

DECISION NO. 2009-WIL-018(a)

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

BETWEEN: Jack Martin **APPELLANT**

AND: Regional Manager **RESPONDENT**

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

DATE: Conducted by way of written submissions
concluding on July 14, 2009

APPEARING: For the Appellant: Jack Martin
For the Respondent: Wayne L. Stetski

APPEAL

[1] This is an appeal brought by Jack Martin against the February 27, 2009 decision of Wayne Stetski, Regional Manager, Environmental Stewardship Division, Kootenay Region (the "Regional Manager"), within the Ministry of Environment (the "Ministry"). The Regional Manager refused to issue Mr. Martin a permit under the *Wildlife Act Permit Regulation*, B.C. Reg. 253/2000 (the "*Regulation*") allowing Mr. Martin to keep a Rocky Mountain Bighorn Sheep cape and set of horns that he found.

[2] The Environmental Appeal Board has the authority to hear this appeal under section 93 of the *Environmental Management Act*, and section 101.1 of the *Wildlife Act*. Section 101.1(5) of the *Wildlife Act* provides that the Board may:

- a) send the matter back to the person who made the decision being appealed, 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.

[3] Mr. Martin asks the Board to issue a permit allowing him to possess the cape and horns.

[4] This appeal was conducted by way of written submissions.

BACKGROUND

[5] The key facts to this appeal are relatively straightforward, and not in dispute. The disputed evidence relates mainly to what Mr. Martin was, or more importantly, was not, told by Ministry officials. This evidence will be discussed later in the decision.

[6] For the purposes of this background, the chronology begins on or about April 8, 2005 when Mr. Martin found a dead male Rocky Mountain Bighorn Sheep near the shore of Grave Lake.

[7] Mr. Martin arranged for the ram's cape and horns to be removed and taken to the Compulsory Inspection facility in Cranbrook, in accordance with the advice of Dave Dunbar, the Fish and Wildlife Section Head for the Kootenay Region of the Ministry.

[8] On inspection, the ram was determined to be 12 ½ years old. The horns were measured and the pertinent information was provided on a one page Compulsory Inspection Data Sheet by a Ministry employee. This data sheet was provided to the Panel.

[9] Mr. Martin then had the cape and horns mounted by a taxidermist. He displayed the mount in his house in Sparwood, British Columbia.

[10] Approximately two years later, two conservation officers from the Ministry attended at his home and seized the mount on the grounds that Mr. Martin did not have a permit from the Ministry allowing him to possess the Bighorn Sheep cape and horns.

[11] Mr. Martin asked the Ministry for a permit that would allow him to keep the mount for personal use.

[12] In a letter dated February 27, 2009, the Regional Manager refused this request. The Regional Manager states that section 6(1)(d) of the *Permit Regulation* "specifically forbids me" from issuing a permit under section 2(p) for an item with a value greater than \$200. He explains:

A regional manager must not issue a permit under section 2(p) for wildlife if the value of the wildlife or 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.

Section 6(2) of the regulation states:

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.

This requires me to determine the value based on the average auction price. For example, for the period from 2005 through to 2007 the average value for a Rocky Mountain Bighorn Sheep cape only ranged between \$1625 and \$1834 (9 specimens) and, for horns only, between \$517 and \$1014 (28 specimens), respectively. The combined average price the government received for a Rocky Mountain Bighorn Sheep cape and set of horns attached to the skull is \$2351.

I have determined that the value of the Rocky Mountain Bighorn Sheep found by you at Grave Lake, British Columbia on April 8, 2005 is greater than \$200 because it is a mature ram of approximately 12 years old with a base circumference of 430 mm and a total horn length of 1013 mm. Based upon the estimated age and measurements of these horns, the value of the specimen you found at Grave Lake would be at the higher end of the range in auction values (i.e. well over \$200). I therefore do not have the discretion to grant your request.

I appreciate that this decision is not what you were hoping to hear. I can assure you I considered the facts carefully and did not make the decision lightly.

[13] On March 27, 2009, Mr. Martin appealed this decision to the Board.

