



APPEAL: 84/13 W'Life

J U D G E M E N T

ORDER OF THE DIRECTOR:

On October 31st, 1983, Mr. Carl Edward Koch admitted to the possession of illegal game and was, therefore, convicted under Section 34(2) of the Wildlife Act. He voluntarily paid a fine of \$300.00. In addition to this, he also admitted to the failure to cancel his species licence in accordance with the instructions on the licence, and was, therefore, convicted under B.C. Reg. 336/82, Div. 1, Section 104, and paid an additional voluntary fine of \$75.00.

Further, on February 21st, 1984, because of these convictions, and under the authority of Section 25 of the Wildlife Act and Division 7 of B.C. Reg. 340/82, as amended, and after consideration of a written submission from Mr. Carl Edward Koch, the Director of the Fish & Wildlife Branch, Ministry of Environment, cancelled Mr. Koch's hunting licence (No. 579325) for a period of two years, ending on October 31st, 1985.

APPEAL:

Mr. Carl Edward Koch took issue with the Director's order, and appealed that order to the Environmental Appeal Board, on the grounds that the two year cancellation of his hunting privileges, in addition to the two fines, was excessive. He asked that the Board lift the cancellation or reduce the length of time of the cancellation.

HEARING INFORMATION:

The hearing was held on July 26th, 1984, at 9:00 a.m. at the Simon Fraser Inn at Prince George, B. C.

The appeal was heard by a Panel of One of the Environmental Appeal Board, who was:

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

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

REGISTERED APPELLANT:

- was Mr. Carl Edward Koch, represented by Mr. Denis Archambault, LL.B. - Legal Counsel.

RESPONDENT:

- was the Fish & Wildlife Branch, Ministry of Environment, represented by Miss Livia Meret, LL.B., Legal Counsel, from the Ministry of Attorney General, and
- Mr. A. R. Charbonneau, District Conservation Officer for Vanderhoof, B.C., the officer involved in charging the appellant, and the sole witness for the Branch.

EXHIBITS:

- "A" Book of Documents from the Fish & Wildlife Branch, containing the following:
1. Copy of Conservation Officer Record 037865, dated September 27, 1983;
  2. Copy of Conservation Officer Record 037868, dated September 28, 1983;
  3. Copy of Crime Report, dated October 25, 1983;
  4. Copy of Crime Report, dated October 25, 1983.
  5. Copy of Order of Confiscation, dated October 27, 1983.

6. Copy of Exhibit Report - Conservation Officer Service, dated September 29, 1983;
7. Copy of B.C. Resident Hunting Licence No. 579325, issued to Carl Koch;
8. Copy of Memorandum from A.R. Charbonneau, Conservation Officer, to G. Gosling, Senior Conservation Officer, dated October 31, 1983;
9. Copy of Memorandum from M.D. Walker, Regional Conservation Officer, Omineca Peace Region, to D. J. Robinson, Director, Fish & Wildlife Branch, dated November 16, 1983.
10. Copy of file copy of letter from D.J. Robinson, Director, Fish & Wildlife Branch, to Mr. Carl Edward Koch, dated November 23, 1983;
11. Copy of letter from Carl Koch to D.J. Robinson, Director, Fish & Wildlife Branch, dated January 20, 1983;
12. Copy of letter from Denis P. Archambault to Fish and Wildlife Branch, dated January 31, 1984;
13. Copy of a letter from D.J. Robinson, Director, Fish & Wildlife Branch, to Mr. Carl Edward Koch dated February 21st, 1984;
14. Copy of a letter from Denis P. Archambault to the Chairman of the Environmental Appeal Board, dated March 21, 1984;
15. Copy of a letter from F. A. Hillier, Chairman, Environmental Appeal Board, to Mr. Denis Archambault, dated April 5, 1984.
16. Copy of a letter from Denis P. Archambault to the Chairman of the Environmental Appeal Board, dated May 2, 1984;
17. Copy of a letter from F.A. Hillier, Chairman, Environmental Appeal Board, to MR. Denis Archambault, dated May 9, 1984.
18. Extracts from the Wildlife Act, B.C. Reg. 338/82, B.C. Reg. 150/82, as amended by B.C. Reg. 175/83 and B.C. Reg. 340/82.



