

DECISION NO. 2009-WIL-026(a)

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

BETWEEN:	Allan Pierce	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 September 21, 2009	
APPEARING:	For the Appellant: Allan Pierce For the Respondent: Tom Bell	

APPEAL

Allan Pierce appeals the June 1, 2009 decision of Tom Bell, Regional Manager Environmental Stewardship (the "Regional Manager"), Skeena Region, Ministry of Environment (the "Ministry"), denying Mr. Pierce a disabled hunting permit. Specifically, Mr. Pierce sought a permit authorizing him to hunt in all of the Skeena Region (Region 6), and particularly in zones that are closed to hunting during the peak of the bull moose rut season. Mr. Pierce's application for the permit was based upon his physical disability.

The Environmental Appeal Board has the authority to hear this appeal under Part 8 of the *Environmental Management Act* and section 101.1 of the *Wildlife Act*. Section 101.1(5) of the *Wildlife Act* provides:

- (5) On an appeal, the appeal 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. Pierce seeks an order from the Board reversing the Regional Manager's decision, and granting Mr. Pierce a permit.

BACKGROUND

Mr. Pierce applied for a disabled hunting permit on March 10, 2009, using a standard Ministry form. The top of the application form states: "Application by hunter having physical disability for permit under section 3(1)(c)(i) or 3(2) of Permit Regulation".

Section 3(1)(c)(i) of the *Permit Regulation*, B.C. Reg. 253/2000, authorizes a regional manager to issue permits that exempt a person from the prohibition in section 27 of the *Wildlife Act* from discharging a firearm or killing wildlife from a motor vehicle. Mr. Pierce was not seeking authorization to shoot from a motor vehicle.

Section 3(2) of the *Permit Regulation* authorizes a regional manager to issue permits that exempt a person from any provisions in *Motor Vehicle Prohibition Regulation*, B.C. Reg. 196/99, and certain provisions of the *Public Access Prohibition Regulation*, B.C. Reg. 187/2003. Essentially, the *Motor Vehicle Prohibition Regulation* and the *Public Access Prohibition Regulation* establish areas where no motor vehicle access is permitted. In his application, Mr. Pierce indicated that he was seeking an exemption from the motor vehicle closures in all of Region 6. He stated in his application that he would like the permit to be "indefinite" because his disability is permanent. He also stated: "My ankle is fused, limiting my ability to walk distances. It also affects my balance on uneven ground."

With his application, Mr. Pierce submitted a form completed and signed by Dr. L. Huang, which indicates that Mr. Pierce's right ankle is fused due to severe arthritis, and that his right quadriceps tendon was repaired on March 3, 2009, after it had ruptured. Dr. Huang answered "yes" to a question that asked whether the applicant, Mr. Pierce, is able to walk at least 100 metres while carrying a firearm.

According to the Regional Manager's submissions to the Board, on March 16, 2009, the Director of Fish and Wildlife accepted that Mr. Pierce is disabled and is eligible for an exemption that allows access to motor vehicle closed areas.

Also according to the Regional Manager's submissions, on or about March 27, 2009, Ministry staff contacted Mr. Pierce to clarify his request. During discussions with Ministry staff, Mr. Pierce "altered" his request, and Ministry staff learned that he actually wanted an exemption that would allow him to hunt bull moose within the 400 metre boundary of the "rut" closure areas that are in effect from September 25 to October 10 in the Skeena Region.

By a letter dated June 1, 2009, the Regional Manager denied Mr. Pierce's application for a permit. The Regional Manager's decision letter states, in part:

Thank you for your application requesting a permit to be exempt from the *Motor Vehicle Prohibition Regulation* in Skeena Region 6.

Unfortunately, I am unable to grant your request for the reason stated below.

I have considered your request for a permit to hunt in the rut closure zones that extend 400m from a number of secondary roads in the Skeena Region. The general open season for bull moose is from August 15 to November 15 (3 months), [which] provides a very long extended hunting season with a wide diversity of hunting opportunities for all users, and creates a longer time period where moose are potentially under hunting pressure. The rut closures were put in place to protect and conserve moose during the peak of the rut between September 25 to October 10, to provide a balance for protection of moose in recognition of the longer open season, and in recognition that because of the longer season there continue[s] to be a wide diversity of hunting opportunities in these same areas for all hunters. The rut closures only occur in the northern part of the region (basically north of the Nass and Skeena watersheds).

