



Environmental Appeal Board

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DECISION NO. 2019-WIL-019(a)

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

BETWEEN: Peter Forino **APPELLANT**

AND: Deputy Director, Wildlife and Habitat Branch **RESPONDENT**

BEFORE: A Panel of the Environmental Appeal Board:
Darrell Le Houillier, Chair

DATE: Conducted by way of written submissions
concluding on November 15, 2019

APPEARING: For the Appellant: Peter Forino
For the Respondent: Amanda Macdonald, Counsel

APPEAL

[1] This appeal concerns an application for a permit to use a pack goat as a companion to assist a disabled hunter while hunting. The Appellant, Peter Forino, has a physical condition that limits his ability to carry hunting gear and pack out wildlife meat. He applied for a "companion" permit under section 2(aa) of the *Wildlife Act Permit Regulation*, B.C. Reg. 253/2000, so that he could use his pack goat as a companion to carry gear and wildlife meat when he is hunting.

[2] The Respondent, the Deputy Director, Wildlife and Habitat Branch (the "Deputy Director") of the Ministry of Forest, Lands, Natural Resource Operations and Rural Development (the "Ministry"), denied Mr. Forino's application on the basis that the *Wildlife Act* and the *Permit Regulation* provide no authority to grant a permit authorizing the use of a pack goat as a companion while hunting.

[3] The Environmental Appeal Board has the authority to hear this appeal under section 101.1 of the *Wildlife Act*, and has the power to make the following decisions:

- confirm, reverse, or vary the Deputy Director's decision;
- return the matter back to the Deputy Director, with directions; or
- make any decision that the Deputy Director could have made and that the Board considers appropriate in the circumstances.

BACKGROUND

[4] Section 2 of the *Permit Regulation* describes the various types of permits that can be granted under the *Act* and their purposes. Mr. Forino applied a permit under section 2(aa) of the *Permit Regulation*, which allows a permit to be issued:

- (aa) subject to section 2.01, authorizing a physically disabled person to be assisted by having one or more hunting companions to, on the disabled person's behalf, track, kill and retrieve big game wounded by the disabled person,

[5] Section 2.01 of the *Permit Regulation* is not in issue in this appeal.

[6] In a letter dated September 13, 2019, the Deputy Director denied Mr. Forino's permit application. The Deputy Director acknowledged that a medical assessment submitted by Mr. Forino's doctor establishes that he has a physical condition limiting his ability to carry the extra weight of hunting gear and wildlife meat. However, the Deputy Director stated that a companion permit under section 2(aa) of the *Permit Regulation* was not applicable to Mr. Forino's circumstances, because he was asking to have a goat as a hunting companion. The Deputy Director also noted that it is an offence to hunt while accompanied by, or using, a pack goat under section 18(1)(l) of the *Hunting Regulation*, B.C. Reg. 190/84, which states:

18 (1) A person commits an offence where the person

...

- (l) hunts while accompanied by, or with the use or aid of, a goat or sheep, including by using the goat or sheep as a pack animal,

[7] In addition, the Deputy Director acknowledged that the Ministry's policy is to determine how to best accommodate an applicant who has a physical disability. The Deputy Director reviewed four types of permits that are available under the *Permit Regulation* for accommodating hunters who have a physical disability: a companion permit (section 2(aa)); a permit to access a restricted area with a motor vehicle (section 3(2)); a permit to shoot from a motor vehicle (section 3(1)(c)(i)); and, a proxy hunter permit authorizing a hunting companion shoot, track, kill and retrieve big game on the permit holder's behalf (section 2(bb)). The Deputy Director noted that Mr. Forino and Terry Ahern, a Ministry employee, had previously discussed the available accommodation options, but Mr. Forino regarded the options as unsuitable. Those options, as stated in the letter, were:

- a human hunting companion which you [Mr. Forino] said is not an option for you because you don't have anyone you could ask to be a companion hunter nor assist you only in removing meat and gear following a hunt;
- seeking authorization for access to areas closed to the use of motorized vehicles for hunting so that you would not have as far to hike or pack gear and meat, however you expressed being unable to pack meat and gear back to a vehicle on your own; and

- the use of a non-restricted pack animal, such as a donkey or a horse. I understand you said that you currently do own horses, and also said it is not easy to train a draft horse as a pack horse and your preference is to use the pack goat as you have already trained it in this manner. You contend that your only option for help while hunting is the use of your pack goat.

