Case Name:

R. v. Taylor

Between
Regina, and
George Taylor and David Atkinson@

[2002] B.C.J. No. 1846

2002 BCPC 321

Prince George Registry No. C06368

British Columbia Provincial Court
Prince George, British Columbia

M.J. Brecknell Prov. Ct. J.

Heard: November 27 - 29, 2000, January 5,
February 16 and 26 and September 6, 7, 26 and
November 14, 2001, and January 10 and June 4, 2002.
Judgment: August 9, 2002.

(109 paras.)

Criminal law -- Procedure -- Indictment -- Quashing -- Common law defences -- Officially induced error of law -- Civil rights -- Trials, due process, fundamental justice and fair hearings -- Criminal and quasi-criminal proceedings -- Right to be informed of alleged offence.

This was a trial of Taylor and Atkinson on three counts under the Wildlife Act for possession of wildlife without a permit, allowing a hunting license to be used by another person and failing to comply with a condition of a hunting license. Taylor and Atkinson were hunting in Prince George with valid hunting licenses. They were offered a fish by Jael, who was aboriginal, and incorrectly advised by a conservation officer that they were permitted to accept teh fish. They were then advised that Jael had shot a moose which he did not want to retrieve. Taylor and Atkinson were advised by Jael that as an aboriginal, he was entitled to shoot the moose. Taylor and Atkinson, with the assistance of others, retrieved the moose, at which time Taylor incorrectly cancelled his species license or tag. Taylor had no intention of sharing the moose with Atkinson. Taylor requested particulars of count three from the Crown on three occasions but they were not provided. It was not revealed until the trial that the charge referred to Taylor's cancelling of his species tag when he had

not killed the moose. Taylor and Atkinson argued that count three should be quashed because it did not contain sufficient detail with respect to the act or omission to be proved against them. Taylor raised the defence of officially induced error regarding count one based on his belief that he was entitled to accept the moose as a result of the advice from the conservation officer regarding the fish.

HELD: Atkinson was acquitted and Taylor was convicted of count one. They were both acquitted of count two. Count three was quashed. There was no evidence that Atkinson had title or possession to the moose. Taylor was never given possession of the moose by Jael. The situation was therefore not analogous to the gift of fish and he could not rely on the defence of officially induced error. Taylor used his own hunting license, and neither Taylor nor Atkinson allowed anyone else to use the license. Count three was quashed because it did not contain sufficient detail with respect to the act or omission to be proved.

Statutes, Regulations and Rules Cited:

B.C. Reg. 340/82, s. 16.01(a), 16.01(b), 16.01(c).

Canadian Charter of Rights and Freedoms, 1982.

Criminal Code, ss. 4(3), 4(3)(a), 4(3)(a)(i), 4(3)(a)(ii), 4(3)(b), 581(3), 601(4.1).

Firearm and Licencing Regulation, B.C. Reg. 8/99, ss. 7, 15.

Limited Entry Hunting Regulation, B.C. Reg. 134/93, ss. 2, 9(1)(b).

Offence Act, ss. 96(3), 98, 98(1), 100(4)(b).

Wildlife Act, R.S.B.C. Chap. 488, ss. 33(2), 81, 81(a).

Counsel:

Ron Beram, for the Crown.
Stephen D. Taylor, for the accused (George Taylor).
C. Keith Aartsen, for the accused (David Atkinson).

REASONS FOR JUDGMENT

M.J. BRECKNELL PROV. CT. J.:--

CHARGES

1 The Defendants are charged with three counts under the Wildlife Act (the "Act"), namely:

> Count 1
>
> George TAYLOR and David ATKINSON, between the 17th day of October, 1998, and the 20th day of October, 1998, at or near Prince George, in Wildlife Management Units 7-7 and 7-9, in the Province of British Columbia, did have in their possession wildlife, to wit: moose, while not authorized under a licence or

permit or as provided by regulation, contrary to Section 33(2) of the Wildlife Act, R.S.B.C. Chap. 488, (as amended).

Count 2

George TAYLOR and David ATKINSON, between the 17th day of October, 1998, and the 20th day of October, 1998, at or near Prince George, in Wildlife Management Units 7-7 and 7-9, in the Province of British Columbia, did unlawfully allow George Taylor's licence or limited entry hunting authorization to be used by another person, contrary to Section 81(a) of the Wildlife Act, R.S.B.C. Chap. 488, (as amended).