[14] In his Notice of Appeal, Mr. Martin states that he informed the Ministry within hours of finding the dead sheep, he followed the Ministry's directives regarding inspection station, and he had the sheep mounted. It was not until sometime later that conservation officers came to his house and took the sheep's head because he did not apply for a permit.

[15] Mr. Martin states that the Ministry did not inform him that he needed a permit and he spent \$1,000 to have the cape and horns mounted by the taxidermist.

ISSUE

[16] Whether a permit for the Rocky Mountain Bighorn Sheep cape and horns should be granted in the circumstances of this case.

RELEVANT LEGISLATION

[17] In his decision, the Regional Manager referred to his authority to issue a permit under section 2 of the *Permit Regulation*.

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 and dispose of 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

The Panel notes that Mr. Martin does not seek a permit for the educational, scientific or ceremonial purposes outlined in subsection (k).

The *Regulation* then sets out the limitations on a regional manager's powers to issue a permit under section 2.

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 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 to 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 a permit.

DISCUSSION AND ANALYSIS

[18] Whether a permit for the Rocky Mountain Bighorn Sheep cape and horns should be granted in the circumstances of this case.

[19] In his submissions, Mr. Martin provides a more detailed chronology of the events leading up to this appeal. He explains that on April 6, 2005, he and a companion were at a cabin on Grave Lake. Across the lake, they noticed a Bighorn Sheep ram grazing. The ram stayed there for a few hours. When Mr. Martin left the cabin, the ram was laying down.

[20] The next day, Mr. Martin went to see if the ram was still in the area. After a couple of hours, the ram came out of the bush near the location that he had been observed the day before.

[21] On the following day, April 8, Mr. Martin looked across the lake from the cabin and again saw the ram. However, this time he noticed that a crow was sitting on the ram's head and realized that something was wrong. He went to get his son in Sparwood and asked him to go to check on the ram. Mr. Martin couldn't physically make the journey to where the ram was lying, so his son went alone and took some pictures of the ram.

[22] Mr. Martin and his son then consulted a friend about what to do. The friend contacted the local conservation officer, Frank Deboon, and told him the story. Based upon the conversation with Mr. Deboon, Mr. Martin's son and a friend went out to the ram, "capped him and brought him out".

[23] Mr. Martin stated that on April 11, 2005, he called Dave Dunbar, Fish and Wildlife Section Head for the Ministry, explained what happened and asked what to do next. Mr. Dunbar advised him to take the ram cape and horns to the mandatory inspection station in Cranbrook.

[24] On April 28, 2005, Mr. Martin and his son took the cape and horns to the inspection station and "got a plug put in and the paper work copy". A "plug" is a metal identification pin that is inserted into one of the horns. It was Mr. Martin's understanding that he could now take the cape and horns to a taxidermist. "Up to this point", he states, "no one has said anything about a Permit."

[25] On May 3, 2005, Mr. Martin took the cape and horns to a taxidermist to get them mounted. Six weeks later, it was ready for pick up.

[26] Two years later, two conservation officers came to Mr. Martin's house and seized the mount because he did not have a permit. Mr. Martin submits that he called the Ministry right after he found the ram and followed all instructions. He maintains that "at no time did anyone mention about a permit" and asks, "why would I spend \$1,000 on something that I can't keep?"

[27] The Regional Manager provided a chronology in which he details his version of the conversations and events leading up to the appeal.

[28] The Regional Manager states that when Mr. Martin contacted Dave Dunbar on April 11, 2005, he sought advice on his ability to keep the specimen (the ram). He states that Mr. Martin was advised at that time of the existing legislation that forbids private possession of found or picked up wildlife and/or wildlife parts exceeding a value of \$200. According to the Regional Manager, Mr. Martin then indicated that he intended to donate the specimen to the "Coal Discovery Centre" that was planned for the Elk Valley. Given that a regional manager may issue a permit under section 2(j) or 2(p) to an educational institution or scientific organization in certain circumstances, Mr. Dunbar indicated that this likely would be acceptable to the Ministry of Environment. To initiate the process, Mr. Dunbar suggested that the specimen be inspected at a Compulsory Inspection facility to document details of the animal and the related circumstances. Mr. Martin complied with this suggestion and had the ram inspected. The Ministry had no further information or involvement in relation to the ram until 2007.

