



Environmental Appeal Board

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APPEAL NO. 2001-WIL-012

In the matter of an appeal under section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488.

BETWEEN: Allan Crawford **APPELLANT**

AND: Regional Wildlife Section Head **RESPONDENT**

BEFORE: A Panel of the Environmental Appeal Board
Alan Anderson, Chair

DATE OF HEARING: Conducted by way of written submissions
concluding on January 31, 2002

APPEARING: For the Appellant: Allan Crawford
For the Respondent: David L. Jones

APPEAL

This is an appeal of the May 14, 2001 decision of David L. Jones, Regional Wildlife Section Head for the Southern Interior Region, Ministry of Water, Land, and Air Protection (the "Section Head") to refuse to issue Mr. Crawford a permit to possess a snowy owl.

The Environmental Appeal Board (the "Board") has the authority to hear this appeal under section 11 of the *Environment Management Act*, and section 101.1 of the *Wildlife Act* (the "Act"). Section 101.1(5) of the *Act* provides that the Board may:

- a) send the matter back to the regional manager or director, with directions,
- b) confirm, reverse or vary the decision being appealed, or
- c) make any decision that the person whose decision is appealed could have made, and that the Board considers appropriate in the circumstances.

Mr. Crawford asks the Board to issue him a permit to possess the owl.

This appeal was conducted by way of written submissions.

BACKGROUND

On March 17, 2001, Mr. Crawford and his girlfriend found a dead snowy owl while hiking in the Adams Lake area of British Columbia. Mr. Crawford subsequently took the owl to an office of the Ministry of Environment, Lands and Parks (now the Ministry of Water, Land, and Air Protection) (the "Ministry") in Kamloops. Mr. Crawford applied to the Ministry for a permit to possess the dead owl on March 30, 2001.

In a letter dated May 14, 2001, the Section Head notified Mr. Crawford that his application for a permit had been denied. The Section Head stated:

I have carefully reviewed your application for a permit for the snowy owl you found on March 17, 2001 near Agate Bay. The price received at the auction for snowy owls is around \$3,000.00 per bird. The Permit Regulations of the Wildlife Act, B.C 253/2000, section 6, subsection (1)(d), states that no permit shall be issued for wildlife parts if the value of the wildlife parts is of greater value than \$200. The Permit Regulation also states that a permit may be issued if the dead wildlife is given as compensation for conducting work or an activity on behalf of government.

In your letter of March 30th you have offered to provide some services as compensation for the owl, unfortunately, I do not have any project that you could do as fair compensation for the owl. It would seem reasonable that government would need around \$3,000.00 in services to be fairly compensated. I am therefore denying you a permit for the owl.

On May 30, 2001, Mr. Crawford appealed the Section Head's decision to the Board.

ISSUE

Whether the Section Head erred in refusing to issue a permit for possession of or the right of property in the snowy owl to Mr. Crawford.

RELEVANT LEGISLATION

The relevant sections of the *Act* are:

Property in wildlife

- 2 (1) Ownership in all wildlife in British Columbia is vested in the government.
- (2) A person does not acquire a right of property in any wildlife except in accordance with a permit or licence issued under this Act or the *Game Farm Act* or as provided in subsection (3) of this section.
- (3) A person who lawfully kills wildlife and complies with all applicable provisions of this Act and the regulations acquires the right of property in that wildlife.

...

Permits

19 (1) A regional manager or a person authorized by a regional manager may, to the extent authorized by and in accordance with regulations made by the Lieutenant Governor in Council, by the issue of a permit, authorize a person

- (a) to do anything that the person may do only by authority of a permit or that the person is prohibited from doing by this Act or the regulations, or

...

The relevant sections of the *Permit Regulation*, B.C. Reg 253/2000 (the "*Regulation*") are:

Authorization by permit

2 A regional manager may issue a permit in accordance with this regulation on the terms and for the period he or she specifies

...