Mr. Pierce appealed the Regional Manager's decision by a Notice of Appeal filed with the Board on June 17, 2009. He submits that his usual hunting area is "basically north of the Nass and Skeena watersheds", and that the Regional Manager's decision does not address the fact that he is a disabled hunter in the Skeena Region. He seeks a "permanent" permit allowing him to hunt within moose rut closure areas in the Skeena Region.

The Regional Manager requests that the appeal be dismissed and his decision be confirmed.

ISSUES

The Panel has considered the following issue:

Whether Mr. Pierce should be granted a "permanent" permit authorizing him to hunt in areas within the Skeena Region that are closed to moose hunting during the peak of the bull moose rut season.

RELEVANT LEGISLATION

The following sections of the *Wildlife Act* are relevant to this appeal:

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
 - (b) to omit to do anything that the person is required to do by this Act or the regulations,

subject to and in accordance with those conditions, limits and period or periods the regional manager may set out in the permit and, despite anything contained in this Act or the regulations, that person has that authority during the term of the permit.

...

The following provisions of the *Permit Regulation*, enacted pursuant to the *Wildlife Act*, are also relevant to this appeal:

Exemptions by permit

- 3 (2) A regional manager may issue a permit in accordance with this regulation, on the terms and for the period he or she specifies, exempting a person from
- (a) any provisions of the Motor Vehicle Prohibition Regulation, B.C. Reg. 196/99, and
 - (b) any of the following provisions of the Public Access Prohibition Regulation, B.C. Reg. 187/2003: section 2; section 3; section 6; section 7; section 9; section 10.

Time limitation on permits

- 22 (1) Except as otherwise set out in this regulation, a permit issued under section 2, 3 or 4 must not be issued for a period of time greater than 5 years from the date of issue.
- (2) Subsection (1) does not apply to a permit issued under section 2 (k), (p), (x) or (y) or 4 (f).

...

DISCUSSION AND ANALYSIS

Whether Mr. Pierce should be granted a “permanent” permit authorizing him to hunt in areas within the Skeena Region that are closed to moose hunting during the peak of the bull moose rut season.

Mr. Pierce’s submissions consisted of his notice of appeal. In it, he states that his walking is restricted in speed and distance due to his disability, and he has to be cautious to ensure his balance. He submits that the rut closures pose problems for him because they are located in his usual hunting area, and the 400 metre closure around certain secondary roads creates a barrier to his ability to hunt. He states, in part:

I am disabled, on LTD from work and receive CPP disability. I had an ankle arthrodesis that did not adequately heal. My walking is restricted in speed, distance and I always have to be cautious of the terrain I am traversing to

ensure my balance. Recently, in February 2009, I fell, tearing ligaments off the top, right and half of the left side of my knee. Because my ankle is fused my knee took the brunt of the injury. This injury is taking a long time to heal and as I am sure you can understand I do not want any repeat traumas.

Under the present regulation the rut closures on the secondary roads pose problems for me, as the 400 metres regulation off the road is a barrier to my abilities to hunt. I live in the north coast and my usual hunting area is "basically north of the Nass and Skeena watersheds." I hunt with an able bodied hunter as it would be impossible for me to go on my own. I need help for the work involved. I have to go when he goes and that time is usually 2 weeks between mid-September and mid-October.

This decision does not address the fact that I am a disabled hunter in Skeena Region 6. It just states to hunt at other times or places during the hunting season.

I would like a **permanent permit** to be able to hunt the rut closure roads during the rut in Skeena Region 6. I may or may not be out there at that time but if I am I would like to be able to hunt.

This is a huge personal safety issue for me and I would be delighted if you reverse the decision and grant me the permit.

[bold in original]

The Regional Manager submits that there is no open season for any licensed hunter to legally hunt moose during the rut closure along identified rights-of-way in the Skeena Region, although the moose hunt is open beyond the 400 metre closure boundary. The Regional Manager submits that, depending on which part of a road or trail Mr. Pierce is hunting on, he could legally use a motor vehicle to traverse to the edge of the 400 metre closure boundary, without the need for a permit. The only case where Mr. Pierce could not do so is if he was hunting along a part of a road or trail that has a 10 metre vehicle access restriction or if the 400 metre rut closure extended above the 1400 metre elevation restriction¹.

