" as "means a person who, for compensation or reward received or promised, accompanies and assists another person to hunt wildlife, but does not include a guide for fish."

This section defines "**hunt**" as "includes shooting at, attracting, searching for, chasing, pursuing, following after or on the trail of, stalking or lying in wait for wildlife, or attempting to do any of those things, whether or not the wildlife is then or subsequently wounded, killed or captured, (a) with intention to capture the wildlife, or (b) while in possession of a firearm or other weapon."

Section 33(2) of the *Act* is as follows:

Possession of wildlife

33 (2) A person commits an offence if the person has dead wildlife or a part of any wildlife in his or her possession except as authorized under a licence or permit or as provided by regulation.

The Assistant Director's decision was made pursuant to section 24(2) of the *Act* which states:

Suspension and cancellation of licences

24 (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.

EVIDENCE AND ARGUMENT

The Appellant's evidence is that taxidermy started out as a hobby, which he recently learned from another taxidermist, but it clearly developed into a business. He testified that the taxidermist charged the Appellant for lessons and also asked the Appellant to take him on a hunt, free of charge. The Appellant claims to have responded that his taxidermy lessons should also be free. That seems to have caused their relationship to deteriorate, such that the Appellant suspects that is how his trouble with the law started, by accusations connected with his taxidermy business.

The Appellant admits to taking the two undercover officers on a hunt and admits to charging them \$2,500 for the five-day hunt. His defence is that, in his view, he was just "packing" for the officers. To be guilty of "guiding", the Appellant says that he would need to be carrying a rifle, although he admits to carrying a shotgun, and would need to have pointed out which ram to kill. He claims to have received that interpretation of "guiding" from a conservation officer.

The Appellant's version of the details of the hunt varies substantially from the evidence called by the Respondent. The Appellant's view of himself is that of a law-abiding citizen, respectful of wildlife, who was entrapped by overzealous undercover officers who continually tried to get him to break the law. But, suspecting his guests to be undercover officers, he resisted their many attempts and ultimately cancelled the hunt on day four because one of the officers shot a beaver.

As to the charge of unlawfully being in possession of dead wildlife, he admits to his guilt but says that most of the specimens were abandoned by customers and that, with the benefit of hindsight, he should have thrown them out.

The Appellant also maintained that he received a six-month hunting licence suspension from the Court. The Panel notes that he held this belief despite the fact that:

- there is no legislative basis for the Court's exercise of such powers,
- a letter to the Appellant dated May 23, 2003, from Crown Counsel, said "that the Court in this prosecution has no authority to affect your hunting privileges", and
- a copy of the Court's Order made no reference to such a suspension.

On cross-examination, the Appellant admitted to also taking other people to the same area previously for a hunt, on at least one other occasion, for which he was also paid.

When questioned by the Panel, the following chronology was established:

- September 23, 2003 – the Appellant was convicted and sentenced on counts 2 and 13.
- September 23, 2003 to March 23, 2004 – the Appellant did not hunt, believing his hunting licence was suspended by order of the Court.
- March 23, 2004 to August 10, 2006 – the Appellant had a valid hunting licence and admits to hunting.
- August 10, 2006 to date – the Appellant has ceased hunting.

The evidence of the Respondent was submitted through various exhibits that were filed, plus the evidence of District Conservation Officer Douglas Forsdick, who testified via telephone from Vanderhoof. When asked why the witness did not attend in person, the Respondent advised that it was "to save costs."

Mr. Forsdick was one of the two undercover officers who retained the Appellant to take them on the hunt from August 13 to 18, 2001. He recounted how he called the Appellant in March 2001 to enquire about his guiding service and determine his fee, then called back on April 8, 2001 to discuss dates for the hunt, ultimately agreeing upon a five-day hunt beginning August 13, 2001. As \$1,000 had previously been paid to the Appellant, the balance of \$1,500 was paid on August 14, 2001.

Mr. Forsdick described the hunt in detail, including conversations with the Appellant, to illustrate the Appellant's attitude towards wildlife. Mr. Forsdick described how he, the Appellant and the second conservation officer set up camp on August 14, 2001, and how, on August 15th, he and the Appellant crawled to a point on the mountain where they were able to look down and see four sheep. Mr. Forsdick, believing that the offence of illegally "guiding" had been established, declined to shoot.

Mr. Forsdick also described how, on August 17, 2001, while in search of ducks, ravens and beaver, the Appellant referred to beavers as "road wreckers", indicated that he would kill as many bears as he could, would run down coyotes, that, as far as the Appellant was concerned, there were no rules when it came to wolves and that he "did not give a shit about moose". Mr. Forsdick admitted to shooting a beaver, as a ploy to keep the Appellant believing that he was a real hunter.

On cross-examination of Mr. Forsdick by the Appellant, it became clear that there was substantial disagreement, not on the substantive issue of whether there was a hunt, but on the details of who said what to whom, with the Appellant denying each and every one of the above comments attributed to him.

In closing argument, the Appellant said that he paid his fine, accepted responsibility for his actions and that none of this will happen again.

The Respondent argued that the Appellant's own admissions justify the licence cancellation of six years and referred the Panel to various decisions of this Board in support of that length of cancellation: *Leslie Clifford Loring v. Deputy Director of Wildlife* (Decision No. 2005-WIL-008(a), November 29, 2005) (unreported); *Erwin Adolf Klapper v. Deputy Director of Wildlife* (Decision No. 2006-WIL-003(a), June 11, 2007); *Patrick Dolan v. Deputy Director of Wildlife* (Appeal No. 2004-WIL-

018(a), September 9, 2004); *Kim Robinson v. Deputy Director of Wildlife* (Appeal No. 2003-WIL-005(b), October 6, 2003).

