



***ENVIRONMENTAL APPEAL BOARD***  
***Province of British Columbia***

**APPEAL NO. 89/05 WILDLIFE**

JUDGMENT:

In the appeal of Mark T. R. East, under the *Wildlife Act* against the decision of the Deputy Director of Wildlife to suspend his hunting licence for a period of five years from the date of conviction, September 15, 1988, at Creston, B. C., and the order that he successfully complete the Conservation and Outdoor Recreation Education Program before seeking a new hunting licence.

APPELLANT:

Mark T. R. East  
General Delivery  
Creston, B. C. VOB 1G0

**HEARING DETAILS**

The hearing commenced at 9:00 a.m. on June 8th, 1989, at the Inn of the South, Cranbrook, B. C.

The appeal was heard by a Panel of One, Mr. H.D.C. Hunter, Chairman.

Miss Shirley Mitchell, Executive Secretary to the Board, acted as recorder of the Proceedings.

APPELLANT:

Mr. Mark East, represented by Mr. Donald P. Neidermayer, Counsel

Mr. East gave evidence.

RESPONDENT:

Deputy Director of Wildlife, Wildlife Branch, Ministry of Environment  
represented by: Mrs. A. Katz, Counsel, Ministry of Attorney-General

Mr. R. Demarchi, Regional Wildlife Biologist Cranbrook, B.C.

Mr. B. Petrar, Conservation Officer, Creston, B. C.

Mr. Demarchi and Mr. Petrar gave evidence

Witnesses:

Mr. Bob Jensen of the East Kootenay Hunters Association was called as a witness by the Wildlife Branch.

**EXHIBITS:**

EX. "1" Book of Documents prepared by the Ministry of Attorney-General.

In addition, Mr. Petrar, in his evidence, produced a booklet of photographs taken by him. These had been produced in the court proceedings but were not filed with the Board.

**THE APPEAL:**

The appeal was against the suspension by the Deputy Director of Wildlife of Mr. Mark East's hunting licence for a period of five years, and an Order that he take the CORE course before re-applying for a licence. The suspension followed the Appellant's convictions in Provincial Court. There were six charges which may be abbreviated as follows:

1. Hunting a grizzly bear without a tag.
2. Having the hide and skull of a grizzly bear in his possession without a licence.
3. Having the skull and claws of a grizzly bear in his possession without a licence.
4. Having the horns of two antelope in his possession without a licence.
5. Having four birds (raptors) in his possession without a licence, and
6. Having two birds in his possession without a licence.

At trial, the Branch stayed proceedings on Count 1 and Count 6. The Appellant pleaded guilty and was fined \$1,500.00 on Count 2; \$300.00 on Count 3 and \$400.00 on Count 5. Sentence was suspended on Count 4.

Following these convictions, Mr. Petrar, as required by the regulations, submitted a form and recommendation for suspension to his superiors and these went up the line with further recommendations to the Deputy Director. The Deputy Director invited and received a submission from the Appellant. He then sent him copies of various documents which he had received, and asked for further comments, which he did not receive. He then accepted the recommendations of Mr. Petrar and his superiors, and suspended the Appellant's licence, imposing a ban of five years before applying for a renewal. He also ordered the Appellant to take the CORE Course before re-applying.

The Appellant takes no objection to the requirement to take a CORE Course. He considers a five-year suspension too long.

**EVIDENCE:**

Mr. Demarchi gave evidence in part about the philosophy of the *Wildlife Act* and about wildlife management as practiced by the Branch. It depends upon accurate

information as to kills being received from hunters and on research by many bodies. The particular grizzly bear killed by the Appellant had a radio collar and was part of a study by U.S. biologists in which the Canadian Wildlife Branch fully co-operated.

There are very detailed regulations for hunting which all hunters must know and abide by. All accidental kills must be reported and even the finding of a dead big game animal must be reported. He also gave evidence as to the method by which allocations for hunting are given out. He produced and filed a copy of the 1988/89 Hunting and Trapping Regulations Synopsis which is given to all hunters when a licence is issued.

It is against this background that the actions of the Appellant must be judged.

The Appellant stated that he was hunting black bear legally in May, 1987. He saw a bear at about 300 yards range and thought it was a black bear. When he had shot it, he found that it was a grizzly; he also found that it had a radio collar. He cut the collar off and left it. He skinned the bear and took the skin home; put it in a styrofoam box in the freezer. He hoped to draw a grizzly tag in the future and would then have declared this grizzly under that tag. He had found a dead grizzly on an earlier occasion. He took the skull and claws and put them in a box in his freezer.