EXHIBITS (Continued)

"B" A map of the area involved, showing management units 5-12, 5-13, 6-1, 7-11, and 7-12, including Kluskus Road and Suscha Road.

SUMMATION OF THE APPELLANT'S PRESENTATION:

Mr. Koch's testimony was as follows:

1) Mr. Koch said that he had lived in Prince George since 1969. He was now 43 years old and was married with four children.

2) Mr. Koch also stated that he had worked for Transport Canada for the last 4 1/2 years. His wife worked for the City.

3) Mr. Koch further stated that he has hunted since he was 9 years of age, and continues to hunt every year. He stated that the reason he hunts is to put meat on the table as he cannot afford to buy beef. Beef is too expensive for a man of his means. He stated that beef costs \$1000.00 per animal, but he could get a moose for about \$40.00 per animal; that is before the licence cost was increased.

4) When the supposed hunting infraction occurred, Mr. Koch stated that he was hunting with two other men, Mr. George West, a fire chief from Victoria, and a man called Sid, also from Victoria. Sid was a friend of George West. Mr. Koch also stated that he had tried to have George West and Sid appear at the hearing to testify on his behalf, but George West was away at a convention and he didn't know how to contact Sid.

5) On the day in question, Sid, George and Carl Koch were driving along in the camper. Both Sid and George had permits (special tags for a big bull) for hunting in area 6.1. Carl Koch did not have a special tag to hunt in this area. At any rate, they came on a large bull moose standing by the side of the road in an area which Koch believed to be 6.1. Sid leaped out of the camper and fired two shots, which blew a large hole in the side of the animal. Koch, believing the wounded animal was escaping, also fired one shot at the moose

and brought it down. The three men then dressed down the animal where they had shot it and then took it back to their camp at Tanley Lake. Koch noted that Sid did not tag the animal after shooting it.

6) Carl Koch then stated that three days later he got a smaller bull moose in area 5-13, about a half mile behind Tanley Lake. He said that somehow Sid tagged this animal and that if he had tagged it again, it would have been tagged twice. Koch said that the only crime he was guilty of was not punching his tag for this animal.

7) Four days after the big bull had been shot, Mr. Charbonneau and the police showed up at the hunters' camp. They stated that Sid's animal was an illegal animal. Charbonneau then gave Koch a ticket for not punching his tag for this animal, even though his tag was not the proper tag for the animal. Mr. Charbonneau did not give the other two men tickets.

8) Three days after Mr. Charbonneau issued the first ticket, he then showed up at the hunters' camp again and gave all three men tickets for illegal possession of moose.

9) Mr. Koch stated that he went to see a lawyer about the matter, but the lawyer advised him that the cheapest way out of his problem was to pay the fines and not fight the case. Mr. Koch then paid both his fines (i.e. \$75.00 and \$300.00). The other men paid their fines and did not contest the charges.

10) Mr. Koch then stated that some five months later, he received a notification that his hunting licence privileges were cancelled. He also noted that the other two men did not have their licences cancelled.

11) Mr. Koch stated that this was his first offence, he had never received a ticket before and, therefore, had no previous convictions.

COMMENTS MADE DURING CROSS-EXAMINATION OF THE APPELLANT:

1) Mr. Koch said that he had been hunting in the Kluskus area for some three years.

2) Mr. Koch said that he was aware of where the boundaries of the various hunting areas were.

3) Mr. Koch said that the first large bull moose was shot in area 6.1 and not in area 7.12.

4) Mr. Koch said that hunting costs for a moose were about \$100 for gas and the tag. He said that he only hunted during his holidays.

5) Mr. Koch said that his take-home pay was about \$1000 per month and his wife's take-home pay was about \$600 per month.

6) Mr. Koch said that he never identified which of the two animals was his during Mr. Charbonneau's visit to his camp, nor was he ever asked to do so.

SUMMATION OF THE FISH & WILDLIFE PRESENTATION:

Mr. Charbonneau's testimony was as follows:

1) Mr. Charbonneau said that he had held his present job for some six years. Part of his qualifications for the job were that he had taken the following courses:

- a) B.C.I.T. - Fish, Wildlife & Recreation
- b) B.C.I.T. - Forestry
- c) Justice Institute of B.C. - Conservation Officer
- d) R.C.M.P. - Junior Constable.

