

DECISION NO: 2009-WIL-029(a)

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

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| BETWEEN: | Michael Bjorn Sorensen | APPELLANT |
| AND: | Regional Manager | RESPONDENT |
| BEFORE: | A Panel of the Environmental Appeal Board Loreen Williams, Panel Chair | |
| DATE: | Conducted by way of written submissions, concluding on January 18, 2010 | |
| APPEARING: | For the Appellant: Michael Bjorn Sorensen For the Respondent: Tom Bell | |

APPEAL

[1] Michael Sorensen appeals the September 25, 2009 decision of Tom Bell, Regional Manager Environmental Stewardship (the "Regional Manager"), Skeena Region, Ministry of Environment (the "Ministry"), denying Mr. Sorensen a permit to Accompany a Non-Resident Alien while hunting big game. The Regional Manager denied the permit on the grounds that Mr. Sorensen was not eligible for this permit until 2011, being three years from the date of his conviction under section 9 of the *Firearm Act*.

[2] The Environmental Appeal Board has the 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 that, on an appeal, the Board may:

- (a) send the matter back to the person who made the decision being appealed, 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.

[3] Mr. Sorensen asks the Board for an order that would allow him to apply for a permit earlier.

[4] This appeal was conducted by way of written submissions.

BACKGROUND

[5] Mr. Sorensen has been a hunter for many years. He was issued a hunting number on September 30, 2003. His hunting licence purchase history indicates that between 2004 and 2008 he held both a basic hunting licence and a moose species tag in 2004, 2005 and 2007.

[6] In the summer of 2009, Mr. Sorensen made plans to go hunting with his uncle from Sweden, Mr. Olle Sjoqvist. He and his uncle wished to hunt between the dates of September 19 and 25, 2009 in Management Units 6-19, 6-20 and 6-21. Mr. Sorensen knew that he had to apply for a permit to accompany a non-resident alien while hunting big game in British Columbia pursuant to section 70(1)(a) of the *Wildlife Act*, and did so on August 27, 2009.

[7] As part of the Ministry's application review process, it performed a background check that identified that Mr. Sorensen had been convicted of an offence under the *Firearm Act* in September of 2008. Specifically, on September 25, 2008, two conservation officers conducted an ATV-based patrol of the Klappan Rail Grade Road near Iskut, BC. Mr. Sorensen and a party of hunters were in a vehicle leaving the area. On inspection, the officers found that Mr. Sorensen's firearm was in the cab of the vehicle and was loaded with four live rounds in the magazine. He was issued a Violation Ticket for committing an offence under section 9(1) of the *Firearm Act* which states:

Offence

- 9 (1) Unless authorized by the regulations or a permit, a person must not discharge, carry or have in the person's possession, ..., or in or on a motor vehicle, ... a firearm containing live ammunition in its breech or in its magazine.
- (2) A person who contravenes subsection (1) commits an offence.

[8] The Violation Ticket identified a fine of \$230, which Mr. Sorensen paid on October 7, 2008.

[9] The Regional Manager concluded that under the *Wildlife Act*, Mr. Sorensen was ineligible for the requested permit. He informed Mr. Sorensen of his decision by letter dated September 25, 2009. That letter states in part:

Thank you for your application requesting an Accompany to Hunt Permit. Unfortunately, I am not prepared to approve your request at this time.

In processing your application, it came to our attention that you have a record of [a] *Firearm Act* offence from 2008. We have discussed your application with the relevant Conservation Officers, and have determined that these violations warrant the denial of your permit application. Under Section 16(2)(b)(ii) of the Permit Regulation (BC Reg 253/2000) you [are] not eligible for an accompany to hunt permit for a period of three years because of your conviction under the *Firearm Act*.

[10] Mr. Sorensen appealed the Regional Manager's decision by a Notice of Appeal filed with the Board on October 8, 2009. He submits that the three year period

during which he is prohibited from applying for a permit to accompany a non-resident alien pursuant to section 70(1)(a) of the *Wildlife Act* is unduly harsh. He asks the Board to reduce the three period to two years so that he may apply for a permit for the 2011 hunting season.

ISSUES

[11] The Panel has considered the following issue:

Whether the Board has the authority to abridge the three year period of ineligibility for a *Firearm Act* violation as set out in section 16(2)(b)(ii) of the *Permit Regulation* to allow Mr. Sorensen to apply for a permit to accompany a non-resident alien in time for the hunting season in 2011.