In addition, the Regional Manager submits that Mr. Pierce's original request for a motor vehicle exemption permit was denied for several reasons, including the fact that he did not actually want a motor vehicle exemption. The Regional Manager submits that he then turned his mind to Mr. Pierce's request for a permit to hunt in the rut closure zones, and he denied that request for several reasons, which may be summarized as follows:

¹ The Regional Manager's submissions explain that the 1400 metre elevation restriction is a separate type of motor vehicle restriction that applies during the summer in 4 areas within the Skeena Region.

- allowing Mr. Pierce to use a motor vehicle to traverse beyond the 400 metre or 10 metre closure zones would cause habitat degradation and a great risk of environmental damage;
- the area in which Mr. Pierce wishes to hunt has an open season for bull moose from August 15 to November 15, which is the longest general open season in the Province. The rut closure is for 16 days of the 92-day open season. This closure applies to all hunters, for a small portion of the open season, and it applies to a very small portion of the Region;
- allowing Mr. Pierce to hunt in the rut closure area would compromise the conservation and management objectives of the rut closure, which include reduction of the moose harvest during the rut period along accessible portions of roads and trails, and dispersal of hunting effort beyond the 400 metre road and trail corridors;
- no provisions of the *Wildlife Act* or its regulations authorize a regional manager to allow a person to hunt for personal purposes during a closed season. Section 2(c) of the *Permit Regulation* provides for hunting on public lands during a closed season for certain purposes, but Mr. Pierce's request does not fall under any of those purposes. In particular, it would not be for the proper management of wildlife resources (section 2(c)(iii)) because allowing Mr. Pierce to hunt during a closed season that applies to all other hunters is an unreasonable accommodation and is contrary to the conservation and management objectives of the closure. In any case, a moose killed under a permit issued under section 2(c)(iii) remains the property of the Province, and a condition of such a permit would be to provide the moose to the Conservation Officer Service for distribution to local food banks or families in need, which is not likely an outcome that Mr. Pierce would find acceptable; and
- the term of the permit Mr. Pierce requested exceeds the 5-year maximum set out in section 22(1) of the *Permit Regulation*.

The Regional Manager referred the Panel to the Ministry publication, "2009-2010 Hunting & Trapping Regulations and Synopsis", which sets out moose rut closures in the Skeena Region from September 25 to October 10 within 400 metres of 21 specific roads or trails.

The Panel's Findings

The Panel finds that the medical information that Mr. Pierce provided with his application supports a finding that he suffers from a disability to his right leg which affects his ability to walk. The Panel notes that, according to the Regional Manager's submissions, the Director of Fish and Wildlife made a finding on March 16, 2009 that Mr. Pierce is disabled and is eligible for an exemption to the motor vehicle closure areas. However, based on the submissions before the Board, the

Panel finds that Mr. Pierce is not seeking to be accommodated by the issuance of a permit to hunt using a motor vehicle in areas that are otherwise closed to motor vehicles.

Although the written application that Mr. Pierce submitted to the Ministry was for a permit to hunt in areas closed to vehicles, he either changed his mind or clarified what he was seeking sometime before the Regional Manager made his decision. That is apparent from the Regional Manager's summary of the discussions Mr. Pierce had with Ministry staff on or about March 27, 2009; specifically, Mr. Pierce advised that he was seeking an exemption from the moose rut closures in the Skeena Region, rather than an exemption from the motor vehicle closures. The Regional Manager's submissions on this point are consistent with Mr. Pierce's submissions to the Board. Mr. Pierce clearly indicates in his submissions that he is seeking an exemption from the moose rut closures in the Skeena Region.

This change or clarification in the type of authorization Mr. Pierce is seeking is an important one, as the Panel explains below. The change or clarification also explains the language in the Regional Manager's written decision. The first two paragraphs of the Regional Manager's decision dated June 1, 2009 acknowledge Mr. Pierce's application for an exemption from the *Motor Vehicle Prohibition Regulation*, and state that the Regional Manager is unable to grant Mr. Pierce's request. The third paragraph of the Regional Manager's decision explains why he has decided not to grant an exemption from the moose rut closures. The third paragraph amounts to a refusal to grant a permit authorizing an exemption from the moose rut closure in the Skeena Region.

