



APPEAL: 84/12 W'LIFE

J U D G E M E N T

ORDER OF THE DIRECTOR:

On May 20th, 1983, Mr. James Massier was convicted under Section 34(2) of the Wildlife Act and sentenced to pay a fine of \$500.00.

Further, on November 23rd, 1983, because of this conviction, and under the authority of Section 25 of the Wildlife Act and Division 7 of B.C. Reg. 340/82, as amended, and after considering the written submission from Mr. James Massier, the Director of the Fish & Wildlife Branch, Ministry of Environment, cancelled Mr. Massier's hunting licence (No. 726221) for a period of two years, ending on May 20th, 1985.

APPEAL:

Mr. Massier appealed against the Director's order on the following grounds:

- 1) That he needed his hunting licence in order to carry on his normal activities as an assistant guide. This was the way that Mr. Massier earned part of his living, and he said that he had a job to go to in August, 1984.
- 2) That he was suffering economic hardship in the fact that he was out of work; his unemployment insurance benefits had expired in April, 1984, and that he now had no source of income, except from welfare.
- 3) That under the circumstances, with his fine and the suspension of his licence to date, he had been punished enough. He pointed out that his fine of \$500.00 constituted over 25 percent of his income of \$1900.00 for last year.

- 4) He informed the Board that he was very repentant for his past actions, and promised never to break the Wildlife Act again.

HEARING INFORMATION:

The hearing was held on July 26th, 1984, at 2:00 p.m. at the Simon Fraser Inn, Prince George, B. C.

The appeal was heard by a Panel of one of the Environmental Appeal Board, Mr. Frank A. Hillier, P. Eng., Chairman.

The official recorder was Mrs. Susan Tyree of Professional Reporting Services, Victoria, B. C.

REGISTERED APPELLANT:

Mr. James Massier - represented by Mr. Brad Chudiak,
B.Sc., LL.B. - Legal Counsel.

Mr. Karl Prinz, Guide Outfitter, also gave evidence as a witness for the appellant.

RESPONDENT:

Fish & Wildlife Branch, Ministry of Environment,
represented by Miss Livia Meret, LL.B. - Legal Counsel
from the Ministry of the Attorney-General, and

Mr. Jim Corbett, District Conservation Officer for
Quesnel, B.C., the officer involved in charging the
appellant, and the sole witness for the Branch.

EXHIBITS:

"A" - Ministry of Human Resources - G.A.I.N. Application for
Mr. Massier.

"B" - Statement of Income & Taxation for Mr. Massier,
Revenue Canada

EXHIBITS (Continued)

"C" - Book of Documents from the Fish & Wildlife Branch, containing the following:

1. Copy of Conservation Officer Record 083060, dated January 6, 1983.
2. Copy of Exhibit Report - Conservation Officer Service, dated January 7, 1983.
3. Copy of B.C. Resident Hunting Licence No. 726221, issued to James Massier.
4. Copies of Assistant Guide Licences issued to James Massier on August 30th, 1982, and on August 25th, 1983.
5. Copy of Crime Report, dated June 6, 1983.
6. Copy of Memorandum dated June 6, 1983 from J.N. Corbett, Conservation Officer to Roy Slavens, Senior Conservation Officer.
7. Copy of Memorandum from W.R. Hazledine, Regional Conservation Officer, Cariboo Region, to D. J. Robinson, Director, Fish & Wildlife Branch, dated June 14, 1983.
8. Copy of file copy of letter from D.J. Robinson, Director, Fish & Wildlife Branch, to Mr. James Massier, dated August 30, 1983.
9. Copy of letter from D.J. Robinson, Director, Fish & Wildlife Branch, to Mr. James Massier, dated November 23, 1983.
10. Copy of letter from Mr. James Massier dated April 19, 1984.
11. Copy of letter from Mr. Brad Chudiak to Mr. F.A. Hillier, Chairman, Environmental Appeal Board, received May 14, 1984.
12. Copy of letter from F.A. Hillier, Chairman, Environmental Appeal Board, to Mr. Brad Chudiak, dated May 31, 1984.
13. Copy of letter from F. A. Hillier, Chairman, Environmental Appeal Board, to Mr. Brad Chudiak, dated June 26th, 1984

14. Extracts from the Wildlife Act and B.C. Reg. 340/82.

"D" -Criminal Code - Conviction Document for Mr. Massier-Judge C.C. Barnett.

