

2017 BCPC 403

British Columbia Provincial Court

R. v. Baldonaza et al.

2017 CarswellBC 3656, 2017 BCPC 403, [2017] B.C.J. No. 2677, 144 W.C.B. (2d) 152

REGINA v. ELMER SAN PEDRO BALDONAZA, SAMUEL GEORGE, VALENTIN ALATIIT

J.P. MacCarthy Prov. J.

Heard: November 7, 2017; December 11, 2017

Judgment: December 11, 2017

Docket: Duncan 39921-1

Counsel: J. Blackman, for Crown

R. Alberto, for Defendant

Subject: Natural Resources; Public

Related Abridgment Classifications

Natural resources

I Fish and wildlife

I.5 Offences

I.5.o Sentencing

I.5.o.i Fines

Headnote

Natural resources --- Fish and wildlife — Offences — Sentencing — Fines

Individual named A approached retired RCMP officer and expressed interest in purchasing wild deer meat from officer — This inquiry resulted in undercover investigation, in which undercover operatives sold wild deer meat to A on two occasions — A provided undercover operatives with name and telephone number of accused, who was also interested in acquiring wild deer meat — Accused met operatives at his home on two occasions — On first occasion accused purchased meat from them — Shortly after leaving accused's home one of operatives called accused and told him that selling deer meat to him was illegal and he should not tell anyone — Accused acknowledged that he knew that it was illegal and he confirmed that he would not tell anyone about it — On second occasion accused told operatives that he did not require any meat but he contacted friend who was interested and he came over and purchased meat — Accused pleaded guilty to two counts of **trafficking** in wild deer meat — Accused was 47 years old and he had no criminal record — Accused fined \$2,500 for first offence and \$3,000 for second offence — Accused had to pay no less than half of total fine of \$5,500 within 18 months of date of this hearing and remaining balance within 36 months of same date.

Table of Authorities

Cases considered by J.P. MacCarthy Prov. J.:

R. v. Abbott (2005), 2005 BCSC 1523, 2005 CarswellBC 2537, 18 C.E.L.R. (3d) 133 (B.C. S.C.) — referred to

R. v. Kim (2016), 2016 BCPC 113, 2016 CarswellBC 1204 (B.C. Prov. Ct.) — considered

R. v. Lamouche (1998), 1998 CarswellAlta 1215, 236 A.R. 69, 1998 ABPC 101 (Alta. Prov. Ct.) — considered

R. v. Shamrock Chemicals Ltd. (1989), 1989 CarswellOnt 2798 (Ont. Prov. Offences Ct.) — considered

R. v. Shamrock Chemicals Ltd. (1989), 4 C.E.L.R. (N.S.) 315, 1989 CarswellOnt 209 (Ont. Dist. Ct.) — referred to

Statutes considered:

Criminal Code, R.S.C. 1985, c. C-46

s. 718 — considered

ss. 718-718.2 — referred to

s. 718.1 [en. R.S.C. 1985, c. 27 (1st Supp.), s. 156] — considered

s. 718.2 [en. 1995, c. 22, s. 6] — considered

Health Act, R.S.B.C. 1996, c. 179

Generally — referred to

Offence Act, R.S.B.C. 1996, c. 338

s. 88 — considered

Wildlife Act, R.S.B.C. 1996, c. 488

Generally — referred to

s. 1(1) "traffic" — considered

s. 2(1) — considered

s. 2(2) — considered

s. 2(3) — considered

s. 22 — considered

s. 84 — considered

s. 84(1) — considered

s. 84(1)(a) — considered

s. 84(2) — considered

s. 84(2)(a) — considered

s. 84(6.2) [en. 2003, c. 90, s. 29] — considered

s. 84(6.2)(a) [en. 2003, c. 90, s. 29] — considered

Regulations considered:

Health Act, R.S.B.C. 1996, c. 179

Sewage Disposal Regulation, B.C. Reg. 411/85

Generally — referred to

SENTENCING of accused on conviction for two counts of **trafficking** in wild deer meat.

