



Environmental Appeal Board

APPEAL NO. 94/17 WILDLIFE

In the matter of appeal under s. 103 *Wildlife Act*, S.B.C., 1982 Chap. 57, Index chapter 433.1

BETWEEN: Mr. Thomas Stanway **APPELLANT**

AND: Assistant Deputy Director of Wildlife **RESPONDENT**

BEFORE: A Panel of the Environmental Appeal Board
Mr. Wm I. MacFarlane

DATE: April 20, 1995

PLACE: Commercial Appeals Commission
1304, 865 Hornby Street, Vancouver, BC

APPEARING: For the Appellant Mr. Thomas Stanway

For the Respondent Mr. G. Swannell

This was an appeal against the November 21, 1994, Decision of the Assistant Deputy Director of Wildlife, Mr. Chris Dodd, to uphold the Decision of Mr. W. Stalker, Senior Conservation Officer, to refuse to issue a permit to the Appellant to possess a cougar.

EXHIBITS

R-1 Respondent Package of Information regarding History leading up to Appeal.

APPEAL

The authority for the Panel of the Environmental Appeal Board to hear this appeal is found in the *Environment Management Act*, and in section 103 of the *Wildlife Act*.

The grounds for the appeal presented at the hearing were that Assistant Deputy Director Chris Dodd's Decision to uphold the Decision of Mr. W. Stalker, Senior Conservation Officer was unfair and did not reflect the nature of the incident nor did it recognize other similar permits.

The Order sought was that the Assistant Director of Wildlife's Decision be overturned and that the Appellant be given a permit for possession of the cougar.

BACKGROUND

Mr. Stanway, in his presentation and in the material presented at the hearing, outlined an incident in which he killed a cougar that was going to attack his hunting partner, Mr. Fred Baldwin on September 15, 1993 in the Kootenay Region. The cougar was killed by Mr. Stanway, and following procedure, he applied to Mr. W. Stalker, Senior Conservation Officer for a permit to possess the cougar. The permit was refused but it was pointed out by Mr. Stalker in his letter of April 20, 1994, "do not take this refusal as any kind of suspicion that you (Mr. Stanway) did anything wrong."

Mr. Stanway then appealed Mr. Stalker's Decision. After an agreed to process, and some delays, correspondence was exchanged outlining the appeal. On November 21, 1994, Mr. Chris Dodd, Assistant Deputy Director upheld the Decision of Mr. W. Stalker.

Mr. Stanway followed this with an appeal to the Environmental Appeal Board.

ISSUES AND EVIDENCE

The Appellant, Mr. Stanway submitted, as outlined in his faxed statement of points, dated April 5, 1995, the following points at the hearing:

He says he was told that he could obtain the cougar by Conservation Officer Hitchcock.

He followed proper procedure in applying for a permit to Mr. W. Stalker and the permit was refused on April 20, 1994.

He also felt due to the nature of the incident, he was justified in killing the cougar and thus it seemed fair to him he be given a permit to possess it.

He did what he had to in accommodating Mr. Hitchcock.

He incurred expenses and had to deal with much physical and mental stress.

He submitted that other people have been given permits to possess carnivores killed under similar circumstances and that it seemed unfair, in his opinion, that other people were receiving similar permits.

He questioned whether or not there was another reason as to why he was not getting the cougar (without saying what the reason might be) and wondered where the cougar was now.

He stated that he had a lawyer and further evidence to present as it was his intention to go to "an appropriate hearing of the British Columbia Supreme Court."

Mr. Stanway was given the opportunity to present any further evidence at the hearing of the Environmental Appeal Board.

Mr. G. Swannell, Respondent, then testified, first in response to the Appellant's points.

He indicated that Mr. Stanway was told that he could apply for a permit to possess the cougar. Mr. Stanway would have to follow correct procedure. Such requests are to be in writing but did not automatically mean a permit would be issued. Mr. Swannell indicated that the Appellant had followed the correct procedure in his letter to Mr. Stalker on March 16, 1994. Mr. Stalker's refusal came on April 20, 1994.

He indicated that Mr. Hitchcock, in his investigation of the incident, found no reason not to believe Mr. Stanway's description of how the cougar had been shot. Had there been some reasonable doubt and, as the Appellant did not have a permit, Mr. Stanway could have been charged.

He indicated that, in dealing with Mr. Stanway's appeal to Mr. Dodd, that proper procedure had been followed. He submitted documents and copies of regulations and procedures to support this.

He indicated that Mr. Dodd had accepted Mr. Stanway's description of the incident and that Mr. Stanway had properly applied for a permit to possess the cougar.

He described the process followed as outlined in the correspondence entered as Exhibit R-1, beginning with Mr. Stanway's March 16, 1994, letter to Mr. Stalker and ending with the Decision of Mr. Dodd of November 21, 1994.

He presented documentation to show that Mr. Dodd had the authority to make the decision under appeal.

He emphasized the point that Mr. Dodd had made in his decision that section 2(3) of the *Wildlife Act*, is very specific and says that where wildlife is killed for the protection of life or property, it remains the property of the Crown.

He agreed that there had been a number of such cases so this one was not unique.

He explained that in the *Wildlife Act* Permit Regulations (BC Regulations 337-82) s. 1(l) and (s):

A regional manager ... may authorize:

(l) a person to possess dead wildlife or parts of them;

(s) the exemption of a person or persons from the application of a provision of the Act or regulations,

might be applicable but they must be used very cautiously and only in exceptional circumstances. Essentially the legislation anticipated such situations and prohibits a person from acquiring wildlife under such circumstances as a conservation measure.

He indicated that the Decision of Mr. Dodd had been based on relevant provincial law on the merits of the case and that there had been no bias.

He stated that Mr. Stanway's behavior had been exemplary.

DECISION

In making this decision, the Panel of the Environmental Appeal Board has carefully considered all of the relevant documentary evidence and comments made during the hearing, whether or not they have been specifically reiterated here.

The intent and purpose of the *Wildlife Act* is to ensure conservation and wise use of the animal resources in the Province of British Columbia.

The Supreme Court of British Columbia has ruled in *Olson v. Walker* (1989), S.C.B.C. Duncan Registry No. 2286 that for appeals under the *Wildlife Act*, the Environmental Appeal Board can not substitute its opinion for that of the Director where the Director's Decision was made in the lawful exercise of discretion.

The Panel of the Environmental Appeal Board could find no evidence to suggest that the Appellant had been treated unfairly or without due process. Nor was there any evidence to show that the Director's Decision was not made in the lawful exercise of discretion.

It is, therefore, the Decision of the Panel of the Environmental Appeal Board that this appeal is dismissed.

Wm I. MacFarlane, Panel Chair
Environmental Appeal Board

May 31, 1995