Count 3

George TAYLOR and David ATKINSON, between the 17th day of October, 1998, and the 20th day of October, 1998, at or near Prince George, in Wildlife Management Units 7-7 and 7-9, in the Province of British Columbia, did fail to comply with a condition of an instruction in a hunting licence, contrary to B.C. Reg. 340/82 Section 16.01(a) under the Wildlife Act, R.S.B.C. Chap. 488, (as amended).

2 Each of the Defendants has pleaded not guilty to Counts 1 and 2, and declined to enter a plea to Count 3 on the basis that that count does not comply with Section 581(3) of the Criminal Code, or more properly in this case Section 96 (3) of the Offence Act, insofar as it does not "contain sufficient detail of the circumstances of the alleged offence to give to the accused reasonable information with respect to the Act or omission to be proved against him, and to identify the transaction referred to . . ." and as such, the court should quash that count.

3 Each of the Defendants indicated that in the event the court ruled against them on the sufficiency of Count 3, they would enter a plea of not guilty to that count.

FACTS

4 The Defendants came to the Prince George area in mid-October 1998 to hunt moose. They both had in their possession valid hunting licences, species licences, and at least the Defendant Taylor, had a limited entry hunting authorization (LEHA) for Wildlife Management Unit ("WMU") 7-9. Their hunting trip proved unsuccessful insofar as neither of them shot a moose.

5 Both of the Defendants were experienced hunters, with Defendant Taylor having over 50 years of hunting experience, and Defendant Atkinson operating an outdoor equipment store in Summerland.

6 During their hunting trip, Defendant Taylor renewed his acquaintance of Doug Neal, a former work supervisor, and through Mr. Neal, the Defendants met an aboriginal hunter, Stephen Jael. The Defendant Taylor befriended Mr. Jael and assisted him by providing maintenance to Mr. Jael's rifle. In recognition of that kindness, Mr. Jael offered to the Defendants a gift of salmon.

7 The Defendants were concerned about the legality of accepting such a gift, so at one of the random "hunter checks" they were subjected to, they asked Conservation Officer (C.O.) Richardson if they could accept such a gift. C.O. Richardson, although hesitant to provide an answer, thought he

gave the Defendants a true and correct answer when he advised them that so long as they were not purchasing or bartering fish with Mr. Jael, they could accept such a gift. That information was wrong.

8 C.O. Richardson acknowledged in court:

> [a] that Conservation Officers were the appropriate people for hunters, such as the Defendants, to ask questions of concerning fish and game regulations, and
>
> [b] wildlife can encompass fish.

9 Subsequently, C.O. Richardson was corrected by C.O. van Spengen concerning the wrong advice he had given to the Defendants, but that information was not relayed to the Defendants until after they provided statements on October 20, 1998.

10 Near the end of the hunting trip, Defendant Taylor received a telephone call from Mr. Neal who advised that Mr. Jael had shot a moose in a swamp, but was refusing to retrieve it. Mr. Neal told the Defendant Taylor that whoever recovered the moose could have it. After that telephone call, there were discussions among a group of people including the Defendants, Mr. Neal and Mr. Jael, about the recovery of the moose.

11 However, there were no discussions between Mr. Jael and the Defendants surrounding any transfer of a proprietary or possessory interest in the moose, although Mr. Jael indicated to the Defendants and others, in no uncertain terms, that he was not going to retrieve the moose.

12 Mr. Jael also indicated to the Defendant Taylor that as an Aboriginal hunter, he was entitled to hunt anywhere at any time, for any game, either in his traditional territory or outside his traditional territory, if he had the permission of the Chief in whose territory he was hunting.

13 At no time did the Defendant Taylor ask for, or did Mr. Jael offer, to provide any documentation verifying:

> [a] that he was the person who shot the moose;
>
> [b] that he was entitled to do so; and
>
> [c] that he was transferring his interest in it to the Defendant Taylor.

14 On October 18, 1998, others in Mr. Neal's hunting party had located the moose and had taken initial steps to butcher it, but gave up because it was cold and dark. The Defendants were directed by telephone to the kill site and located the moose.

15 The Defendants completed the gutting and butchering process, and the Defendant Taylor cancelled his moose species licence (often referred to as a tag), by flashlight that night, even though he had not shot the moose.

16 Defendant Taylor gave as his reason for cancelling the licence his understanding that one cannot be in possession of game without a cancelled species licence. In cancelling his moose tag, the Defendant Taylor did so incorrectly, and was later shown how to correctly cancel it by C.O. van Spengen.

