



Appeal: 84/06 W'LIFE

J U D G E M E N T

Appeal against the decision of the Director of the Fish and Wildlife Branch, dated February 28th, 1984, heard under Section 103 (3) of the Wildlife Act, and Section 11 of the Environment Management Act, relative to the cancellation of a hunting licence.

APPELLANT: Mr. Fred Bressler
564 - East 30th Avenue
Vancouver, B. C.

Counsel: R. E. Breivik.

Mr. Bressler gave evidence

HEARING INFORMATION:

The hearing was held in Conference Room 6, Robson Square, Vancouver, B. C., commencing at 10:00 a.m., on May 15th, 1984.

The appeal was heard by a Panel of the Environmental Appeal Board. Board members in attendance were:

G. E. Simmons - Chairman
L. Campbell - Member
Dr. R.F. Patterson - Member

Miss Shirley Mitchell, Secretary to the Board, acted as Recorder of the proceedings.

The Director of the Fish and Wildlife Branch was represented by:

Mr. P. G. Jarman	-	Counsel
Mr. T. McGunigle	-	Conservation Officer
Mr. W. McGregor	-	Ungulate Specialist responsible for wildlife regulations for British Columbia

Mr. McGunigle and Mr. McGregor gave evidence.

The appeal was against the decision of the Director of the Fish and Wildlife Branch cancelling the appellant's hunting licence, and ordering that the appellant would not be eligible to hunt or to obtain or renew his hunting licence for a period of two years, which period to terminate on November 23rd, 1985.

EXHIBITS:

- Ex. 1 - Reasons for Judgement of His Honour Judge T. W. Shupe
- Ex. 2 - Complaint by Mr. Bressler to the Regional Conservation Officer, Kamloops, and subsequent correspondence.
- Ex. 3 - British Columbia Hunting Regulations Synopsis, 1982-1983.
- Ex. 4 - An Information filed by T. B. McGunigle, sworn June 28th, 1983, at Clinton.

FACTS:

The appellant, a man with some 20 years of hunting experience in British Columbia, lives in the Vancouver area, and maintains a holiday cabin north of Clinton. He is employed in a supervisory capacity in the Vancouver area and has been a member of the North Shore Fish and Gun Club since 1953, and is a member of the B.C. Wildlife Federation.

Relatively early on the morning of November 9, 1982, the appellant was hunting for moose alone in an area adjacent to Big Bar Lake in Wildlife Management Area 3-31. In evidence, he stated that he saw a moose on a small knoll about 100 yards ahead of him, but because the head was not visible, he could not establish the sex of the animal. It was noted that on that date, the pertinent regulations permitted the taking of either a cow moose or a bull moose in Area 3-13, the take being limited to one animal only per hunting licence.

The appellant stated that he fired one shot and the animal disappeared. He waited a few minutes, listening for sounds before he saw a young bull moose, and he fired again. He subsequently indicated that he fired twice at the young bull moose. The bull moose disappeared from sight. He then went to inspect and found a cow moose and a bull moose. The cow moose was dead, but he had to complete the kill of the bull moose. The appellant then advised that he cleaned both animals. He placed tree limbs over the cavity in the cow moose and left it in the woods, taking the bull moose home.

The shots fired by the appellant were heard by three individuals who witnessed the two dead animals shortly after the kill. The action was reported to the R.C.M.P. by the witnesses and the appellant was subsequently charged in that he unlawfully took more than one moose in one licence-year, contrary to Section 11 (1) of B.C. Regulation 307/80 as amended. The charge was heard by His Honour Judge T.W. Shupe on October 27, 1983, at Kamloops. The Judge reserved his decision, finding the appellant guilty on November 23rd, 1983, and awarding a fine of \$750.00. The records indicate that the Judge recommended suspension of the appellant's hunting licence for one year.

Under questioning by counsel, the appellant described an unrelated incident involving the reporting of the taking of a mountain goat under licence in October of 1982. The issue was raised because of a confrontation over the telephone between the appellant and the local Conservation Officer at Clinton, Mr. McGunigle. That confrontation resulted in the appellant filing a complaint with the Regional Conservation Officer at Kamloops. It was that

experience which the appellant claimed gave rise to a sense of panic when he discovered that he had killed not one, but two, moose.