RELEVANT LEGISLATION

[12] The following sections of the *Wildlife Act* are relevant to this appeal:

Permit in guide area

70 (1) The regional manager may, by issuing a permit containing conditions the regional manager considers suitable, authorize

(a) a resident, who holds a hunting licence and meets the prescribed qualifications, to accompany

(i) a non resident, or

(ii) a non resident alien

as provided in the regulations, while hunting big game, if no remuneration is requested by, offered to or accepted by the permittee,

[emphasis added]

[13] The "prescribed qualifications" referred to above are set out in section 16 of the *Permit Regulation*, B.C. Reg. 253/2000. The subsections of particular relevance to this appeal are underlined. Section 16 states:

Permits under section 70 (1) (a) of the Act and offences

16 (1) To be eligible for a permit under section 70(1)(a) of the Act an applicant must

(a) be at least 19 years of age,

(b) be a citizen or permanent resident of Canada, and

(c) have

- (i) held a British Columbia resident hunting licence and a big game species licence for 3 of the 5 licence years immediately preceding the application for a permit, or
 - (ii) successfully completed the CORE program as defined in B.C. Reg. 53/98, the Hunter Safety Training Regulation, and have held a British Columbia resident hunting licence and a big game species licence for 2 of the 5 licence years immediately preceding the application for a permit.
- (2) A person is not eligible for a permit under section 70(1)(a) of the Act if

...

- (b) either the applicant or the non-resident or non-resident alien to whom the permit would apply has been convicted of an offence
 - (i) specified under section 84(1)(a) of the Act within the 5 year period immediately preceding the application for a permit, or
 - (ii) specified under
 - (A) section 84 (1) (b) of the Act, or
 - (B) the *Firearm Act*

within the 3 year period immediately preceding the application for a permit, or

- (c) another permit under section 70(1)(a) of the Act has been issued for a different time period in the same licence year that applies to the non-resident or non-resident alien whom the person will accompany under the permit.

[emphasis added]

DISCUSSION AND ANALYSIS

Whether the Board has the authority to abridge the three year period of ineligibility for a *Firearm Act* violation as set out in section 16(2)(b)(ii) of the *Permit Regulation* to allow Mr. Sorensen to apply for a permit to accompany a non-resident alien in time for the hunting season in 2011.

[14] Mr. Sorensen did not provide detailed or lengthy submissions to support his appeal. He provided four reasons why he felt that the ineligibility period should be shortened, namely: that he had already paid the original fine, that his uncle had expended funds to travel to Canada to hunt and was not allowed to hunt, that Mr. Sorensen had expended funds to travel to hunt in 2009 and was not allowed to hunt and finally, that he now had a greater respect for the handling of firearms.

[15] According to the Regional Manager's submissions to the Board, to be eligible for a permit, the applicant must meet certain criteria. These are set out as "permit conditions" on the back of the application for the permit. These mirror the qualifications set out in the *Permit Regulation*. They state:

Applicants must meet the following requirements:

- must be a BC resident, who is a Canadian citizen or permanent resident (landed immigrant) of Canada; and
- must be 19 years of age or older; and must have:
 - (i) held a B.C. resident hunting licence AND a big game species licence for 3 of the 5 years immediately preceding application for this permit; OR
 - (ii) successfully completed the BC Conservation and Outdoor Recreation Education program, and held a B.C. resident hunting AND a big game species licence for 2 of the 5 years immediately preceding application for this permit; and
- must possess, or be qualified to possess, a B.C. resident hunting licence in good standing; and
- must not have applied for or been issued with a permit of this nature during the same licence year as this application.
- a person is not eligible for a permit under section 70(1)(a) of the Act if either the applicant or the non resident alien to whom the permit would apply, has been convicted of an offence
 - (i) specified under section 84 (1)(a) of the Act, within the 5 year period immediately preceding the application for a permit, or
 - (ii) specified under
 - (a) section 84(1)(b) of the Act, or
 - (b) the *Firearm Act* within the 3 year period immediately preceding the application for a permit.

[16] The Regional Manager stated in his submissions that the application form FW-13, specifically asks applicants to "Carefully read the 'Permit Conditions' on the attached pages." Beneath the listed Permit Conditions is a list of individuals whom an applicant may accompany.