17 The Defendants received assistance in recovering the moose on October 19, 1998 from a number of people who were associated with, or acquaintances of Mr. Neal. At the suggestion of

Neal, the moose was taken to a cutting facility operated by a Mr. Loring. There was no evidence called to where Mr. Loring's cutting facility was located.

18 The Defendant Taylor's LEHA was for WMU 7-9. The moose was shot in WMU 7-7. Defendant Taylor cancelled his moose tag in WMU 7-7. There was no evidence presented that the moose was ever in WMU 7-9.

19 On October 19, 1998, the Defendants were stopped by C.O. van Spengen at a "hunter check". On that occasion, Defendant Taylor advised C.O. van Spengen that they had "got a moose", and that it had been taken to the cutters. The Defendants did not advise C.O. van Spengen that they had "got" the moose shot by Mr. Jael.

20 Unbeknownst to the Defendants, Mr. Neal and Mr. Loring were the subjects of a complex undercover investigation conducted by a task force of conservation officers. As part of that larger investigation, C.O. van Spengen received information that the moose which Defendant Taylor had brought into Mr. Loring's shop had not been shot by him, but in fact had been shot by Mr. Jael.

21 Based on that information, C.O. van Spengen made a decision to search out and interview Defendant Taylor. In the early evening hours of October 20, 1998, while travelling towards the Defendant's camp near Willow River, C.O. van Spengen observed the Defendant's vehicle and stopped it to investigate the information he had concerning who had shot the moose.

22 Upon stopping the Defendant's vehicle, C.O. van Spengen realized that there were three people in the vehicle: the Defendant Taylor, the Defendant Atkinson, and Mr. Jael. On that basis, he contacted C.O. Coyle for assistance in the investigation.

23 Upon C.O. Coyle's arrival, and after a brief discussion between the conservation officers, C.O. Coyle attempted to take a statement from Mr. Jael, who declined to give one. He then took a statement from Defendant Atkinson who was cooperative and forthright. That statement was ruled inadmissible in an earlier decision in this proceeding.

24 While C.O. Coyle was speaking to Mr. Jael and the Defendant Atkinson, C.O. van Spengen spoke to Defendant Taylor. The Defendant Taylor was cooperative in providing a statement and readily admitted that Mr. Jael had shot the moose, and that he, the Defendant Taylor, had cancelled his moose tag. In the taking of the statement, C.O. van Spengen was polite and later described by Defendant Taylor as a "straight shooter". The Defendant Taylor's statement was ruled admissible in this proceeding.

25 After the statement of the Defendant Taylor was taken, C.O. van Spengen seized Defendant Taylor's hunting licence and species licences, and advised him that he could retrieve them the next day from the conservation officers' office.

26 C.O. Coyle seized the Defendant Atkinson's camera. The photographs from the camera were developed and ruled admissible in this proceeding. Those photographs depict the Defendants and others with the moose, both at the kill site and at Mr. Loring's cutting facility.

27 Once the statements were taken, the conservation officers accompanied the Defendants back to their camp to make a further inspection. While at the camp, Defendant Taylor advised that they had the heart and liver from the moose and offered to produce those items, but that was declined by the conservation officers.

28 After the Defendants gave their statements on October 20th, 1998, no further statements were given to conservation officers by the Defendants, and they had no further knowledge of the investigation until they were served summonses soon after the Information was sworn on April 22, 1999.

DISCUSSION

Introduction:

29 Hunting, and fishing, are an important lifestyle pursuits to many people in British Columbia. Our wilderness areas, and the opportunity to enjoy recreational activities in them, are important attractions to residents and visitors alike.

30 Hunting is a regulated voluntary recreational activity. The government publishes a Hunting and Trapping Regulations Synopsis on an annual basis to assist those who wish to participate in ensuring that their activities are lawful and comply with the Act and Regulations, and are conducted in a conservationally sound manner to ensure the continued health of the resource. Wildlife is important to all British Columbians, even those who do not hunt. For that reason, breaches of hunting laws, although regulatory in nature, are treated very seriously, with penalties including loss of hunting privileges, fines, forfeitures of equipment, and in some cases, penal consequences.

31 Some people, when learning about the facts of this case, may ask why so much court time was taken over one moose shot by a native person and recovered by a white person.

32 That view misses the point. This case is about maintaining a fair but firmly enforced regulation of a voluntary sporting activity. Without such enforcement, our wilderness areas would end up being a slaughterhouse, with wildlife running for cover under a fusillade of buckshot and bullets.