The antelope horns had been brought into British Columbia from Alberta by his brother and he intended to use them for table legs. He did not know a permit was required. He had bought the various birds stuffed and mounted, and did not know a permit was required.

Mr. Petrar gave evidence. He is a Conservation Officer whose duty is to enforce the regulations and provisions under various statutes including the *Wildlife Act*. He said that much effort had gone into finding out about the killing of this particular bear. After some months and the publication of notice of an award, he had information which led him to obtain a search warrant and search Mr. East's home. There he found the skins and the other items which were the subject of the various charges. He pointed out that any trade in stuffed birds, particularly raptors, encouraged the illegal killing of them. He said, and his photographs confirmed this, that the birds were fully in view among the other trophies in Mr. East's home.

Mr. Petrar's evidence, coupled with his written submission to Crown Counsel and to his superiors, indicated that he thought Mr. East was involved in the black market trade in wildlife. There was no evidence before the Board to support this opinion. He also stressed the need to obtain the co-operation of the hunters with the Branch in order to make the wildlife management work.

Mr. Bob Jensen, the president of the East Kootenays Hunters Association, gave evidence on the contents of the CORE Course. He is a certified instructor in this course and it covers much more than wildlife regulations. Out of a total of some 27 hours, about 3 hours are spent on dealing with the wildlife regulations. He also expressed the concern of wildlife organizations to encourage ethical hunting, although the word "ethical" was not defined either by him or by Mr. Petrar, who had also used it.

**DECISION:**

The Board has to decide whether the penalty imposed by the Director is reasonable, and, if not, what penalty should be imposed.

In this case, the Board has the advantage of hearing the parties in person and assessing their credibility under questioning. The Deputy Director did not hold a hearing before making his decision. There was one other advantage to the Board in that a highly prejudicial comment made to the Deputy Director regarding a second charge against the Appellant has since been dismissed and the Appellant has been acquitted.

The offenses, or alleged offenses, fall into four main categories. First of all, the possession of stuffed birds: the Synopsis does not indicate that such a possession is an offence. The popularity of such trophies, at least in years past, would suggest the contrary.

The possession of antelope horns apparently was a breach of an import regulation. The Synopsis mentions export, but does not mention import. Breach of an Alberta regulation is no offence in British Columbia and the uncontradicted evidence of the Appellant was that he was given these horns in British Columbia by his brother who had obtained them in Alberta. There are no antelope in British Columbia. There was no evidence that the Appellant intended to trade in these articles. The Board would not impose any penalty for these particular offenses, considering that the Appellant has already paid a fine in respect of a breach of them.

Another offence is the possession of a grizzly bear skull and claws. The uncontradicted evidence of the Appellant was that this animal was found dead. The Synopsis does refer to parts of the carcass of a grizzly bear, and the Appellant should have reported his find at least. This is a more serious matter.

The major complaint is the shooting of a grizzly bear and the subsequent attempt to cover up this offense. The Appellant clearly knew that he had made a mistake in shooting a grizzly. Mr. Demarchi said that it was not always easy to distinguish between a grizzly and a black bear. However, this bear had a radio collar and obviously it was important to someone.

Mr. Petrar was obviously frustrated by his lack of initial success in obtaining any information on this bear. He appears to have allowed his frustration to assume black market activities. The facts as disclosed to the Board are equally consistent with a person making a mistake and very foolishly trying to hide it and only succeeding in getting further into a bog. Such foolishness cannot be allowed to go unpunished.

The Appellant is a faller with only a Grade 8 education. Because he has had a hunting licence for some years, he has not been required to take a CORE Course, nor has he done so. He is not a member of any wildlife association, but this fact alone should not be held against him. In spite of his efforts, Mr. Petrar was not able

to find a single one of the over 25 trophies in the Appellant's home which had not been shot legally. However, every hunter must know the regulations.

The Board agrees completely with the need for co-operation between hunters and the Wildlife Branch. However, the Board is not convinced that an apparent attitude of vindictiveness is the best way of securing co-operation.

It is the Board's opinion that the Appellant broke the law and then proceeded to aggravate the situation out of utter stupidity rather than with any criminal intent. Clearly, a significant penalty must be imposed, but not one with a length that Mr. Petrar, in his 15 years' service, has never recommended before. The penalty imposed is too harsh.

The Deputy Director is directed to amend his decision to provide for a three-year suspension, from September 15th, 1988, and to continue to require Mr. East to complete successfully a CORE course before he reappplies for a hunting licence.

H.D.C. Hunter, Panel Chairman  
Environmental Appeal Board

July 17th, 1989