[8] Mr. Forino appealed the Deputy Director's decision to the Board. He asks the Board to grant him a permit to use a goat to carry gear while hunting and to pack out wildlife meat.

[9] The Deputy Director asks that the appeal be dismissed.

ISSUE

[10] There is one issue that I must decide in this appeal: Should the Board grant Mr. Forino's request for a permit authorizing him to be assisted by having a goat as a hunting companion to carry gear and pack out wildlife meat?

SUMMARY OF THE PARTIES' SUBMISSIONS

Mr. Forino's submissions

[11] Mr. Forino submits that after he provided his permit application and doctor's letter to the Ministry, he received a telephone call from Mr. Ahern. They discussed other options for Mr. Forino besides using a pack goat, but Mr. Forino did not think those options were suitable. In his Notice of Appeal, he advises that although horses are legal pack animals and his wife has horses, they are draft horses that are trained to work in fields, and are not trained as hunting or pack horses.

[12] Mr. Ahern also discussed that the law would need to be changed in order for Mr. Forino to hunt lawfully with a pack goat, but this could take some time. Mr. Forino assumed that Mr. Ahern would look into that for him, but nothing about it was mentioned in the Deputy Director's decision letter. Mr. Forino advises that he would look into the matter himself if he was told who to contact.

[13] Mr. Forino suggests four possible solutions for the Board to consider:

- If the Deputy Director has no authority to grant the requested permit, then Mr. Forino asks to be directed to who does, and he will contact that person himself.
- Create a new type of permit for Mr. Forino's situation. If the Deputy Director cannot create a new type of permit, Mr. Forino asks that he be directed to who can, and he will contact that person himself.
- Exempt Mr. Forino from the law prohibiting the use of a pack goat while hunting, just as there are exemptions for disabled hunters from other prohibited hunting activities (e.g., exemption from the prohibition against hunting from a motor vehicle).
- If none of those options are possible, then Mr. Forino asks to be directed to whom he should speak to about changing the law.

[14] In addition, Mr. Forino submits that he was advised by a Conservation Officer that the prohibition against using a pack goat while hunting was created to protect wild goat and sheep populations from diseases carried by domesticated animals. Mr. Forino advises that he could take his pack goat to a veterinarian who would certify that his goat is healthy. He advises that his pack goat was previously used in a project involving pack animals carrying survival equipment, and a veterinarian ensured that his pack goat was vaccinated and disease free before it participated in the project. Moreover, Mr. Forino maintains that it is legal to use his pack goat to carry food, water and clothes while hiking on Crown land, and it makes no sense that the goat's presence becomes illegal because it is carrying hunting equipment or because Mr. Forino is hunting, instead of hiking on the same lands.

[15] In support of his submissions, Mr. Forino provided a copy of the doctor's form confirming that he has a physical condition which limits his ability to carry hunting gear and pack out wildlife meat, and a copy of his permit application.

The Deputy Director's submissions

[16] The Deputy Director does not dispute the fact that Mr. Forino has a physical condition that limits his ability to carry the extra weight of hunting gear and wildlife meat. The Deputy Director submits that the possible accommodations that are available to disabled hunters were outlined for Mr. Forino, both in conversation with Mr. Ahern before the Deputy Director issued the decision letter, and in the decision letter.

[17] The Deputy Director submits that there is no lawful authority to grant Mr. Forino's request for a permit to use of a pack goat as a hunting companion. The ability to grant such a permit does not exist, and the law would need to be changed to grant the type of permit that Mr. Forino requests. However, neither the Deputy Director nor the Board have the authority to change the law to "create" a new type of permit. In addition, it is an offence to hunt while accompanied by, or with the use of, a goat as a pack animal, and there is no authority under the *Wildlife Act* to exempt a person from this prohibition.

[18] In summary, the Deputy Director submits that neither he nor the Board have the authority to change the law to accommodate Mr. Forino's request. Regulations can only be changed by the Lieutenant Governor in Council (i.e., Cabinet), and the *Wildlife Act* can only be changed by an Act of the Legislature.

DISCUSSION AND ANALYSIS

1. Should the Board grant Mr. Forino's request for a permit authorizing him to be assisted by having a goat as a hunting companion to carry gear and pack out wildlife meat?

[19] I accept the evidence that Mr. Forino has a physical condition limiting his ability to carry the extra weight of hunting gear and wildlife meat, and I understand that the accommodations currently legally available to disabled hunters do not include the type of accommodation he is requesting. I also

understand that according to Mr. Forino's permit application and evidence, his pack goat would not present a risk of disease to wild goats and sheep.

