



Appeal No. 83/11 W'LIFE

J U D G E M E N T

Appeal against decision of the Director,
Fish & Wildlife Branch, dated July 25, 1983

APPELLANT: Mr. Wm. Rankins,
c/o Robertson, Niedermayer & Kent,
Suite 100,
125 - 10th Avenue, S.,
Cranbrook, B. C. V1C 2N1

Hearing Details:

The hearing was held by a Panel of the Board
on November 16th, 1983, at the Inn of the South,
Cranbrook, B.C.

The Panel of the Board in attendance were:

H.D.C. Hunter (lawyer)	Chairman
Dr. N. Schmitt, M.D. (retired)	Member
Dr. R. Patterson (retired)	Member

By consent of the parties, there was no recorder
of the proceedings present, but the Chairman recorded
the proceedings on tape.

Summary of Principal Reasons for Appeal, as presented
to the hearing .

The Director was too severe in upholding the
order of the Acting Regional Director in cancelling
the Guide Outfitter licence.

Appeal: 83/11 - W'Life

Appellant's Representative:

Mr. Donald P. Niedermayer, Counsel
Mr. Wm. Rankins, Appellant

Director's representative (Fish & Wildlife Branch)

Mr. Dirk Ryneveld, Counsel

Exhibits:

1. Partial Transcript of the hearing before the Director.
2. Partial Transcript of the hearing before the Acting Regional Manager.
3. File of letters of reference regarding the Appellant.
4. Decision of Mr. S. Willett, Regional Manager, Fish & Wildlife Branch, Prince George, in the appeal by Mr. Kenneth W. Hooker after hearings held in May, June and July, 1983.
5. Decision of Mr. Robinson, Acting Director, dated December 1, 1978, in an appeal by Mr. F.E. Cooke.
6. Letter of Mr. D. Ryneveld, dated April 7, 1983, to the Court Reporter.
7. Transcript of hearing before the Acting Regional Manager.
8. Photograph of a trophy sheep.
9. Reasons for Judgement of Cooper CCJ, 8th April, 1983.

Neither party presented any witnesses or new evidence, but the Panel was presented with transcripts of parts of the previous hearings. The contents of such transcripts were accepted by both parties as evidence before the Panel.

Appeal No: 83/11 W'LIFE

Principal points raised by Appellant's Counsel before the Panel

1. The matter of the appellant's right to transfer his licence was withdrawn and was not now a matter before the Panel.
2. The appeal was based on the allegation that the cancellation of the licence was unjust and unfair, and went beyond the needs of the Wildlife Act.
3. The licence should have been suspended for perhaps 3 years, but not cancelled. In the Hooker case, the licence had been suspended for 3 years by another Regional Manager, and there should be some uniformity between Regions.
4. It was admitted that the Appellant had been convicted of several offences arising out of four incidents. He had been fined \$2,500.00 and sentenced to 75 days in jail.
5. The value of the licence on the market would be about \$80,000 to \$100,000. If it was cancelled, the Appellant would lose all this capital value built up over the years.
6. One offence was for the Appellant shooting a thin-horn sheep in another area out of season.
7. The other three animals were all shot by other people, two in Banff National Park and one in another guiding area while the Appellant was cutting christmas trees. In these cases, the Appellant did not report the killers but assisted in the disposal of the animals or parts of them. He considered that it was not proper to report his friends.
8. The Appellant had not previously been in trouble with the law; he regretted his mental aberration, and he submitted letters of reference as to his good character from neighbours and persons he had guided.

Appeal No: 83/11 - W'LIFE

Principal points raised by the Director's Counsel
before the Panel

1. The circumstances had been fully canvassed before the Acting Regional Manager.
2. The circumstances had been fully canvassed before the County Court, including the fact that the licence had been cancelled. Nevertheless, the County Court Judge did not interfere with the sentences of the lower courts.
3. Two of the animals were killed in the National Park, where all hunting is totally forbidden. One animal was shot from the truck while the Appellant was in it. The other was shot with a pistol equipped with a scope sight.
4. The Hooker case related to different sets of facts.
5. Not only had the Appellant broken the law himself, his attitude that he could not turn in his friend, or wouldn't report him, indicated an attitude inconsistent with the privilege of being a guide-outfitter who dealt with non-resident hunters.
5. The County Court Judge, in his reasons, pointed out that the Court does not only interfere in cases where there has been an error in principle, but considers the fitness of the sentence. However, it will not "tinker with sentences". If there is to be a variation, it should be substantial; finally, past decisions are not binding because circumstances change

In his reply, Counsel for the Appellant urged the Panel to ignore allegations of emotional appeal. The appeal was against the decision of the Director. The sentence of the criminal courts should be taken into consideration.

Appeal No. 83/11 W'LIFE

Following the submissions, the Panel asked questions about the differences between licences and certificates. The following points emerged:

1. A certificate could be legally transferred under the Act in some circumstances.
2. A licence was simply a licence from year to year. However, as a matter of practice, they were always automatically renewed to the previous holder unless there was some reason not to.
3. A licence would be transferred at the request of a licence holder and the new licensee would pay the old licensee for this transfer.
4. It is the Branch's intention not to issue any new licences for the Fording area (the Appellant's area) because of industrial developments and the intention to make it a wildlife reserve. The intention is not yet approved policy.

DECISION:

The Panel of the Environmental Appeal Board has carefully considered the submissions made to it and the agreed documents presented.

The Panel is of the opinion that the Appellant cannot have failed to be aware that his companion was preparing to shoot an elk from the truck in the National Park, nor to be aware that his companion was carrying a pistol with a scope sight when they approached a ram in the National Park. He does not suggest that he tried to prevent the kills.

The Appellant further stated on previous occasions that his friendship to persons or to clients would prevent

Appeal No. 83/11 W'LIFE

turning them in even for serious offences. He gave no indication that his opinion had changed.

The Panel is of the opinion that the decision of the Director, Fish & Wildlife Branch, made on July 25, 1983, was reasonable and fair, and should not be altered.

The appeal is dismissed.

A handwritten signature in blue ink, appearing to read 'H.D.C. Hunter', is written above the printed name.

H.D.C. Hunter,
Panel Chairman

Victoria, B. C.
November 30th, 1983