"E" -Crown Counsel Report - Background on the moose poaching problems in the Quesnel area.

SUMMATION OF THE APPELLANT'S PRESENTATION:

Mr. Massier's testimony was as follows:

1) He had moved to B.C. in 1969. He was now 37 years of age, divorced and had an eight-year old daughter, of whom he had partial custody.

2) In 1972, he had started his own business - a self-employed proprietor of a gas station. In 1979, his house burned down, he had no insurance and the bank had foreclosed and taken his business (presumably to cover the mortgage on his house). Shortly afterwards, his marriage had broken up.

3) Since 1982, he said that his principal occupation had been that of an Assistant Guide. He had worked for Rocky Mountain Outfitters (Karl Prinz - owner) and Findlay River Outfitters in 1982 and 1983 respectively.

4) In the past, he had also worked in the forest industry as a faller. He had tried to obtain work in this capacity in recent times but had failed to do so because of the current recession. He was now on welfare, as his unemployment insurance benefits had expired.

5) He said that someday he would like to own his own guiding "outfit" and was working towards that end.

6) Because of his abject financial conditions and poor housing (he lived in a trailer with plastic windows) he had moved in with a woman on welfare, Jean Mackie, during the winter of 1982/83. He also became associated with his neighbour, a Mr. Stan Fost, whom he describes as a "con-artist". During this period of time, he describes himself as being very gullible and emotionally disturbed. He also indicated that he was afraid of Stan Fost and was intimidated by him. In summary, he said that he had gotten in with bad company.

7) On January 6, 1983, he said that Mr. Stan Fost had given him some fresh moose skins. In dragging the skins over from his property, it seems that Mr. Fost had left a trail of blood. Later in the day, Mr. Fost also offered to provide Mr. Massier with some fresh moose meat. Mr. Massier accepted. Mr. Massier also said that he had been drinking extensively during the day.

8) Some time later in the day, Mr. Jim Corbett, District Conservation Officer, and Constable Deakes, arrived at the house, found a pick-up truck with blood in the box, found the trail of blood across the yard, found the fresh moose skins and the moose meat in Mr. Massier's trailer. In short, he was caught with extremely incriminating evidence.

9) Mr. Massier said that at the time, he had had the vague impression that the skins and meat had come from a road kill of a moose by a logging truck. He said that he had not paid Fost any money for the moose meat or the skins.

10) He also said that he had not tried to implicate Stan Fost or anyone else in the incident at the time he was charged. He said that he had been stupid in this regard.

11) He said that he was very sorry he had broken the law. He also said that he had always tried to obey the game laws and that it was only this one time that he had totally slipped up. He said there was no way in the future that he was ever going to be involved in this type of "stuff" again.

12) He stated that he had been convicted of possession of moose meat out of season and fined \$500.00. He produced a financial statement from Revenue Canada which indicated that his total income in 1982 had been \$1805.00. It seems, however, that he was going to receive an income tax refund of \$1,889.00. The Panel of the Board found the Revenue Canada Statement somewhat confusing.

13) He also testified that he had become a Crown witness in the case against the others involved in the incident. (It seems they were part of an organized poaching gang). He said, however, that he was the only one convicted.

14) He said that he was embarrassed about being on welfare and that the getting of a subsistence licence through welfare was degrading.

15) He said that during the incident, he had always been co-operative with the police and conservation officer.

- 16) He noted that the value of his two vehicles and trailer was only about \$1500.00.
- 17) He further stated that he does not believe in poaching for any reason.
- 18) He also said that he would like an opportunity to get into the "good books" of the Fish & Wildlife Branch by helping Jim Corbett, if he ever had a problem with bears in the Quesnel area. He said he had four bear hounds which were about two years old, which could be used to track down problem bears.