(k) authorizing

- (i) a person to possess and dispose of dead wildlife or parts of wildlife for scientific or educational purposes, or
- (ii) a person to possess dead wildlife or parts of wildlife for a ceremonial or societal purpose,

...

(p) transferring the right of property in dead wildlife or wildlife parts from the government to a person,

...

Section 6 of the *Regulation* provides restrictions on the issuing of a permit:

Restrictions on permits providing possessory or property rights

6 (1) A regional manager must not issue

- (a) a permit under section 2(j) or (p) if the wildlife or parts that are the subject of the permit were taken, captured, possessed, transported, hunted, trapped, imported or killed contrary to the Act or regulations,

(b) a permit under section 2(p) if the wildlife that is the subject of the permit was killed by accident, for a humane purpose or for the protection of life or property, unless the regional manager is satisfied that special circumstances exist,

...

(d) a permit under section 2(p) for wildlife if the value of the wildlife or the wildlife parts is greater than \$200 unless

(i) the person applying for the permit will receive the dead wildlife or wildlife parts as compensation for conducting work or an activity on behalf of the government, or

(ii) the person applying for the permit is applying on behalf of a charitable organization in British Columbia.

(2) For the purpose of subsection (1)(d), the value of wildlife or wildlife parts is to be determined by the regional manager based on the average price the government receives at auction for wildlife or wildlife parts of the particular species, of similar size and in similar condition.

(3) Despite subsection (1), a regional manager may issue a permit under section 2(j) or 2(p), as applicable, to an educational institution or a scientific organization or an agent of either

(i) to authorize the possession of, or

(ii) to transfer property rights in

wildlife or parts of wildlife for an educational or scientific purpose.

(4) Despite subsection (1)(a), a regional manager may issue a permit under section 2(p) with respect to dead wildlife or a part of wildlife to a person who finds and collects that wildlife or part and who was not a party to any of the activities referred to in subsection (1)(a) with respect that wildlife or part, other than transporting and possessing, if the person immediately notifies an officer that he or she is in possession of that dead wildlife or part and applies for the permit.

DISCUSSION AND ANALYSIS

Whether the Section Head erred in refusing to issue a permit for possession of or the right of property in the snowy owl to Mr. Crawford.

In Mr. Crawford's Notice of Appeal, he states the following:

1. I believe that I have more of a right to the Snowy Owl than some rich person that has enough money to buy it.

2. I do not feel that the government has the right to confiscate an animal that has not been taken illegally simply because of its monetary value.
3. Wildlife in British Columbia is not for SALE?!

Mr. Crawford expands on these points in his November 22, 2001 submission:

After finding the owl we decided that such a beautiful animal should not be wasted so we took it home. Our idea was to pay to get the owl properly stuffed by a taxidermist so we could enjoy the beauty of the owl forever. Unfortunately when I took the owl to the Ministry of Environment they informed me that since the owl was valued over two hundred dollars it would be confiscated. ... If the bird would not of been worth two hundred dollars a permit would have been issued and our snowy owl would still be in our possession.

... This is wrong! British Columbia Wildlife does belong to the crown, but isn't possession nine tenths of the law. If we would not of brought the owl in to get the required permit it would of soon become a foxes or coyotes meal, but still the government claims ownership. Why? Because it's worth money! Not because its something beautiful and meaningful that they would cherish, but because they can make a quick buck off some dead bird.

If this new law would be orientated towards the protection or conservation of wildlife in British Columbia, I would still question it, but would not appeal it. The fact that they put a price limit on it, states clearly what the purpose of it is. And it's wrong. If a permit would of been issued the owl would of been mounted and displayed for friends and family to admire, and hear the story of how we found the owl; instead it will be sold to some rich nameless person at an auction, so he/she can take it home and show off the rare owl as if it meant something to them.

Mr. Crawford asks the Board to note that the government would have no knowledge of this owl's whereabouts if he had not brought it in for inspection.