Through the appeal hearing process, the Regional Manager had an opportunity to further explain the rationale for his decision. He maintained that his decision was a proper exercise of his discretion in the circumstances of the case, and that it was the correct decision based on the provisions of the *Permit Regulation* that authorize him to issue permits for exemptions to closed seasons. The Panel agrees. When considering Mr. Pierce's request, it is important to bear in mind the differences between an exemption from a motor vehicle closure and an exemption from the moose rut closure. The Regional Manager's submissions disclose that he was mindful of those differences, which are discussed below.

Firstly, an exemption from a motor vehicle closure allows a person to use a motor vehicle to access areas that are open to hunting but are not open to motor vehicles. Anyone who is licensed to hunt can hunt in a motor vehicle closure area, but they cannot use a motor vehicle within the closure area unless they obtain a permit. In contrast, an exemption from the moose rut closure allows a person to hunt in an area that is otherwise closed to all moose hunting. In other words, the moose season closures apply to all hunters, whether able bodied or not, and regardless of how they may access the area.

Secondly, the legal basis for each type of closure is different. An exemption from a motor vehicle closure requires a permit that exempts a person from provisions of the *Motor Vehicle Prohibition Regulation* or the *Public Access Prohibition Regulation*, whereas an exemption from the moose rut closure requires a permit that exempts a

person from provisions of the *Hunting Regulation*. In this case, section 6 and Schedule 6 of the *Hunting Regulation* are relevant because they set out restrictions on the open season for moose hunting in the Skeena Region. In particular, paragraphs 6(11) and (12) of Schedule 6 of that regulation set out the moose rut closures along 21 roads or trails in the Skeena Region.

Thirdly, depending on what type of exemption is being sought, different sections of the *Permit Regulation* apply. Section 3(2) of the *Permit Regulation* authorizes the issuance of a permit exempting a person from the *Motor Vehicle Prohibition Regulation* (and certain sections of the *Public Access Prohibition Regulation*). In contrast, section 2(c) of the *Permit Regulation* authorizes the issuance of a permit authorizing a person to hunt on public land during a closed season, but only for specific purposes, as set out below:

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

...

- (c) authorizing a person to hunt, trap or kill wildlife during the open or closed season for the following purposes:
 - (i) scientific purposes;
 - (ii) educational purposes;
 - (iii) if the regional manager considers it necessary for the proper management of the wildlife resource;
 - (iv) on behalf of the government, to destroy wildlife that is dangerous to public safety;
 - (v) on behalf of the government, to destroy wildlife that is so badly injured that prolonging the animal's life would result in the animal suffering unduly,

The Panel finds that there is no indication that Mr. Pierce is seeking an exemption for any of the purposes listed in section 2(c)(i), (ii), (iv) or (v) above. Moreover, the Panel agrees with the Regional Manager that it would be unreasonable to grant a permit under subsection (iii), given that the rut closures:

- are created for conservation purposes;
- do not restrict vehicle access along the roads and trails that are subject to the rut closure zones, and therefore, do not restrict Mr. Pierce's hunting opportunities outside of the rut closure areas;
- are in effect for a short portion of the relatively long open season for moose in the Region; and,

- cover a small portion of the region where Mr. Pierce usually hunts.

Finally, the Panel is not satisfied that Mr. Pierce has provided any evidence that being precluded from hunting in the areas closed during the rut closure affects his personal safety. Mr. Pierce is able to travel by vehicle to the edge of the closure areas to access the open areas. His doctor confirmed that he is able to walk at least 100 metres while carrying a firearm. This gives Mr. Pierce liberal access to the open hunting areas. Mr. Pierce will be accompanied by an able bodied hunter who must also hunt in the open areas, and who will be there to assist Mr. Pierce with his moose hunting activities. Under these circumstances, the Panel is not convinced that Mr. Pierce's disability creates any personal safety issues for him when hunting. Accordingly, the proper management of the wildlife resources must take precedence over Mr. Pierce's desire for a convenient hunting opportunity. This is especially so when the majority of the management area is available to Mr. Pierce during the time that he wishes to hunt.

For all of these reasons, the Panel finds that the submissions do not support the issuance of a permit authorizing Mr. Pierce to hunt in areas that are closed during the moose rut.

DECISION

In making this decision, the Panel of the Environmental Appeal Board has carefully considered all relevant documents and evidence before it, whether or not specifically reiterated here.

For the reasons stated above, the Panel finds that the Regional Manager's decision should be confirmed.

Accordingly, the appeal is dismissed.

"Alan Andison"

Alan Andison, Chair
Environmental Appeal Board

October 6, 2009