Burden of Proof:

33 The Wildlife Act is a regulatory statute which details certain activities as being unlawful. Offences under the Wildlife Act are strict liability and, as such, there is no need for the Crown to prove mens rea R. v. City of Sault Ste. Marie [1978] 2 S.C.R. 1299.

34 In these type of offences, it is up to the Defendant in avoiding liability, to show that all reasonable care was taken. Furthermore, some defences require the Defendants to advance evidence in support of the defence including:

[a] exceptions under Section 98 of the Offence Act;

[b] legal necessity;

[c] due diligence, and

[d] officially induced error.

35 It still remains, however, the duty of the Crown to prove the facts alleged beyond a reasonable doubt in order to gain a conviction.

Hunting Party v. Party Hunting:

36 A hunting party, or hunting partners, are two or more people lawfully engaged in hunting together. It is not uncommon, and in fact prudent from a safety perspective, for hunters to coordinate their activities. Furthermore, it is not uncommon or illegal for hunters to share any game obtained during the hunt, so long as that game is obtained legally and the sharing of it is properly documented.

37 Party hunting is two or more people hunting together, and agreeing to act illegally in any number of ways which can include:

> [a] one hunter canceling his species licence or tag for an **animal** shot by another hunter;
>
> [b] acting in concert, with knowledge that their actions are a breach of the Act or Regulations.

38 In this case, the Crown alleges that the Defendant Taylor and the Defendant Atkinson were conspirators in a party-hunting scheme. The Crown further alleges that the Defendant Atkinson must have had knowledge and acquiesced to the Defendant Taylor's actions in canceling his moose species licence in an illegal and improper manner, and in taking possession of the moose shot by Mr. Jael.

39 Clearly, the Defendant Atkinson was hunting with the Defendant Taylor, and he helped the Defendant Taylor retrieve the moose in question; but so did many others. It is not uncommon in hunting big game that many hands will assist in retrieving the killed **animal,** because, as a result of its size, it cannot be handled by one person in any event.

40 Although the conservation officers gave evidence that they had suspicions that the Defendants were party hunting, those suspicions do not amount to sufficient evidence in this case to support such a conclusion. Likewise, the Crown's submission that the use of cell phones is indicative of party hunting is not, without other evidence of wrongdoing, persuasive.

Wildlife Management Units 7-7 "and" 7-9:

41 The moose in question was clearly shot in WMU 7-7, and the Defendant Taylor acknowledged that he cut his tag while in that WMU even though his LEHA was for WMU 7-9. There was also evidence that the moose was taken to Mr. Loring's cutting shop, but there was no evidence that the cutting shop was located at WMU 7-9.

42 Given that there is no evidence of either of the Defendants doing anything in WMU 7-9, the Defendants assert that they should be found not guilty on all counts, because the Crown has failed to prove a specific averment in each of the counts.

43 In response, the Crown argues that the word "and" can, sometimes also mean "or". That interpretation is correct in some circumstances when applied to both legislation or Informations. Many authors go to great lengths to point out where, in some circumstances, "and" must really mean "or", because to consider otherwise would render the legislation or Information nonsensical. However, it not necessary to embark on that discussion in these circumstances.

44 The situation here is covered by the wording of Section 100 (4)(b) of the Offence Act, which reads as follows:

> "(4) A variation between the Information the evidence taken on the trial is not material with respect to

> [b] the place where the subject matter of the proceedings is alleged to have arisen, if it is proved that it arose within the territorial jurisdiction of the justice who holds the trial."

Analogous wording can also be found in Section 601(4.1) of the Criminal Code.

45 The Defendants should not be permitted to escape potential liability for their actions in one specific place simply because the Crown has alleged that they committed the offence in two locations, and fails to prove the offence continued to the second location. Therefore, the Defendants' submission that they should be found not guilty on the basis of the surplusage of wording in the Information is rejected.

Count 3:

46 The Defendants declined to enter a plea to this count, alleging that it did not comply with Section 581(3) of the Criminal Code. The appropriate section to apply here is Section 96(3) of the Offence Act.

47 The Defendant Taylor, through his counsel, made requests of the Crown on three occasions for particulars or further specificity concerning this count, but that information was not provided.

48 Section 96(3) of the Offence Act states:

> "(3) A information must contain sufficient detail of the circumstances of the alleged offence to give to the accused reasonable information with respect to the act or omission to be proved against the defendant and to identify the transaction referred to, but otherwise the absence or insufficiency of details does not vitiate the information."