Mr. Crawford proposed that he be issued a permit with the following guidelines:

1. Owl will remain property of the government of British Columbia
2. Owl shall not be bartered, traded, sold, donated, destroyed, or otherwise damaged
3. [Owl] shall not be exported from the province
4. Owl may have taxidermy work done

As well, Mr. Crawford agreed to pay for the taxidermy work and proposed that he retain possession of the owl until his death, at which time, the government would take possession.

In the alternative, Mr. Crawford proposes that he be given the owl as compensation for work done on behalf of the government. He submits that he should be given the owl as compensation for finding the bird and bringing it to the Ministry office in Kamloops so that the Ministry biologist would have a record of a positive sighting of a snowy owl in the Kamloops area. In the further alternative, Mr. Crawford submits that he would be prepared to assist the Ministry with the removal of problem cougars or wolves as compensation for the owl.

The Section Head submits that under section 2 of the *Act* wildlife is the property of government unless an individual obtains it during a lawful hunting season, purchases it from a lawful owner, purchases it from a government auction or obtains it by permit.

He also submits that the Regional Fish and Wildlife Manager, Charles Porter, valued the bird at \$3,000 based on snowy owls of similar condition that had gone through the government auction in Prince George.

As there was no specific evidence before the Panel on how the Regional Manager valued the snowy owl under section 6(2), the Panel sent a letter to the Section Head requesting that he provide further information relating to the size and condition of the snowy owl and auction information.

The Section Head responded that two snowy owls were auctioned in 1999 and sold for \$2,500 and \$2,800 respectively. He did not describe the size and condition of these owls. No snowy owls were auctioned in 2000. In 2001, four snowy owls were auctioned. Two were medium sized snowy owls in good condition and sold for \$1,600 each. In addition, two small, immature snowy owls, one of which was badly damaged, sold for \$700 and \$300. The Section Head describes the snowy owl found by Mr. Crawford as a medium sized bird in good condition.

The Section Head submits that he did not consider the permit application under section 2(k) of the *Regulation* since the type of permit applied for was not for scientific or educational purposes, and because the applicant did not belong to a society or ceremonial group.

He further submits that he considered transferring the right of property in the snowy owl from the government to Mr. Crawford under section 2(p) of the *Regulation*:

In order for me to consider transferring the right of property in the snowy owl from Government to Mr. Crawford under section 2(p), I am required to consider certain prohibitions outlined in section 6(1) of BC Regulation 253/2000. Section 6(1) states that the Regional manager must not issue a permit if any of the conditions in subsection (a) to (d) apply. I considered 6(1)(a) through (d). As the value of the dead snowy owl was more than \$200, and the applicant was not applying on behalf of a charitable organization in BC, nor was the person applying for the permit being compensated for work or an activity done on behalf of government, I determined that the permit could not be issued.

The applicant proposed to do work for government under section 6(1)(d)(i) however this Section enabled government to compensate an individual for actual work done on behalf of government. The intent of this section is where government asks an individual to perform services for government e.g. getting a cougar hunter with hounds to kill a problem cougar, a trapper to trap wolves that are a problem, etc.

Additionally, the Section Head submits that if the value of the wildlife is more than \$200, the wildlife must be sent to auction where the government will get a fair return on its resources.

The Section Head also provided supplementary submissions that address the issue of "special circumstances," as that term is used in section 6(1)(b) of the *Regulation*, and the correctness of the Board's decision in *Swalwell v. Regional Wildlife Manager* (Appeal No. 2001 WIL-006, July 30, 2001)(unreported). However, for the reasons provided below, the Panel found it unnecessary to address these submissions.

The Panel has considered Mr. Crawford's application under both sections 2(k) and 2(p) of the *Regulation*.

Sections 2(k)(i) and (ii) of the *Regulation* provide that a permit may be issued to a person to possess dead wildlife for scientific or educational purposes, or for a ceremonial or societal purpose. Simply having the owl for display purposes does not meet these requirements. Therefore, the Panel finds that Mr. Crawford does not qualify for a permit under section 2(k) of the *Regulation*.