[29] On January 15, 2007, Mr. Dunbar received a phone call from an individual involved in an appeal to the Environmental Appeal Board advising that Mr. Martin was in possession of a mounted Bighorn Sheep specimen at his private residence. Mr. Dunbar contacted the Permit Authorization & Service Bureau to determine whether a permit had been issued to the Coal Discovery Centre for the specimen. No such permit was located.

[30] Local Conservation Officers with the Ministry were then asked to remove the unpermitted cape and horns from Mr. Martin's residence. Conservation Officers did so in early February, 2007.

[31] The Regional Manager advised that on May 24, 2007, Mr. Martin contacted Mr. Dunbar. He asked whether the Ministry would be issuing a permit to him so that he could regain possession of the mount. Mr. Martin also advised Mr. Dunbar that the fee for the taxidermy work to mount the sheep was approximately \$750. Mr. Dunbar reiterated that the Regional Manager could not issue a permit given the estimated value of the sheep horns and cape, despite the money that Mr. Martin had paid for the taxidermy. Further, Mr. Dunbar cited Mr. Martin's original intent to donate the specimen for public display/education purposes to the Coal Discovery Centre, which Mr. Martin confirmed. Given that the Coal Discovery Centre was no longer planned for completion, Mr. Dunbar advised him that another public facility would be acceptable for displaying the sheep as long as the objectives were aimed at educating the public.

[32] On June 14, 2007, Mr. Martin telephoned Mr. Dunbar to suggest that the Whiskey Jack Golf Course was willing to display the specimen in their lobby.

[33] The Regional Manager states that after a number of discussions with his office and the Provincial Economic Development Manager (Kevin Weaver), a suitable alternative location for displaying the sheep was proposed to Mr. Martin on November 6, 2007. The proposed site was the new Provincial Information Centre in Sparwood, which has approximately 100,000 public visitors per year. The Manager of the Information Centre was supportive of displaying the sheep at that location. Mr. Martin told Mr. Dunbar that he would think about this proposal.

[34] On May 23, 2008, Mr. Martin telephoned Mr. Dunbar to ask for an update on the status of the specimen. He advised again of the \$750 he spent on the taxidermy and asked whether he could be compensated for the amount. Mr. Dunbar investigated whether the specimen was worthy of compensation to Mr. Martin. Conservation Officer Joe Caravetta advised that the specimen "was reasonable". The Regional Manager states, "Despite a very limited budget, Dave Dunbar called Jack Martin back to offer \$750 for the specimen, which would then be displayed to the public at a Ministry of Environment office." Mr. Martin advised that he would think about it.

[35] On August 21, 2008, Mr. Martin called Mr. Dunbar to advise that he decided to try to appeal the decision. Mr. Dunbar advised that the Ministry would send him a formal decision in writing that he could appeal, which is what occurred.

[36] The Regional Manager submits that he treated Mr. Martin as fairly as possible under the circumstances. Although Mr. Martin had numerous discussions with regional wildlife staff indicating that he intended for the mount to be permitted to an educational focused facility, the specimen was displayed only in his home. The Regional Manager believes that Mr. Martin misinterpreted the meaning of the Compulsory Inspection Data Sheet as some sort of permit document. This is not the case. He states that this document is simply a data collection sheet on dead animals. It does not permit private possession or ownership.

[37] The Regional Manager submits that the Ministry attempted to find a suitable alternative location for the mount to be displayed, and even agreed to compensate Mr. Martin for his taxidermy costs prior to the issuance of a permit, which was ultimately rejected by Mr. Martin.

[38] The Panel notes that Mr. Martin was given an opportunity to reply to the Respondent's submissions however, he failed to do so. Consequently, the Panel is left with conflicting accounts of the conversations that occurred and the information conveyed. Mr. Martin says that he was never told that he needed a permit; the Regional Manager's evidence is that Mr. Martin was told that he required a permit. Mr. Martin says he thought he could keep the mount after the inspection; the Regional Manager understood that he would be donating it to a facility for educational purposes.