49 Despite the Defendant Taylor's request for further particulars, the actual details of the offence alleged were not made clear until the evidence of C.O. van Spengen at trial when he said that the offence occurred when the Defendant Taylor cancelled his moose tag, not being the person who killed the moose.

50 B.C. Regulation 340/82 s. 16.01 states:

> "s. 16.01 A person commits an offence where he fails to comply with a condition of, or an instruction in
>
> [a] a hunting licence,
>
> [b] a species licence,
>
> (c) a limited-entry hunting authorization."

51 I have reviewed Exhibit 2 in this proceeding which is photocopy of five documents, the first one entitled "Hunting Licence", and the next four entitled "Species Licence" for a variety of different species, one being for moose.

52 I have examined carefully the "Hunting Licence" which comprises the first page of Exhibit 2, and am unable to discern based on that document "sufficient detail of the circumstances of the alleged offence" such that it would give "the accused reasonable information with respect to the act or omission to be proved against him, and to identify the transaction referred to".

53 Based on a careful reading of R. v. WIS Developments Corp. Ltd. [1984] 1 S.C.R. 485 and R. v. Cote [1978] 1 S.C.R. 8, I am unable to understand exactly what that count refers to and in what manner the Defendants were supposed to have failed to comply with a condition of or an instruction in a hunting licence; and as such, I cannot conclude that the Defendants, as lay persons, would be in a position to make any sense of that count.

54 As detailed in Cote and referred to by the learned author E.G. Ewaschuk in Criminal Pleadings and Practice in Canada: "The golden rule in determining whether a count is factually sufficient is that an accused must be reasonably informed of the transaction alleged against him to give him the possibility of a full defence and fair trial, but without the former need for extreme technicality, especially in the absence of a timely allegation of prejudice."

55 In this case, the Defendant Taylor raised his concerns early on and well before the trial, and it would not have been unreasonable to expect that the Crown should have facilitated matters by pointing out the facts it alleged constituted the offence.

56 In light of my ruling on this matter, and based on the directions provided in WIS, I would quash this count.

57 If I am wrong in this analysis, and the wording of the count is sufficient to comply with Section 96(3), I would enter not guilty pleas on behalf of the Defendants and examine whether or not the Crown has proved this count.

58 There is no evidence that Defendant Atkinson did anything to Defendant Taylor's hunting licence or had any influence over what Defendant Taylor did with his licence. Furthermore, Defendant Taylor's evidence was that he cancelled his moose species licence, and there is no evidence to suggest there were discussions between the two Defendants about that issue. Therefore, if this count was not to be quashed, I would find the Defendant Atkinson not guilty.

59 The only evidence of wrongdoing concerning this count was that the Defendant Taylor had cancelled his moose species licence when he was not the person who shot the moose, and in a WMU for which he did not have an LEHA.

60 Count 3 refers to "a condition of an instruction in a hunting licence". Notwithstanding that the wording of the count differs from that of the Regulation, I have examined the Hunting Licence page of Exhibit 2, and I am unable to see anything on its face indicating that the Defendant Taylor failed to comply with a condition of or an instruction in that licence.

61 Some of the wording on the Hunting Licence is also illustrative. In the lower left corner of that document, in bolded letters, are the words: "Licencee do not remove any page(s) or licence(s) from this booklet. The only persons authorized to remove any page(s) or licence(s) from this booklet are Ministry of Environment officials."

62 I have also examined the Defendant Taylor's moose species licence and the confirmation of his LEHA. However, he is not charged with failing to comply with a condition of or an instruction in a species licence or an LEHA. Furthermore, there was no evidence presented that a species licence or an LEHA is, or alternatively is not, an integral subsidiary part of a hunting licence.

63 Any argument that a species licence or an LEHA is a subsidiary part of a hunting licence rather than a separate document which must be obtained to legally hunt a particular species in a particular area, is rebutted by B.C. Regulation 8/99, Firearm and Licencing Regulation Sections 7 and

15, and B.C. Regulation 134/93, Limited Entry Hunting Regulation Sections 2 and 9(1)(b), each of which clearly describes species licences and LEHA's as distinct documents from a hunting licence.

64 The Crown failed to prove the charge as alleged, and if the count was not quashed, I would find the Defendant Taylor not guilty.

Count 2:

65 Section 81(a) of the Wildlife Act states:

> "Except as authorized by regulation or as otherwise provided under this Act, a licence, permit or limited entry hunting authorization is not transferable, and a person commits an offence if the person
>
> > [a] allows his or her licence, permit or limited entry hunting authorization to be used by another person, or
> >
> > [b] uses another person's licence permit or limited entry hunting authorization".