Before considering whether a permit should be issued under section 2(p) of the *Regulation*, the Panel has considered the value of the bird. Based on the information provided, the Panel does not agree with the Regional Wildlife Manager's valuation of \$3,000. Section 6(2) of the *Regulation* requires him to determine the value of wildlife parts based on the average price the government receives at auction for wildlife of the particular species, of similar size, and in similar condition.

The information provided to the Board indicates that the value of the bird is less than \$3,000. Even if it could be assumed that the snowy owls auctioned in 1999 were of medium sized and in good condition, the average price for those owls is \$2,650. However, since the Section Head failed to indicate the size and condition of the 1999 owls, the Panel will consider the price for the two snowy owls, described as medium sized and in good condition, which were auctioned in 2001. These owls were auctioned for \$1,600 each.

Consequently, the Panel finds that the value of the snowy owl found by Mr. Crawford is \$1,600, not \$3,000.

Since there is no dispute that the value of the snowy owl is in excess of \$200, the Panel has considered whether Mr. Crawford qualifies for a permit under sections 6(1)(d)(i) or 6(1)(d)(ii) of the *Regulation*. Under those sections, a permit under section 2(p) may be issued for wildlife valued at over \$200 if the person applying for the permit will receive the dead wildlife as compensation for conducting work or

an activity on behalf of the government, or the person is applying on behalf of a charitable organization in B.C.

There was no evidence that the latter circumstance applies to Mr. Crawford. The evidence indicates that the owl would be for personal use. With regard to the former, Mr. Crawford has offered his services, but the Section Head has determined that there is no project that Mr. Crawford could undertake as compensation for the owl.

Additionally, the Panel is not satisfied that Mr. Crawford should be compensated for having brought the owl to the Ministry so that it could be recorded. The owl is the rightful property of the government.

Therefore, the Panel finds that sections 6(1)(d)(i) and 6(1)(d)(ii) do not apply in this case.

The Panel has also considered whether a permit may be issued to Mr. Crawford based on other sections of the *Regulation*.

Section 6(1)(a) provides that a permit shall not be issued under section 2(p) of the *Regulation* where wildlife has been killed contrary to the *Act* or regulations, unless section 6(4) of the *Regulation* applies. There is no indication from the submissions that the owl was killed illegally or that the Ministry was immediately notified. Therefore, sections 6(1)(a) and 6(4) of the *Regulation* do not apply in this case.

Section 6(1)(b) of the *Regulation* provides that a permit must not be issued under section 2(p) of the *Regulation* where wildlife has been killed by accident, for a humane purpose, or for the protection of life or property unless special circumstances exist. There were no submissions provided on this issue. However, even if the owl was killed by accident, for a humane purpose, or for the protection of life or property, there is no evidence of any special circumstances that justify granting a permit in this case. As such, on the facts of this case, section 6(1)(b) does not apply.

Given that there are no special circumstances that warrant issuance of a permit under section 6(1)(b), the Panel finds that it is unnecessary to address the Section Head's supplemental submissions regarding *Swalwell*.

Finally, section 6(3) of the *Regulation* provides that, despite section 6(1), a regional manager may issue a permit under section 2(p) of the *Regulation* to an educational institute, scientific organization, or their agent, to transfer property rights in wildlife for an educational or scientific purpose. However, the Panel finds that section 6(3) of the *Regulation* does not apply in this case. Mr. Crawford has indicated that the owl would be mounted and displayed for friends and family to enjoy. There is no evidence that he seeks a permit for scientific or educational purposes as an agent of an educational institute or scientific organization.

The Panel finds, therefore, that Mr. Crawford does not qualify for a permit under section 2(p) of the *Regulation*.

Accordingly, the Panel finds that the Section Head properly exercised his discretion when he refused to issue a permit to Mr. Crawford authorizing the possession of or transferring the right of property in the snowy owl.

DECISION

In making this decision, the Panel has carefully considered all of the evidence before it, whether or not specifically reiterated herein.

For the above reasons, the appeal is dismissed.

Alan Andison, Chair
Environmental Appeal Board

February 5, 2002