J.P. MacCarthy Prov. J.:

INTRODUCTION

1 Elmer San Pedro Baldonaza is before the court. Mr. Baldonaza has entered guilty pleas on Counts 3 and 4 of Information 39921, which are allegations that some seven months apart he was involved in **trafficking** in wild meat contrary to s. 22 of the *Wildlife Act*. Mr. Baldonaza (hereinafter referred to as "the Offender") is before this court for sentencing. The remaining four counts relate to identical offences alleged to have been committed at different times by different individuals. Those counts name Valentin Alatiit and Samuel George. Neither are today before this court. The task of this court is to consider and impose a fit sentence upon the Offender for his two offences.

FACTS

Circumstances Surrounding the Offences

2 The Offender entered the two guilty pleas and Crown then outlined the circumstances of the two offences. No issue is taken with respect to those circumstances. I accept them as the facts and those facts are sufficient to support the two guilty pleas offered by Mr. Baldonaza. I will provide a very brief summary of the circumstances in order to assist in understanding the sentencing issues before the court.

3 The charges arise out of an undercover investigation by the Conservation Officer Service which commenced in the fall of 2014 in the Cowichan Valley when a retired RCMP officer of First Nations heritage was approached in a WalMart parking lot by an individual who, as it turned out, was Valentin Alatiit. He expressed interest in purchasing wild meat from the retired police officer. In the course of that approach, Mr. Alatiit provided a telephone number which was traced to him after the matter had been reported and referred to the Conservation Officer Service.

4 During the course of the undercover operation undertaken by the Conservation Officer Service between November 2014 and December 2014, undercover operatives sold wild meat to Mr. Alatiit on two separate occasions. During the course of the conversations with Mr. Alatiit, he provided the undercover operatives with the name and telephone number of a person identified as "Elmer," who turned out to be Mr. Baldonaza, and indicated that Mr. Baldonaza was a person who was also interested in acquiring wild deer meat.

Circumstances Relating to Count 3

5 The circumstances giving rise to the offence on Count 3 may be summarized in the following manner. The undercover operatives from the Conservation Officer Service contacted the Offender on December 3, 2014, by telephone, indicating that they were friends of Mr. Alatiit and that they had wild deer meat available to be sold and purchased. They arranged a meeting, at the Offender's request, at the Offender's residence in Esquimalt, British Columbia, on December 4, 2014. The purpose of the meeting was for the Offender to inspect the wild deer meat purportedly obtained from the Interior of British Columbia. When he was contacted by the undercover operatives, the Offender indicated that he might be interested in purchasing wild deer meat and, therefore, requested that the wild deer meat be brought to his residence on December 4, 2014. That occurred.

6 During the course of the telephone discussions, the sale price was discussed which the undercover operatives said was \$200 for a full Interior deer to which the Offender indicated he normally paid \$75 for a deer. The undercover operative indicated that he was prepared to sell the Offender half of a large Interior deer for \$100.

7 During the December 4, 2014, meeting between the Offender and the undercover operatives at the Offender's residence around 10:40 a.m., the Offender inspected the wild deer meat. Further negotiations about the price occurred, and the Offender accepted the offer to pay \$80 for a complete rear-half of a deer. The Offender paid cash in the amount of \$80 and took delivery of the rear half of the deer from the undercover operatives. The Offender also gave the undercover operatives a bottle of what was purported to be a strong Korean liquor.

8 Shortly after leaving the Offender's residence, one of the undercover operatives called the Offender and told the Offender that selling the deer meat to the Offender was illegal and that he should not tell anybody. The Offender acknowledged that he knew that it was illegal and confirmed that he would not tell anybody about it.

Circumstances Giving Rise to Count 4

9 In the spring of 2015, and in the late afternoon of May 26, the same undercover operatives arrived at the Offender's residence, but he was at work and not at home. They arranged with the Offender's spouse to attend the Offender's residence the next day on May 27, 2015, in order for the Offender to view the wild meat that the undercover operatives indicated was available for purchase.