66 This count alleges that Defendant Atkinson "did unlawfully allow George Taylor's licence or limited-entry hunting authorization to be used by another person".

67 The plain wording of the count and Section 81 of the Act, combined with the evidence presented, shows that Defendant Atkinson did not use Defendant Taylor's hunting or species licence or LEHA. Nor is there any evidence that he allowed or encouraged another person, whether that person was or was not the Defendant Taylor, to do anything with Defendant Taylor's licence. Therefore, I find him not guilty of this count.

68 Likewise, Defendant Taylor cannot be guilty of this count because, based on the evidence, he did not allow his licence to be used by "another person". He himself used the licence and he cannot be "another person" to himself as contemplated either in the section or the wording of the count.

Count 1:

69 Section 33(2) of the Wildlife Act states:

> "(2) A person commits an offence if the person had 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."

70 By his own admission, the Defendant Taylor was clearly in possession of a dead moose. His defence to the charge rests on other grounds.

71 The Defendant Atkinson denies being in possession of the moose.

72 The Crown alleges that Defendant Atkinson was in possession of the moose because he had "dominion and control" over it. This argument is based largely on the photographs in evidence and the admissions made by the Defendant Taylor in his statement to C.O. van Spengen.

73 The Crown further contends that the onus is on the Defendant Atkinson to show his actions are an exception to the dominion or control issue of possession, pursuant to Section 98(1) of the Offence Act.

74 The word "possession" is not defined in the Wildlife Act. Section 4(3) of the Criminal Code defines possession as:

> "(3) For the purposes of this Act,
>
> [a] a person has anything in possession when he has it in his personal possession or knowingly
>
> [i] has it in the actual possession or custody of another person, or
>
> [ii] has it in any place, whether or not that place belongs to or occupied by him, for the use or benefit of himself or of another person; and
>
> [b] where one of two or more persons with the knowledge and consent of the rest, has anything in his custody or possession, shall be deemed to be in the custody and possession of each and all of them.

75 The Defendant Atkinson maintains that possession includes both knowledge and control. There was no evidence that the Defendant Atkinson in any way controlled the moose. Further, the Defendant Atkinson relies on Defendant Taylor's evidence that it was Defendant Taylor's moose, and that there were no discussions surrounding sharing the moose between them, even though Defendant Atkinson, along with others, had assisted in retrieving the moose from the swamp.

76 Of the two alternative argued definitions of possession, I prefer that of the Defendant Atkinson. The Crown's argument that he had "dominion" in order to be successful, would have required the Crown to prove that the Defendant Atkinson had both title and possession, and there was no evidence presented that "title" was ever transferred to Defendant Atkinson.

77 The photographs entered as an exhibit do clearly show the Defendant Atkinson, along with several other persons, assisting in the skinning of the moose. His demeanor appears to be that of a happy hunter. However, such weak evidence does not amount to legal possession, particularly when combined with the Defendant Taylor's clear assertion that there was no intention to share the moose with Defendant Atkinson.

78 The Crown also relies on certain portions of the Defendant Taylor's statement to C.O. van Spengen, which is evidence in this proceeding, as proof of Defendant Atkinson's possession of the moose. However, given that the Crown's contention that the Defendant Atkinson and Defendant Taylor were co-conspirators has been rejected, the case law clearly states that a statement made by one co-accused should not be considered as evidence against another co-accused; and as such, there is no evidence to consider in Defendant Taylor's statement concerning the status of Defendant Atkinson's "possession" of the moose. As such, I find the Defendant Atkinson not guilty of this count.

79 The Defendant Taylor's defence to Count 1 rests on:

> [a] alleged contradictions between various portions of the Regulations;
>
> [b] the necessity of retrieving the moose so that it would not be left to rot;

> [c] due diligence in attempting to comply with the Regulations; and
>
> [d] officially induced error based on his conversation with C.O. Richardson.

80 The Defendant Taylor gave considerable evidence, and his counsel made considerable argument, on the alleged contradictions between various portions of the Hunting and Trapping Regulations Synopsis ("Synopsis").

81 Defendant Taylor points particularly to Pages 7 and 8 of the that booklet, where it states:

> "It is unlawful . . .
>
> [37] to kill wildlife (with the exception of grizzly bear, cougar or a fur-bearing **animal** other than a black bear), and fail to remove from the carcass the edible portions of the four quarters and loins to the person's normal dwelling place, or to a meat cutter, or the owner or operator of a cold storage plant. A person who kills wildlife is exempted from the requirement to remove the edible portions if that person transfers possession of the wildlife to a recipient who complies with the requirement."