[20] Section 2(aa) of the *Permit Regulation* provides authority for the Deputy Director, and the Board in an appeal, to grant permits authorizing a physically disabled person to be assisted by having a "hunting companion" to track, kill and retrieve big game wounded by the disabled person. "Hunting companion" is not defined in the *Permit Regulation* or the *Wildlife Act*, but the role of a hunting companion, as stated in section 2(aa), is to assist the disabled hunter by doing the following on their behalf: "track, kill and retrieve big game wounded by the disabled person". Section 2(bb) contains similar language, except it also allows the companion to shoot game, and requires the companion to be named in the permit.

[21] Based on this language, I find that Mr. Forino's goat cannot fulfill the requirements of section 2(aa) of the *Permit Regulation*. The language in sections 2(aa) and 2(bb) of the *Permit Regulation* suggest that a hunting companion should be a human; however, for the purposes of this case, I do not need to make a conclusive determination on that point. It is sufficient that Mr. Forino's goat lacks the three capabilities described in section 2(aa).

[22] The evidence does not support a conclusion that the goat in question can track and kill big game. It is likewise insufficient that the goat could pack out meat; the plain and ordinary meaning of retrieval involves more than carrying. The goat would need the means to pack the killed game itself or otherwise to be able to move the killed game from place to place. Mr. Forino's evidence indicates that he packs goods on the goat and proposes to do the same with game he hunts, after field dressing the kill. The goat would not be retrieving the game within the meaning of section 2(aa), let alone tracking and killing it.

[23] Even if I am wrong and retrieving big game means carrying big game, a permit under section 2(aa) requires the capacity to "track, kill **and** retrieve big game" [emphasis added]. It does not differentiate between these capacities by use of an "or" or and "and/or". No alternative interpretation was suggested to me by the parties and I see no viable alternative.

[24] For all these reasons, I find that the Board has no legal authority to issue the type of permit that Mr. Forino requests. The *Permit Regulation* would need to be amended to create a new type of permit that could accommodate Mr. Forino's request.

[25] Independent of this concern, I find that even if such a permit could presently be issued, it would conflict with section 18(1)(l) of the *Hunting Regulation*, which makes it an offence for a person to hunt while accompanied by, or with the use or aid of, a goat. This prohibition applies to use of a goat as a pack animal. Section 18(1)(l) expressly prohibits Mr. Forino from doing what he seeks permission to do: be accompanied by a goat while hunting and use a goat as a pack hunting gear and wildlife meat. I find that it would be illogical and inconsistent with the legislative scheme that regulates hunting to grant a permit under one regulation authorizing a hunter to do something that is an offence under another regulation.

[26] Mr. Forino's submissions focused on the merits of this prohibition and he described the health of his goat and its ability to serve as a pack animal on Crown land. To be clear, my analysis on this point is not based on any concern about whether Mr. Forino's goat carries any illnesses that pose a risk to wildlife in British Columbia or the characteristics of the goat itself. Simply, I do not have the discretion to ignore applicable regulations and it would be absurd for the regulatory scheme at issue to allow a permit to be issued for an action which is also defined as a regulatory offense.

[27] I also find that the Board is unable to amend the *Permit Regulation* to create a new type of permit that would accommodate Mr. Forino's request, amend 18(1)(l) of the *Hunting Regulation* so that the prohibition no longer applies to goats, or amend the *Wildlife Act* or its regulations to create an exemption from the prohibition in section 18(1)(l) of the *Hunting Regulation*. According to sections 108 and 109 of the *Wildlife Act*, regulations under that Act can only be made or amended by the Lieutenant Governor in Council (i.e., Cabinet) or, in some cases, the Minister of Forests, Lands, Natural Resource Operations and Rural Development. The *Wildlife Act* itself can only be amended by the Legislature.

[28] Mr. Forino may wish to write to his local MLA and/or the Minister of Forests, Lands, Natural Resource Operations and Rural Development regarding his request that the law be amended.

DECISION

[29] In reaching this decision, I have considered all of the evidence and submissions provided, even if I did not specifically reference it in my decision. The evidence and submissions summarized above were as necessary to give context to my decision.

[30] For the reasons set out above, the appeal is dismissed.

"Darrell LeHouillier"

Darrell LeHouillier, Chair
Environmental Appeal Board

February 28, 2020