2) Mr. Charbonneau stated that while on patrol on September 27, 1983, he received information as to a possible illegal bull moose kill in hunting area 7-12 by a party camped at Tanley Lake. The kill took place on September 23rd, 1983.

3) Mr. Charbonneau and two police officers stopped at the kill site and found possible evidence of the kill on the ground which included viscera, blood and digested material from the stomach. The site was near the intersection of the 500 and Kluskus forest roads at approximately kilometer 73 on the Kluskus Road.

4) Mr. Charbonneau entered the Tanley Lake camp on the morning of September 27th, 1983, and found two bull moose carcasses hanging from poles, one fairly large and one somewhat smaller. The head of the small moose was still in existence and had three point antlers. Mr.



Charbonneau then asked whom the animals belonged to. Mr. Koch said the large animal belonged to him, and Mr. Thermo (Sid) said the small animal belonged to him. Mr. Charbonneau then asked to see licences and tags.

5) Mr. Thermo produced his licence and tag, which was properly cancelled. Mr. Koch said that he didn't have his tag with him but had it in the camper. Mr. Koch and Mr. Charbonneau then went to the camper. Mr. Koch took some time to find his tag and in the process, appeared to be trying to tamper with it. Mr. Charbonneau, on suspecting that something was wrong, immediately demanded the tag and found that it was improperly cancelled.

6) Mr. Koch said the moose was shot on Friday, September 23rd, 1983, about a half-mile in back of Tanley Lake. The law says the tag must be cancelled immediately after the kill and Charbonneau's visit was four days later. Mr. Charbonneau then asked if it would be possible to return to the kill site to examine the viscera, etc. Mr. Koch said no, it wouldn't because a grizzly bear had moved in the next day and completely eaten up all the remains. Mr. Charbonneau then gave Mr. Koch a ticket for improper cancellation of his tag.

7) Mr. Charbonneau then said that upon returning to Vanderhoof, he was further informed that four separate witnesses had observed a party with a moose at kilometer 73 on September 23rd, 1983, and that the same party was now camped at Tanley Lake.

8) Mr. Charbonneau said that he contacted two of the witnesses, Mr. & Mrs. Dan LaFrance, who said they had stopped and seen the party with the dead moose at kilometer 73 on the day of the incident. They also said that they had seen one of the party run some 60 to 70 feet to a rock and hide something behind it. Later, on investigation, Mr. LaFrance said that he had found the head of a large moose. Mr. LaFrance then took the antlers from the moose head and later turned them over to Mr. Charbonneau. On September 28th, 1984, Dan LaFrance and his wife reconfirmed that the party at Tanley Lake was the same party that had had the moose at kilometer 73 the day of the incident, as the party had just called at their home in a small brown Volkswagon. Mr. LaFrance then prepared a statement on the matter and gave it to Mr. Charbonneau.

9) Mr. Charbonneau said that the other two witnesses were with the Forest Service. One of the witnesses was Mr. Herb Fisher who said he could identify the persons involved.

10) Mr. Fisher and Mr. Charbonneau then visited the campsite, where a camper was found, but no occupants. Mr. Fisher identified the camper as the one involved in the incident. After a 30-minute wait, both Charbonneau and Fisher departed.

11) On September 28th, 1984, Charbonneau and Fisher again visited the camp-site. This was about 7 o'clock in the evening. Mr. Fisher identified Mr. Koch and Mr. Thermo as two of the men he had talked with while they were gutting the moose on September 23rd, 1984. Mr. Fisher said that Mr. Thermo had been drinking at that time. Mr. Koch and Mr. Thermo were again drinking in the evening of September 28th, 1984.