82 The Defendant Taylor states that because Mr. Jael transferred possession of the moose to him, he was under an obligation to remove the carcass as prescribed by Item 37.

83 Furthermore, he states that as a hunter he felt he was duty-bound to recover the moose carcass so that it would not go to waste. While that may be a laudable course of action, it was neither a necessity at law or the proper response.

84 The proper response would have been to call the conservation officers to report the matter of the moose in the swamp, and seek direction from them concerning its recovery.

85 Likewise, the Defendant Taylor's evidence that he exercised due diligence in attempting to comply with the Regulations when he cancelled his moose species licence in order to transport the moose to the cutters because he had no other type of documentation, ignores the wording of another portion of Synopsis where it says:

> "It is unlawful
>
> [5] to be in possession of a big game **animal** without a properly cancelled species licence or otherwise by licence, permit or as provided by regulation".

86 With 50 years of hunting experience, the Defendant Taylor was well aware that only the person who shoots an **animal** is entitled to cancel the species licence. That person and no one else is entitled to do so.

87 Had the Defendant Taylor taken the time to peruse Synopsis further, he would have found at Page 12 a highlighted column of information entitled: "Aboriginal Hunting". Had he done so, it should have raised, in Defendant Taylor's mind, concerns about Mr. Jael's comments that he could hunt whenever and wherever he wished.

88 Furthermore, when faced with what Defendant Taylor describes as the unusual circumstances of being offered a gift of game from an Aboriginal person, he should have obtained Mr. Jael's status number, and some documentation signed by him transferring possession of the moose.

89 The Defendant Taylor's defence of officially induced error is based on the erroneous information he received from C.O. Richardson about accepting a gift of fish from an Aboriginal person, which he then extrapolated to include taking possession of the moose shot by Mr. Jael.

90 The fact that the Defendant Taylor readily admitted to C.O. van Spengen that Mr. Jael had shot the moose in his statement of October 20, 1998, seems to enhance his stated belief that he had the authority to take the moose into his possession. On the other hand, Defendant Taylor's statement to C.O. van Spengen on November 19, 1998 that he "got" a moose without disclosing it had been shot by Mr. Jael, indicates some evasiveness on his part.

91 Based on the argument that wildlife, fish and game are somewhat interchangeable under the Act, the Defendant Taylor asks this court to accept that, based on C.O. Richardson's statement that a gift of fish was allowed, it would be reasonable to believe that a gift of game would be equally permitted.

92 Fish, game and wildlife are defined in the Act as follows:

> ""fish" means any
>
> > [a] vertebrate of the order Petromyzontiformes (lampreys) or class Osteichthyes (bony fishes), or
> >
> > [b] invertebrate of the class Crustacea (crustaceans) or class Mollusca (mollusks) from or in non-tidal waters of British Columbia, and includes their eggs in juvenile stages;
>
> "game" means big game, small game, game birds and fur-bearing **animals** and other species prescribed as game;
>
> "big game" means
>
> > [a] any member of family Cervidae."
>
> "wildlife: means raptors, threatened species, endangered species, game or other species of vertebrates prescribed as wildlife and, for the purposed of sections 3, to 5, 7, 8 and 108(a)(v), includes fish;

93 The inter-relationship of the words wildlife, fish and game as defined in the Act, could result in the reasonable interpretation by average citizens that the words could be used interchangeably.

94 The details of C.O. Richardson's evidence was not disclosed to the Defendant until after he had given evidence on a voir dire of his encounter with that conservation officer.

95 It was argued by the Defendant Taylor that such late disclosure should result either in some sanction against the Crown, or some Charter relief concerning the count for which C.O. Richardson's evidence may be used.

96 Although the Crown could have been more forthcoming earlier on concerning that conservation officer's evidence, I do not find that there was any deliberate attempt by the Crown to hide evidence from the court or the Defendant Taylor. Furthermore, the gist of C.O. Richardson's evidence must have been known to the Defendant Taylor and his counsel in order for the defence of officially induced error to be advanced.

97 The main thrust of the Defendant Taylor's defence to Count 1 is based on his contention that he took certain actions based on his conversation with C.O. Richardson, and as such, was led into an officially induced error.

98 Officially induced error was discussed by the Supreme Court of Canada in Regina v. Jogensen (1995) 129 D.L.R. (4th) 510. Based on that case and others, it is clear that a defence of officially induced error is available both for regulatory and purely criminal offences.