[17] When Mr. Sorensen completed the form on August 27, 2008, he indicated that he would be accompanying his uncle and circled that word on the application. The fact that Mr. Sorensen had circled the word "uncle" from the text underneath the "Permit Conditions", suggested to the Regional Manager that Mr. Sorensen had read at least part of the "Permit Conditions" section.

[18] The Regional Manager also stated that, once the application for the permit was submitted, he reviewed it to determine whether Mr. Sorensen met the criteria. He determined that:

Mr. Sorensen was a resident of B.C.

Mr. Sorensen was over the age of 19.

Mr. Sorensen met the hunting experience conditions having held a B.C. resident hunting licence AND a big game species licence for 3 of the 5 years immediately preceding application.

[19] However, he found that Mr. Sorensen had been issued Violation Ticket AH21119856 on September 25, 2008, for committing an offence under the *Firearm Act*, and that he had paid his fine.

[20] The Regional Manager states that Mr. Sorensen was ineligible for the requested permit due to this *Firearm Act* violation which had occurred within three years immediately preceding the application, and that he had no discretion under the *Act* to shorten the duration of the period of ineligibility of the period of ineligibility.

[21] Mr. Sorensen agrees that he was in violation of the *Firearm Act*, but states that he accepted responsibility for his violation by paying the fine rather than contesting it.

The Panel's findings

[22] The section of the *Permit Regulation* that the Regional Manager relied upon to refuse the permit was 16(2)(b)(ii)(B). This section establishes a three year prohibition from obtaining the requested permit if the applicant "... has been convicted of an offence" under the *Firearm Act*. The first question is whether payment of the Violation Ticket means that Mr. Sorensen "has been convicted " under the *Firearm Act*.

[23] To answer this question, the Panel has reviewed the *Offence Act* to determine whether or not the offence committed by the Appellant under the *Firearm Act* was, in law, a "conviction".

[24] Under section 14 of the *Offence Act*, when an individual pays a ticketed amount, he or she is deemed to have pleaded guilty to the offence. Section 14(1) states, "An enforcement officer may complete and sign a violation ticket for contravention of an enactment referred to in the regulations." [Schedule 2 of the *Violation Ticket Administration and Fine Regulation* specifically includes section 9 of the *Firearm Act* as something that may be dealt with by a violation ticket and identifies the applicable fine of \$230.] Section 14(11) then states:

- (11) If a person pays all or a portion of the ticketed amount indicated on a violation ticket in accordance with subsection (9) or (10), the person is deemed to have pleaded guilty to the alleged contravention and the unpaid portion of that ticketed amount is immediately payable to the government.

[emphasis added]

[25] Under section 17 of the *Offence Act*, an individual who is deemed to have pleaded guilty to an alleged contravention is convicted, even if no minutes or memorandum of conviction is drawn up.

[26] In light of these sections, Mr. Sorensen's payment of the fine on the Violation Ticket constitutes a guilty plea to the offence of having a loaded firearm in the vehicle. This constitutes a conviction of the offence. Therefore, when Mr. Sorensen

applied for the permit in question, he fell squarely within the class of applicants who had a *Firearm Act* conviction within the previous three year period. Mr. Sorensen may not have realized the consequences that would ensue when he paid the Violation Ticket, but this Panel cannot undo what has been done. Further, there is no discretion under the *Wildlife Act* or the regulations to either ignore or modify the clear language of section 70(1)(a) of the *Act* (requiring an applicant to meet the prescribed qualifications) or the three year period of ineligibility which is one of the prescribed qualifications set out in section 16(2)(b) of the *Permit Regulation*.

[27] For all of these reasons, and having reviewed the material submitted by both Mr. Sorensen and the Regional Manager, the Panel agrees with the Regional Manager's conclusion that he did not have any authority or discretion to shorten the period of ineligibility set out by the *Wildlife Act*. Similarly, this Panel has no authority or discretion to shorten the period of ineligibility.

[28] The earliest that Mr. Sorensen will be eligible to apply for a permit to accompany his uncle on a hunt is October 6, 2011, which is the expiry of the three year period after his *Firearm Act* offence of 2008.

DECISION

[29] In making this decision, the Panel of the Environmental Appeal Board has carefully considered all the relevant documents, legislation and evidence before it, whether or not specifically reiterated here.

[30] For the reasons stated above, the Panel confirms the Regional Manager's decision.

[31] Accordingly, the appeal is dismissed.

"Signed"

Loreen Williams, Panel Chair
Environmental Appeal Board

February 16, 2010