12) Mr. Charbonneau then told Mr. Koch that he had reason to believe the large moose that he had at the camp was the same one which had been shot at kilometer 73 on September 23, 1984, and that he was seizing the animal. Further, he asked for the licences and tags of Mr. Koch, West and Thermo. Mr. West gave his tags and licence up immediately, Mr. Koch gave up his reluctantly and Mr. Thermo went off and hid in the bush. Mr. Charbonneau and Mr. Fisher searched for him without success. Mr. Thermo finally returned, appearing to be very drunk, and then complied with Mr. Charbonneau's request. About 10:30 p.m., Mr. Charbonneau served all three men with tickets for possession of illegal game. While all this was going on, Koch became more and more abusive, profane and unco-operative, finally appearing to threaten the life of Charbonneau. Mr. West finally approached Mr. Charbonneau and asked him to leave as Mr. Koch was getting harder and harder to control. Koch appeared to be quite drunk and starting to become violent.

13) Mr. Charbonneau took the foregoing action for the following reasons:

- a) The gut pile for the large moose (7 points on each side of the antlers) was found in Management Unit 7-12.
- b) Neither Mr. Koch, or his two hunting partners, had the necessary limited entry permits to hunt in that area.



- c) When confronted by the Conservation Officer in connection with the alleged crime, all three hunters tried to hide the facts. Mr. Koch, in addition, became very abusive and unco-operative.

14) All three men eventually paid their fines voluntarily thereby technically admitting their guilt.

15) On October 31st, 1983, therefore, Mr. Charbonneau made a recommendation to his superior officer, Mr. G. Gosling, that Mr. Koch's hunting licence be cancelled for a two-year period. Mr. Gosling confirmed this cancellation request, and on November 16th, 1983, Mr. M.D. Walker, Omineca-Peace Regional Conservation Officer, wrote to the Director of the Fish & Wildlife Branch further requesting the cancellation.

16) On February 21st, 1984, Mr. D. J. Robinson, Director of the Fish & Wildlife Branch, cancelled Mr. Koch's hunting licence for a two-year period ending on October 31st, 1985.

17) Mr. Charbonneau said that all management unit boundaries are clearly marked on the roads in the general area.

18) Mr. Charbonneau said that the estimated average costs for a moose, when considering costs to all hunters, is about \$1800.

COMMENTS MADE DURING CROSS-EXAMINATION OF THE RESPONDENT:

1) Mr. Charbonneau admitted that he didn't think it was worthwhile going out to look for viscera behind Lake Tanley. He said that it was common practice for grizzly bears to come down in the area and eat the viscera.

2) Mr. Charbonneau said that the reason he had recommended the licence suspension only for Mr. Koch was because Mr. Koch had admitted the big moose was his, and because Mr. Koch had created all the problems during his investigation by being abusive and unco-operative.

3) Mr. Charbonneau said that the reason he had not called Mr. Fisher and Mr. LaFrance as witnesses was because Mr. Fisher was on holiday and Mr. LaFrance and his wife are currently in the Yukon.

4) Mr. Charbonneau said that Mr. & Mrs. LaFrance had not been in their home, but driving back from Vanderhoof, when they had observed the butchering of the big moose.

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. Koch's hunting licence, and has decided that the Director of the Fish & Wildlife Branch, Ministry of Environment, was correct in his decision to impose a two-year suspension on Mr. Koch's hunting privileges.

The appeal is therefore denied.

COMMENTS ON THE BOARD PANEL:

1) The Panel of the Board was disappointed that Mr. West, Mr. Thermo, Mr. Fisher and Mr. LaFrance could not have been persuaded to appear as witnesses before the Panel. Their testimony would have been very valuable.

2) The Panel was, therefore, presented with two conflicting stories. It was one man's word against the other.

In the case of Mr. Koch's story, there were a number of irregularities which did not seem to be reasonable, and which were certainly not indicative of the behaviour of an experienced and responsible hunter. Mr. Koch said that he had been hunting since he was 9 years old and had continued to hunt right up to the present time. The business of the cancelled tag mix-up between himself and Sid Thermo was hard to believe. Mr. Koch's whole story just did not seem to ring true.

On the other hand, the story of Mr. Charbonneau was much more believable and made sense. Further, the Panel wondered what Mr. Charbonneau had to gain by falsifying his story.

3) In the final analysis, however, this Panel did note that all three men pleaded guilty to the offence when they paid their fines voluntarily. It is assumed that the combined fines amounted to some \$900.00. In the Panel's opinion, the voluntary payment of fines of this magnitude is not the action of innocent men.



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

Victoria, B. C.  
Date: August 9th, 1984