Karl Prinz - Witness

Mr. Prinz's testimony was as follows:

- 1) He said that you could trust Jim Massier, he was not a liar, he was straight-forward and not a poacher.
- 2) He said that when he had heard about Jim's problem, he knew that somebody had taken advantage of him.
- 3) He indicated that Jim was naive, too trusting. You can tell him anything and he will believe it.
- 4) He said that he owned Rocky Mountain Guiding Outfitters and that Mr. Massier had worked for him on two occasions. He said that his clients liked Jim, had good experiences with him and wanted to hunt with him again.
- 5) He said that Jim was responsible and noted that, as a guide outfitter, he could not afford to have guides who were not trustworthy.
- 6) He said Jim was careful with firearms, was not a "gun nut" and considered firearms only as tools.
- 7) He said that he was adamantly opposed to poachers and would be among the first to have them put away. He said Jim was no poacher and that under the circumstances, the fine of \$500.00 was too high (i.e. Jim's economic circumstances).

COMMENTS MADE DURING CROSS-EXAMINATION OF THE APPELLANT:

1) Mr. Massier said that his income in 1983 was technically zero.

2) Mr. Massier said that the best he could hope for was about 2 months' guiding this fall, which would gross him about \$3,000.

3) Mr. Massier said that if he could get a job at winter logging (falling), he could probably earn about \$150/day. He indicated, however, that his chances were remote. He said that he didn't like falling as it was too dangerous, and that he was really trying to get a job in logging as an ambulance driver. (He had a first-aid ticket).

4) Mr. Massier said that at the present stage of training, his four bear hounds were probably worth \$1000 each, if he could find a buyer. He said they cost between \$300 and \$500 a year to feed.

5) Mr. Massier said that the operating costs of his car were about \$20.00 a week when it was running.

6) Mr. Massier said that he had not really understood the full extent of the poaching laws, indicating that he was not aware that possession of moose meat out of season was that serious. He said that he certainly knows now.

SUMMATION OF THE FISH & WILDLIFE BRANCH PRESENTATION:

Mr. Corbett's testimony was as follows:

1) Mr. Corbett said that he had held his present job for some six years. Part of his qualifications for the job were that he had attended B.C.I.T. for three years, at the end of which time he obtained diplomas in Forestry and Fish, Wildlife and Recreation.

2) Mr. Corbett said that between Christmas and New Year of 1982, he had confirmed 9 moose shot out of season along the Barkerville Highway and 300 Logging Road. He also said that he was aware of about 10 other kills which he could not confirm. In three of the cases, logging truck drivers had seen a yellow, G.M.C., 4 x 4 pick-up loading up with moose at 2 to 3 o'clock in the morning. This pick-up had a unique bumper shape and unique paint job.

3) On January 6th, 1983, Constable Deakes of the R.C.M.P. and Officer Corbett found this particular truck in town. They identified the driver as Mr. David Schwemler and tailed the truck to Mr. Massier's residence. This was about 10:00 p.m. While Corbett spoke to Schwemler, Constable Deakes in his investigation of the property found three partial hides of moose and two unskinned front quarters of moose in Mr. Massier's trailer.

4) Schwemler and Massier were then arrested and taken to the Quesnel Detachment Headquarters of the R.C.M.P. Massier was issued with a Wildlife Ticket for possession of moose meat out of season and released. At the time of his arrest, the three skins and moose quarters were also seized.

5) At the time when Mr. Massier was charged, he was also informed that upon conviction, in addition to the fine, there would be an automatic cancellation of his hunting licence. The Fish & Wildlife Branch would impose this penalty.

6) On May 20th, 1983, Judge C.C. Barnett, in Provincial Court, found Mr. Massier guilty of Possession of Game During Closed Season, Sec. 34-2 WLA, and fined him \$500.00.

7) On June 6th, 1983, Mr. Corbett made a recommendation to his superior officer, Mr. Roy Slavens, that Mr. Massier's hunting licence be cancelled for a two-year period. Mr. Slavens confirmed the cancellation request and on June 14th, 1983, Mr. W.R. Hazledine, Cariboo Regional Conservation Officer, wrote to the Director of the Fish & Wildlife Branch, further requesting the cancellation.

