



Appeal No. 83/12 W'Life

J U D G E M E N T

Appeal against decision of the Director,  
Fish & Wildlife Branch, dated May 20, 1983,  
cancelling hunting licence until February  
23rd, 1985

APPELLANT: John Ivo Petrosevic  
314 McBeth Crescent,  
West Vancouver, B. C.

Witness: M. Hanzek

Hearing Details:

The hearing was held at the Robson Square Media  
Centre, Vancouver, B. C. on November 29, 1983, at 10:00 a.m.

The Panel of the Board in attendance were:

H. D. C. Hunter	Chairman
Lloyd Campbell	Member
Lou Osipov	Member
S. Mitchell	Recorder

The Fish & Wildlife Branch were represented by:

J.S. deVilliers,  
Ministry of Attorney-General - Counsel

D. J. Robinson,  
Director, Fish & Wildlife Branch

Preliminary:

Mr. deVilliers submitted a preliminary objection. His notice had, unfortunately, not been received by either the Board or the Appellant.

His objection was that the Wildlife Act required an appeal against an order of the Director to be filed within 30 days. It was admitted by the Appellant in this case that he had not done so. It was also admitted that the Director had stated in writing that he did not object to the appeal being heard.

Mr. deVilliers submitted that the Director's lack of objection, or even consent, could not give the Board jurisdiction. In his submission, there was no jurisdiction for the Board to hear an appeal which was not filed in time.

The Appellant had no notice of the objection and had no legal representation. The Panel of the Board decided that it would hear the appeal, subject to the objection, and would render a decision on this point at the same time as it was ready to render a decision on the merits of the appeal.

The Panel of the Board considered the preliminary objection and the case Merry v. Trail (1962) 39 WWR 237, referred to by counsel. The case, Merry v. Trail, is clearly distinguishable because of the different wording of the Statute.

The Board has jurisdiction to hear appeals under four main Statutes: the Water Act, the Waste Management Act, the Wildlife Act, and the Pesticide Control Act. The provisions regarding the timing of appeals are different in each Act.

1. The Water Act provides (Sec. 32(2)) -

"Every appeal from an order of the Comptroller shall be taken within one month".

2. The Waste Management Act provides (Sec. 28(1)) -

"An appeal to the appeal board ... shall be  
commenced within 21 days .... "

Sec. 28(3) "The chairman of the appeal board  
may extend the time ...."

3. The Wildlife Act provides (Sec. 103 3(c)

"....the person aggrieved by the decision may  
appeal the decision of the Director ...within  
30 days ....."

4. The Pesticide Control Act provides (Sec. 15(2)0

"An appeal shall be filed in the time and manner  
prescribed ...."

(Emphasis added in each case)

It is agreed that consent of the Director does not give the Board a jurisdiction it does not otherwise have, and, in this case, the Director did not formally consent, merely signified that he had no objection. Such statement is clearly relevant to the Board in exercising its discretion, if discretion is available.

The Board considers the use of the word "may" in the Wildlife Act as opposed to "shall" in the other Acts to be significant. Furthermore, the Water Act and the Pesticide Control Act have been in force for some time while the Waste Management Act and the Wildlife Act are new. The Waste Management Act provides for a discretion in the Board to extend the time for an appeal, a discretion which was not present in the Pollution Control Act, repealed by this Act.

The Board rules that it has the jurisdiction to hear this appeal notwithstanding that notice of appeal was given more than 30 days after the order of the Director was received by the Appellant.



Appellant's testimony:

The Appellant gave evidence and explained the events which led up to his conviction. After shooting at and apparently wounding a sheep, he was joined by another hunter who assisted him to track the animal and eventually kill it. At that time, the other hunter expressed doubt whether the animal was of a legal size. The Appellant took the sheep to his hunting companion's truck, and on measuring it, it appeared to be too small. Accordingly, he hid the head, intending to return in his own truck later to recover it and report it.

When he got home, and before he could return, he was interviewed by Conservation Officers who took his licence and his gun.

Under cross-examination, he denied having thrown the head away, but insisted he had hidden it with the intent of recovering it.

Mr. Hanzek gave evidence to support the fact that on measuring the horns, they were found to be not of a legal size and he, therefore, was afraid of having the head found on his truck.

Director's testimony:

Mr. deVilliers, for the Director, elected not to call any evidence, but Mr. Robinson, in reply to a question from the Board, stated that there were different open seasons for different species of game.

Decision:

The Panel of the Board considers as inadmissible evidence allegations of wrongdoing or improper pressure from Conservation Officers.

The Board considers that once the Appellant realized he had killed an animal below legal size, he made some foolish decisions in panic rather than deliberately flouting the law. Although the main conviction was for killing an animal

Appeal: 83/12 W'Life

out of season, the Appellant's evidence suggested that the other hunter who helped him and his companion, and, indeed, the Conservation Officers, concentrated on the size of horns, not on whether there was open season or not. The suspension or cancellation of the licence is required by Regulation to date from sentence, which was February 17, 1983, not from the time the Conservation Officers took the licence which was October 26, 1982, so the Appellant has suffered an additional 3 1/2 month suspension through the main part of the season. It is the Board's opinion that the interests of justice and the protection of the wildlife resource will be served by a one year's suspension of the licence.

The Board, therefore, instructs the Director to amend his order, dated May 20, 1983, to provide that the Appellant shall be ineligible to hunt and to obtain or renew his hunting licence until February 17, 1984. The remaining conditions of the Order shall stand as ordered.



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

Victoria, B. C.  
December 15th, 1983