



Province of
British Columbia

Ministry of
Environment

ENVIRONMENTAL APPEAL BOARD
Victoria
British Columbia
V8V 1X5

Appeal: 84/05 W'Life

J U D G E M E N T

Appeal against the order of the Director
of Fish & Wildlife, Ministry of Environ-
ment, dated March 26th, 1984

APPELLANT

Mr. S.C. Buttram
R. R. #2, Cowley Road
Port Alberni, B. C.



Appeal No. 84/05 W'Life

J U D G E M E N T

APPEAL:

The appeal was against a decision of the Director of the Fish & Wildlife Branch of the Ministry of Environment.

The circumstances leading up to the appeal to the Environmental Appeal Board were as follows:

- a) A licence for a guiding area (North Vancouver Island Guide Area) was put out to public tender in the latter part of 1983 for an upset price of \$37,500. Tenders were accepted up until 2:00 p.m., January 4th, 1984, but were required to be accompanied by a certified cheque or money order in the amount of 10 percent of the upset price.
- b) By the tender expiry date, four tenders had been received. Only one of the tenders, that of a Mr. Wiebe, was above the upset price. It was \$43,050: however, the cheque for this amount which accompanied the tender was not certified.
- c) The Regional Manager for the area, Mr. Gordon Prouse, accepted the tender from Mr. Wiebe for the \$43,050. Before doing so, however, he gave Mr. Wiebe a short period of time in which to certify his cheque, which Mr. Wiebe did on the morning of January 5th, 1984.
- d) Mr. S.C. Buttram, who tendered the lowest bid, which was \$16,013.13, took exception to the acceptance of Mr. Wiebe's tender, in that Mr. Wiebe's cheque had not been certified and that when corrective action was taken, the corrective action (cheque certification) had not taken place in a reasonable length of time. On this basis, Mr. Buttram then launched an appeal to the senior officer of the Fish & Wildlife Branch, Mr. D.J. Robinson, the Director. The appeal was heard on February 29th, 1984.

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- e) Mr. Robinson's conclusions and decisions were as follows:

"I have reviewed the transcript of your appeal hearing of February 29th, 1984, and find as follows:

- 1. The deposit cheque submitted by Mr. Wiebe, the successful tenderer, was certified within a time frame acceptable to Regional Manager Gordon Prouse who has the authority to make such a decision.*
- 2. The objective of the Crown to sell a resource option by public tender was accomplished.*
- 3. There was no evidence to show injury or detriment to other persons tendering nor was undue benefit given to Mr. Wiebe.*

I therefore dismiss your appeal and uphold the decision of Mr. Prouse."

- f) Mr. Buttram was not satisfied with the Director's decision and under Section 103, subsection 3(b) of the Wildlife Act, appealed the matter to the Environmental Appeal Board on the same grounds as his original appeal to the Director.

HEARING INFORMATION:

The hearing was held by a Panel of one person of the Board on May 9th, 1984, in the Conference Room, 557 Superior Street, Victoria, B. C., commencing at 9:00 a.m.

The member of the Board in attendance was

Mr. Frank A. Hillier, P. Eng. - Chairman

Miss Shirley Mitchell - Official Recorder.

REGISTERED APPELLANT:

Mr. S. C. Buttram,
R. R. #2, Cowley Road,
Port Alberni, B. C.

RESPONDENT:

Director,
Fish & Wildlife Branch,
Ministry of Environment

represented by:

Ms. Judith R. Wayte, Legal Counsel
Barrister & Solicitor
Ministry of Attorney-General

Mr. J. N. Bone, Guides Administrator,
Fish & Wildlife Branch
Ministry of Environment

While Mr. Bone was in attendance at the hearing, he was not called to give evidence. The defence of the position taken by Fish & Wildlife Branch was restricted to legal matters only.

LIST OF EXHIBITS:

- Exhibit 1 - Only one exhibit was placed before the Panel of the Board, which was a package of Items from Mr. Buttram, as follows:
- a) Notice for Intending Tenderers for Guide Area.
 - b) Procedure Manual for Auctions of Guide Areas.
 - c) Typical Tender Offering (B.C. Government)
 - d) Pages 20, 21 and 24, Wildlife Act.

SUMMATION OF THE APPELLANT'S PRESENTATION:

Mr. Buttram's testimony was as follows:

- 1) He said that all interested parties to the tender for the guide area, including Mr. Wiebe, had been supplied with a copy of the "Notice for Intending Tenderers for Guide Area" (Exhibit No.1). He said that while Mr. Wiebe had been given a copy, he had probably thrown it away or done something of that nature before realizing all the requirements for tendering.

He pointed out that the notice said the following:

"The tenders must be accompanied by a certified cheque or money order payable to the Minister of Finance in an amount equal to ten percent (10%) of the upset price. The certified cheque or money order must accompany the sealed tenders."

- 2) He also pointed out that the Procedure Manual for Regional Managers (Exhibit No. 1) gave the managers instructions, as follows:

"In the case of failure to certify the accompanying cheque, if the tenderer/bidder is successful, then he should be allowed reasonable time (30 minutes) to have his cheque certified."

He said that Mr. Wiebe had taken more than 20 hours.