99 Officially induced error is also one of the few exceptions to the legal principle that ignorance to the law is no excuse. In that regard, Lamer C.J.C. says at page 527 of Jorgensen:

> "In summary, officially induced error of law functions as an excuse rather than a full defence. It can only be raised after the crown has proven all elements of the offence. In order for an accused to rely on this excuse, she must show, after establishing she made an error or law, that she considered her legal position, consulted an appropriate official, obtained reasonable advice, and relied on that advice in her actions. Accordingly, none of the four justifications for the rule that ignorance of the law does not excuse which Stuart outlined is undermined by this defence. There is no evidentiary problem. The accused, who is the only one capable of bringing this evidence, is solely responsible for it. Ignorance of the law is not encouraged because informing oneself about the law is a necessary element of the excuse. Each person is not a law onto himself because this excuse does not affect culpability. Ignorance of the law remains blameworthy in and of itself. In these specific instances, however, the blame is, in a sense, shared with the same official who gave the erroneous advice."

100 Examining the various elements of the test set out by Lamer C.J.C., the following evidence was presented by the Defendant Taylor:

> [a] Defendant Taylor, at the suggestion of the Defendant Atkinson, agreed to speak to a conservation officer before accepting Mr. Jael's offer of a gift of salmon, and as such, it can be said he considered his legal position concerning such action;
>
> [b] Defendant Taylor did actively seek the advice of a conservation officer (C.O. Richardson), and asked specific questions about the legality of accepting a gift of salmon from Mr. Jael. In response to those specific questions, C.O. Richardson provided the advice that such a gift would be proper, and not a breach of law. C.O. Richardson was the appropriate person for the Defendant Taylor to seek advice from, and the advice he received appeared reasonable;

> [c] Based on C.O. Richardson's advice concerning a gift of salmon, Defendant Taylor states that he relied on it in obtaining possession of the moose. He further contends that such reliance was in good faith, and reasonable in the circumstances.

101 That does not end the enquiry however. As described by Macfarlane J. of this court in R. v. Walker, unreported, November 6, 2000, P.G. Registry No. C07854 at Page 4:

> "The burden is upon the accused to prove, on a balance of probabilities, that he was given erroneous advice and that he acted upon it. This involves an objective and subjective element. The advice, objectively considered, must have been erroneous and must be proved to have been given. Once the accused has overcome that hurdle, he or she must then prove that subjectively he or she understood the advice in the sense alleged, believed the advice, and acted upon it in good faith."

The Defendant Taylor has met the first or objective part of the test.

102 The Defendant Taylor's position would be completely supportable as an officially induced error if indeed the evidence revealed that he had received a gift of the moose from Mr. Jael. However, none of the evidence presented points to that being a fact.

103 The clear evidence, even from the Defendant Taylor, is that Mr. Jael had killed the moose and was refusing to retrieve it. He did not offer the moose specifically to the Defendant Taylor, or indeed anyone else. He had abandoned it. In fact, another person, Jody Stochoski, had already made an attempt to retrieve the moose with Doug Neal's son before the Defendants Taylor and Atkinson went to retrieve it.

104 That evidence, combined with the evidence that Mr. Jael had abandoned the moose rather than transferring any possessory interest in it to any particular person, counters the Defendant Taylor's evidence and submission that this court should find his recovery of the moose to be analogous to a gift of salmon from Mr. Jael and an act of good faith. This is not a reasonable conclusion to draw in the circumstances, and as such, the Defendant Taylor has not satisfied me on the subjective aspect of the test.

105 Examining that conclusion, and combining it with Defendant Taylor's decision to cancel his species licence in circumstances where he well knew that doing so was not either proper or legal, convinces me beyond a reasonable doubt that the Defendant Taylor did have in his possession a moose, while not authorized under licence or permit, and as such, I find him guilty of Count 1.

SUMMARY & CONCLUSION

106 I would quash Count 3 as against each of the Defendants, and if I am in error on that point, I would find each of them not guilty of Count 3.

107 I find each of the Defendants not guilty of Count 2.

108 I find the Defendant Atkinson not guilty, and the Defendant Taylor guilty of Count 1.

109 Given that this decision is being made available to counsel prior to the next court appearance date of August 21st, 2002, the court would expect that submissions concerning the appropriate sentence for the Defendant Taylor on Count 1 will be made on August 21, 2002.

M.J. BRECKNELL PROV. CT. J.

cp/i/nc/qlsng