[39] The Panel finds that, regardless of whether or not Mr. Martin was told that a permit was required, the law clearly requires him to have a permit in order to lawfully possess the cape and horns. According to section 2(1) of the *Wildlife Act*, the ownership in all wildlife in British Columbia is vested in the government. This includes dead wildlife.

[40] Section 2 also states:

(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. [Emphasis added]

[41] Further, the *Wildlife Act* makes it an offence to possess dead wildlife or any part of wildlife unless that possession is authorized by a licence or permit. Section 33(2) states:

- (2) A person commits an offence if the person has dead wildlife or a part of any wildlife in his or her possession except as authorized under a licence or permit or as provided by regulation.

[42] A regional manager may issue a permit under section 19 of the *Act* allowing a person 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”.

[43] Accordingly, for the duration that Mr. Martin had the dead wildlife parts in his home without a permit he was acting contrary to the *Act*. The Ministry was therefore correct that Mr. Martin required a permit to keep the cape and horns even though Mr. Martin had paid money to have them mounted, and they had been in his house for two years. During that time, they were not lawfully in his possession.

[44] Further, there is no dispute that the value of the cape and horns at issue exceed \$200. The Regional Manager did not provide documentation supporting his calculations of the average auction value, but the Panel notes that Mr. Martin does not dispute this assessment. The Panel also notes that the values cited by the Regional Manager are not minimally over \$200, which might bring the valuation into dispute. The valuation is over ten times that amount. Accordingly, section 6(1)(d) of the *Regulation* prevents the Regional Manager from issuing a permit under section 2(p) 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.

[45] Neither condition applies in this case.

[46] Mr. Martin suggests that he would not have spent all that money on the taxidermist if he understood that he could not keep the mount. While this may be true, it does not obviate the legal requirement for a permit.

[47] Considering the information provided by Mr. Martin, the Panel is also unable to accept that the Respondent misled Mr. Martin, or that there was any officially induced error. There is no indication in Mr. Martin’s evidence that he ever *asked* the Ministry whether he could keep the cape and horns in his home. Had he done so, the Panel believes that he would have been told that a permit was required by the legislation. According to the Respondent, Mr. Martin was told just that.

[48] Further, the Ministry’s understanding appears to have been that the cape and horns would not be kept by Mr. Martin; rather, they would be used for an educational purpose at the Coal Discovery Centre planned for the Elk Valley. The amount of detail provided in the Respondent’s submission on this point leads the Panel to believe that there is more to the story than Mr. Martin provided in his appeal materials.

[49] Mr. Martin seeks to keep the mount for his personal use, and is essentially seeking a permit authorizing a transfer in ownership. Given the wording of the *Regulation*, the Panel finds that it is not possible for the Regional Manager, or this

Board, to issue a permit to Mr. Martin that would allow him to keep the mount for his personal use. The Panel agrees with the Regional Manager's decision to refuse a permit. Mr. Martin simply does not meet any of the exceptions listed in section 6(1)(d) of the *Regulation*. While the Panel sympathizes with Mr. Martin, there are no grounds for granting him a personal possession permit under the *Regulation* given the value of the wildlife parts at issue.

[50] As a final note, the Panel wants to acknowledge the Ministry's efforts to find an alternative location for the mount, and, in particular, to find a place close to Mr. Martin's home in Sparwood. In the Panel's view, the Ministry has gone out of its way to help Mr. Martin to find a solution that it hoped would be acceptable to him. The Panel also acknowledges the effort made by the Ministry to compensate Mr. Martin for the mount despite the Ministry's limited budget.

DECISION

[51] In making this decision, the Board has considered all of the evidence, documents and arguments provided, whether or not they have been specifically referred to here.

[52] For the reasons set out above, the Regional Manager's February 27, 2009 decision is confirmed. The appeal is dismissed.

"Alan Andison"

Alan Andison, Chair
Environmental Appeal Board

July 28, 2009