- 3) He pointed out that in another government offer for tenders on oil drums, there was also a paragraph which said that offers must be accompanied by a certified cheque or money order, indicating that this was a normal condition of tenders for all government auctions.
- 4) He further said that in discussions with people accepting government tenders and people making government tenders, that it was a general rule that if no certified cheque accompanied a tender, it was tossed aside: it was not accepted as a bid.

- 5) He said that since the Fish & Wildlife Branch had made up a set of rules for the conduct of its personnel, then the Regional Managers should be required to follow them. He wondered why Mr. Prouse could override these rules.
- 6) He indicated that on the basis of his testimony, he felt that the tendering for this guide area had been unfair and wanted the following orders:
 - a) overturn the Director's decision
 - b) accept the second bidder's tender

SUMMATION OF THE CROSS-EXAMINATION OF THE APPELLANT:

Under cross-examination, the appellant stated the following:

- 1) He said that he had been present at the opening of the tenders on January 4th, 1984, and that Mr. Wiebe's tender was the only one over the upset price of \$37,500.
- 2) He said that he had been aware that Mr. Gordon Prouse would reserve his decision on the tenders on the afternoon of January 4th, 1984, until he could check on the validity of the Wiebe bid.
- 3) He said that he was aware and did not doubt that a telephone call had been placed by Mr. Prouse to Mr. Wiebe's bank in Port Alberni immediately after the opening of the tenders to obtain verbal confirmation that Mr. Wiebe could meet his commitments under the tender.
- 4) He said that he was aware that the 20-hour delay in written certification of the cheque included a period when the bank was closed. He was aware that the cheque had been certified 17 minutes after the bank had opened on January 5th, 1984.

- 5) He said that he was aware, from evidence given at the previous appeal hearing, that Mr. Wiebe had said he had not received a copy of the "Notice for Intending Tenderers for the Guide Area". Also, from this previous hearing, he was aware that Mr. Wiebe had not understood that his cheque had to be certified.
- 6) He said that he was also aware that no bidder, other than Mr. Wiebe, had complied with this provision of the tender invitation on the upset price.
- 7) When questioned on his interest in upsetting the Director's decision, Mr. Buttram stated the following:
 - a) He had a hidden agreement with the second tenderer for a 51 percent interest in the guide area.
 - b) He had had a number of confrontations with personnel of the Fish & Wildlife Branch and wanted to keep his serious tender secret. He indicated that the tender under his own name was submitted so that the Fish & Wildlife Branch could throw it out.
- 8) He stated that the second bidder had initially launched an appeal and then withdrew it.
- 9) He stated that he was giving consideration to leaving the Province in the very near future.

POSITION PUT FORWARD BY FISH & WILDLIFE BRANCH:

In her argument, Mrs. Wayte put forward the following position of the Director;

- 1) In law, the statutory requirements are simply stated as follows (Section 66 of the Wildlife Act).

Section 66 of the Wildlife Act

"The right to guide in the area shall be advertised for sale by the regional manager and sold by tender to a person who is qualified to hold a guide outfitters licence".

Neither the law nor the Statutes provide anything in regards to procedures or certified cheques.


- 2) The senior employee of the Branch creates or approves procedures in an attempt to set out guidelines as to how the Regional Managers will carry out their administrative functions. These procedures are not law and are open to interpretation. The Regional Managers are not bound by the procedures.
- 3) Even though Regional Manager Gordon Prouse was not bound by the procedures, the Director was satisfied that the cheque was certified in a reasonable length of time (i.e. 17 minutes after the bank opened the following day).
- 4) In the "law of contracts", a notice of tender is not binding. All tenders can be rejected for any reason or any tender can be accepted if it is in the best interests of the receiver of the tenders. The decision to accept or reject is entirely within the discretion of the person or organization receiving the tender.
- 5) The registered person making the second tender has not seen fit to carry out an appeal against the Regional Manager's decision.
- 6) The Branch notes that this hearing is being carried out prior to the time constraints for the hearing as contained in the Regulations to the Environment Management Act. This is being done at the request of the appellant who has also stated at the start of the hearing that he has no objection. The Branch also has no objection.

DECISION:

The Panel of the Environmental Appeal Board has considered all of the evidence and all of the argument submitted to it at this hearing, and has decided that the position taken by the Director at the appeal hearing of February 29, 1984, was the correct decision. This panel of the Environmental Appeal Board agrees with the Director's conclusions and, therefore, hereby dismisses the appeal of Mr. Buttram.

Further comments of the panel are as follows:

- 1) The purpose of tenders of this type is to earn money for the Province. It is the duty of the public servants involved to obtain the best price possible, within the constraints of protecting the environment (wildlife or otherwise). The public servant must also ensure that the tender is a bona-fide one, and that the expected benefits to the Province will be realized.
- 2) In the case of this guide area, the Regional Manager obtained the best possible price for the Province, and immediately ensured, by telephone, a verbal certification that the money was available, later confirmed by a written certification 17 minutes after the bank opened on the following day. It is the opinion of this panel that the Regional Manager and the Director have both carried out their duties in an exemplary fashion and in the best interests of the Province.



F. A. Hillier, P. Eng.,
Chairman
Environmental Appeal Board

Victoria, B. C.
May 24th, 1984