8) On November 23rd, 1983, Mr. D.J. Robinson, Director of the Fish & Wildlife Branch, cancelled Mr. Massier's hunting licence for a two-year period ending on May 20th, 1985. Unfortunately, the Director's letter was returned, unopened, and it was necessary for Mr. Corbett to serve the notice by hand, which was not done until March 28th, 1984.

9) Mr. Corbett noted that Mr. Massier's Assistant Guide Licence had not been cancelled and that he could still carry firearms. He was only prohibited from hunting, and not from guiding.

10) Mr. Corbett also noted that Mr. Massier was not prevented from applying for a Sustenance Permit to take a moose, provided he could get an approval from Human Resources and could find another registered hunter to make the kill.

11) Mr. Corbett stated that Mr. Massier was now living about one kilometer from the place where he had resided at the time he was charged with possession of game out of season.

COMMENTS MADE DURING CROSS-EXAMINATION OF THE RESPONDENT:

1) Mr. Corbett stated that it was standard practice to cancel hunting licences for infractions of the Wildlife Act when they were serious in nature. No account is taken of the character or financial condition of the individual involved.

2) Mr. Corbett stated that he was not aware of any person ever receiving a Sustenance Permit under similar circumstances to that of Mr. Massier.

3) Mr. Corbett, however, did not preclude the possibility of Mr. Massier getting a Sustenance Permit. He said the normal time involved in getting a Sustenance Permit, after the application documents were completed, was about a week to two weeks.

4) Mr. Corbett said that Mr. Massier had always been polite and co-operative during the course of his actions against him.

5) Mr. Corbett admitted that the Fish & Wildlife Branch had been unsuccessful in getting the main culprits of the poaching ring, and that they were still operating. The only one they had got, in this particular incident, was Mr. Massier.

6) Mr. Corbett took the position that if there was no market for poached game, this type of ring would not exist; therefore, the receiver of the meat was just as much to blame.

7) Mr. Corbett stated that he believed there should be much stiffer penalties for this type of crime if the Fish & Wildlife Branch were to be successful in preventing poaching.

DECISION:

This Panel of the Environmental Appeal Board has considered all of the evidence submitted to it in the appeal hearing into the two-year cancellation of Mr. Massier's hunting licence, and has decided, on compassionate grounds, that Mr. Massier has been punished enough. The decision of this Panel of the Appeal Board is that Mr. Massier's hunting licence be reinstated effective August 15th, 1984, provided he pays the necessary licencing fees.

COMMENTS OF THE BOARD PANEL:

1) There is absolutely no doubt in the mind of this Panel that Mr. Massier was guilty of possession of "Game During a Closed Season", and it is, therefore, difficult to fault the personnel of the Fish & Wildlife Branch for their actions in the fight to prevent poaching and the destruction of this valuable natural resource.

2) In imposing a penalty, this Panel believes that some account must be taken of the offender's character and financial circumstances. The \$500.00 fine and two-year licence cancellation to a man with little or no income is extremely harsh, particularly when he is a hunting guide, and the cancellation could influence his ability to earn a living. A fine of \$500.00 to a man with substantial income and who hunts as a hobby is relatively light. A penalty of this nature is also totally inadequate for professional poachers. If it is possible, this Panel believes that not only the Fish & Wildlife Branch, but the criminal courts, should take these facts into account. On the basis of the foregoing argument, this Panel of the Board believes that Mr. Massier's punishment was too severe.

3) This Panel of the Board notes Massier has had no previous convictions.

4) This Panel of the Board also notes that Massier was always polite, respectful and co-operative towards the personnel of the Fish & Wildlife Branch.

5) This Panel further notes that Massier has given his solemn promise, under oath, that he will never again violate the provisions of the Fish & Wildlife Act. Should Mr. Massier again appear before this Board on a similar charge, he should realize that the Board will not treat the matter with the same leniency he has just received.

6) In coming to its decision, this Panel of the Board believes that in the best interests of the Province, there is no useful purpose in continuing the punishment.

7) Further, in coming to its decision, this Panel of the Board does not wish to indicate any condemnation of the Conservation Officer, Mr. Jim Corbett. In fact, the Panel was favourably impressed by the decorum of Mr. Corbett at the hearing.



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

Victoria, B. C.
August 9th, 1984