In response to the question from counsel, "Did you intentionally shoot two moose", the appellant replied, "no, I did not".

Under cross-examination by counsel for the Director of Fish and Wildlife, the appellant admitted that he had been found guilty of taking more than one moose. He also agreed that he had been successful in taking his limit in deer, goat and sheep within the year. On further questioning, the appellant insisted that he had covered only the cavity of the cow moose and not the whole carcass. With reference to Judge Shupe's Reasons for Judgement (Exhibit 1), the appellant confirmed the Court's findings that on four separate occasions over a number of months, he, in fact, told falsehoods with respect to the shooting.

Questioning of the appellant by the Panel elicited the information that he did not know why he cleaned the cow moose as well as the bull moose.

Counsel for the Director introduced as witness, Mr. T. McGunigle, who described his visit on November 10, 1982, to the appellant's home with a search warrant and accompanied by an R.C.M.P. officer. Portions of a moose, fresh hide and horns were identified. Mr. McGunigle and a R.C.M.P. officer, on November 11th, 1983, found the kill-site by following directions from the three independent witnesses, and saw the carcass of the cow and the remains of the young bull. Although there was much discussion relative to the placement of the branches over the carcass, it was clearly established that the coverage was over the cavity only, leaving the extremities free and visible.

The witness' description of the kill-site was very similar to that provided by the appellant.

Counsel introduced Mr. W. McGregor as a witness.

Mr. McGregor, as officer responsible for B.C. hunting regulations, noted that the moose population in the Province has been declining significantly. Whereas the last moose hunting date in 1982 was November 9th, the closing date is now in October. Conservation of big game species is becoming more essential each year.

FINDINGS:

The appeal was a plea that the order of the Director cancelling the appellant's hunting licence be rescinded. In order to determine the severity of the action and, hence, the degree of penalty, the Panel gave close attention to the situation described by the witnesses.

It was noted that:

1. The appellant described the timing of his four shots as being a few minutes apart between the first and the following two shots directed at the bull moose. The witnesses, however, described a timing of three successive shots with only a pause before the fourth and final shot.
2. The appellant demonstrated a lack of effort to abide by the statutory requirement to report an accidental kill. As Judge Shupe noted, there can be some compassion for an individual who, having erred, is required to confess his error to one with whom he is already in confrontation over another matter. Aside from the four occasions noted by the Court, it would appear from correspondence (Exhibit 2) relative to the appellant's earlier complaint re Mr. McGunigle, that there was at least one other contact with the Fish and Wildlife Branch. The correspondence indicates that on November 17th, 1982, the appellant, in a telephone conversation with a Senior Conservation Officer in Kamloops, declined an opportunity to meet Branch staff with respect to his filed complaint. The appellant could have advised the Senior Conservation Officer of the double kill at that time, noting

that he preferred to so report since he was at odds with the local Conservation Officer, Mr. McGunigle.


3. As a member of an organization which has a significant interest in the proper management of big game in British Columbia, the appellant holds that interest in trust each time he hunts. By his actions subsequent to the killings, and from the findings of the Court, it would appear that the appellant repudiated that trust.

DECISION:

The Director of Fish and Wildlife has the responsibility to manage the game animal populations in the Province, which include the setting of conditions under which they may be harvested. These conditions are universally known, and must be known by all who obtain hunting licences. It is essential that the hunting regulations must not only be clearly spelt out, but also must be properly enforced. The Director must carry out that enforcement, and may do so through the imposition of the penalties of licence cancellation and the designation of ineligibility for renewal of a licence.

The Panel, having heard the evidence presented, and having noted the decision of Judge T. W. Shupe, is of the opinion that the actions of the appellant at the time, and in the subsequent period, were such that the privileges associated with a hunting licence should be foregone for a prescribed period. The two-year period of ineligibility, terminating on November 23rd, 1985, as set out by the Director of Fish and Wildlife, is considered to be appropriate.

The appeal is, therefore, dismissed.


G. E. Simmons
Panel Chairman
Environmental Appeal Board

June 28th, 1984
Victoria, B. C.