A decision that the Respondent pointed to as being particularly on point was *Thomas Schreiber v. Deputy Director of Wildlife* (Appeal No. 98-WIL-05, September 1, 1998), as judicial reviewed, *Schreiber v. British Columbia et al.* [2001] B.C.J. No. 717 (Q.L.), 2001 B.C.S.C. 515; (hereinafter *Schreiber*). In that case, Mr. Schreiber was convicted of hunting in a closed area, possession of dead wildlife not authorized by a licence, knowingly making a false statement and violating the *Mines Act*. The Deputy Director cancelled Mr. Schreiber's hunting licence for six years, and required him to successfully complete the C.O.R.E. program. The Board upheld the cancellation.

DISCUSSION AND ANALYSIS

Credibility

As pointed out above, the Respondent chose to be represented by counsel, who called evidence given by the District Conservation Officer Douglas Forsdick via telephone. The Panel was unable to observe Mr. Forsdick as he gave his evidence. By contrast, the Appellant was present, definite and unwavering in his evidence, admitting his errors but taking serious issue with what Mr. Forsdick said that he said.

Credibility can only be established by viewing the witness. By observing nervousness or anxiety, mannerisms and demeanor, the Panel is better able to judge the witness's forthrightness. As these observations were only possible with respect to the Appellant, the Panel has no choice but to accept the evidence of the Appellant where his evidence diverges with the evidence of Mr. Forsdick.

However, as the disagreement in the evidence does not go to the substantive matters of guilt or innocence, but rather to details surrounding the Appellant's unlawful acts, the Panel has decided to put less weight on the Appellant's bad conduct than it might have, had Mr. Forsdick been present, such that the issue of his credibility could have been properly determined.

Guiding

The Appellant's position that he was "packing", not "guiding", is neither supported by the evidence nor by his conviction on count 2, referred to above. The definition of "guide" in the *Act* contains the elements of "compensation", "accompanying" and "assisting", "another person", to "hunt wildlife." That is exactly what the Appellant did between August 13 and 17, 2001. It is quite irrelevant that wildlife was not taken by Mr. Forsdick when he had the opportunity to do so on August 15, 2001. The definition of "hunt" includes "searching for."

Unlawful Possession of Dead Wildlife

On August 21, 2001, the search warrant was executed. As a result of the search of the Appellant's residence, conservation officers seized dead wildlife for which permits did not exist. This is not in dispute. What is disturbing to the Panel is the

number and type of dead animals that were found at the residence and seized: coyote, red fox, fisher, pine marten, lynx and muskrat.

Decision of the Assistant Director

It is clear from the *Act*, specifically section 24(2), that the Director has the authority to prohibit, cancel or suspend hunting licencing privileges for any cause considered sufficient by the Director, and after providing an opportunity for the person to be heard.

Although the illegal acts of the Appellant took place in August 2001, convictions were not secured until September 2003. That was followed by the March 19, 2004 letter from the Deputy Director, Wildlife Branch, announcing her intention to consider whether to prohibit, cancel or suspend the Appellant's hunting licence in view of his convictions, but giving the Appellant until April 26, 2004, to make whatever submissions he wished to make. The Appellant responded on April 19, 2004. This was the "opportunity to be heard" required under section 24 of the *Act*.

On August 10, 2006, more than two years later, the Respondent, by letter of that date, cancelled the Appellant's hunting licencing privileges for six years, but back-dated the cancellation by more than two years, due to the delay in reaching this decision, such that the cancellation ran from April 20, 2004 until April 20, 2010.

As a result of the evidence that came out at the hearing, the Panel notes that the cancellation period was, effectively, less than four years because the Appellant admits to possessing hunting licences and engaging in hunting until he received the August 10, 2006 letter (except for the six-month period following his conviction on September 23, 2003).

Powers of the Board

Returning to section 101.1(5) of the *Act*, the choices open to the Panel on an appeal are set out in subsections (a), (b) and (c). In addition to confirming, reversing or varying the decision appealed, the Panel may make any decision that the person whose decision is appealed could have made. Alternative decisions considered by this Panel include a deletion of the two-year back dating, as well as either a decrease or a substantial increase in the period of cancellation, provided that the 30 year maximum is not exceeded.

The Panel has carefully considered each of these alternatives and has reviewed the authorities cited by counsel for the Respondent. The Panel concurs that the *Schreiber* case is on point with similar facts. In that case, a six-year cancellation was determined by the Board to be appropriate and the judicial review of the Board's decision was dismissed.

While this Panel is not bound by prior decisions of the Board, they are persuasive.

Panel's Findings on the Issues

Returning to the two issues identified earlier, the Panel finds, based upon all of the evidence, the submissions of the parties and the authorities, the cancellation of the Appellant's hunting licencing privileges for six years should be confirmed but should run from the date the Respondent's decision was made – August 9, 2006.

In coming to this conclusion, the Panel is of the view that it makes no sense to back date a cancellation to a two-year period of time when the Appellant clearly had, and used, a hunting licence. However, the Appellant should receive credit for the six-month period following his convictions when he did not hunt because he believed that the Court had suspended his hunting licencing privileges.

DECISION

In making this decision, the Panel has considered all of the relevant documents and oral evidence, whether or not specifically reiterated herein.

For the reasons set out herein, the Panel confirms the decision of the Regional Director, including the requirement that the Appellant shall successfully complete the C.O.R.E. program and notify the Regional Director of having done so, prior to expiry of the cancellation, with the following modification:

The Appellant's hunting licencing privileges are cancelled for six years, however, he shall be credited for six months for the reasons set out above, and, accordingly, this cancellation is from August 9, 2006 to February 9, 2012.

The appeal is dismissed.

"David H. Searle"

David H. Searle, C.M., Q.C.
Panel Chair
Environmental Appeal Board
October 11, 2007