10 On May 27, 2015, the undercover operatives re-attended to the Offender's residence, re-introduced themselves to the Offender, and indicated that they had wild meat for sale and asked if he was interested. The Offender indicated that he was not

interested because he still had wild meat from the previous time. The undercover operatives then asked him if he had any friends who might be interested in purchasing wild meat. The Offender indicated he might, and then proceeded to make a number of telephone calls to friends. He then indicated to the undercover operatives that he had a friend who was coming over to purchase some of the wild meat.

11 The Offender continued to make telephone calls to other friends about the available purchase of the wild meat. A short time later, a friend who identified himself to the undercover operatives as "Joseph" arrived, viewed and completed the purchase of some wild deer sausage and ground deer meat for a total price of \$60 cash. That amount was paid by Joseph to the undercover operatives.

12 Although the Offender did not purchase any wild meat on that occasion, the Offender did facilitate the illegal purchase of the wild meat by his friend, Joseph. Therefore, funds paid on the two occasions in question laid out in the charges total \$140. That amount was paid to the undercover operatives.

LEGISLATIVE FRAMEWORK

13 The two offences have been laid pursuant to the *Wildlife Act*, R.S.B.C. 1996, c. 488, and amendments thereto. Of importance are the following provisions of the *Wildlife Act*.

14 First of all, under s. 1(1) ("Definitions and interpretation") the term "traffic" means "to buy, sell, trade or distribute for gain or consideration or to offer to do so;" and thereafter, the following provisions are relevant:

Property in wildlife

2 (1) Ownership in all wildlife in British Columbia is vested in the government.

(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 *Animal Health Act* or as provided in subsection (3) of this section.

(3) A person who lawfully kills wildlife and complies with all applicable provisions of this *Act* and the regulations acquires the right of property in that wildlife.

...

Trafficking in wildlife

22 A person who traffics in live wildlife or wildlife meat, except as authorized by regulation or a permit, commits an offence.

...

Fines and penalties

84 (1) For the purpose of determining the fines and penalties to which a person is subject on conviction for an offence under this *Act*.

15 Subsection 84(1)(a) then provides further that ss. (2) applies to an offence under s. 22. Subsection (2) reads as follows:

(2) A person who commits an offence referred to in subsection (1)(a) is liable,

(a) on a first conviction, to a fine of not more than \$250,000 and not less than \$2,500 or to a term of imprisonment not exceeding 2 years, or both, and

(b) on each subsequent conviction for the same offence or another offence referred to in subsection (1)(a), to a fine of not more than \$500,000 and not less than \$5,000 or to a term of imprisonment not exceeding 3 years, or both.

16 What is also applicable under the provisions of the *Wildlife Act* is s. 84 headed, "Fines and penalties." Under s. 84(6.2), the following provision appears:

(6.2) If a thing, other than wildlife, has been seized in relation to an offence under this *Act* or the *Firearm Act*, the court may

(a) order the thing forfeited to the government, if the court is satisfied that the thing was used in the commission of the offence or possessed in contravention of this *Act*, the *Firearm Act* or their regulations . . .

CIRCUMSTANCES OF THE OFFENDER

17 Based on defence submissions, Mr. Baldonaza is 47 years of age. He was born in the Philippines and arrived in Canada in 1993. He is a Canadian citizen. He is married and is the father of two children, one aged 24, and the other aged 16. He works as a home support worker and has done so for a period of some 18 years. He is well regarded by his community.

18 Mr. Baldonaza has no criminal record and has only had a couple of traffic infractions. He is described in defence submissions as a person who makes contributions to his community and has been steadily and gainfully employed for a number of years. His annual income is in the range of between \$34,000 and \$35,000 per annum. His spouse also works in order to help support the family.

19 In defence submissions, it was indicated that the Offender is not a hunter. He met Mr. Alatiit as a friend of a friend and through that relationship he learned about wild meat and became curious about it. In defence submissions, the context for this offence was initially a response by the Offender to an invitation to acquire the wild meat when the undercover operatives first called him. That led to him completing the initial purchase and to meeting with the undercover operatives on the second occasion.

POSITION OF CROWN ON SENTENCING

20 Crown says that strong general and specific deterrence should be the applicable purposes of sentencing in this type of case and that such an approach is important in order to further the goals of stopping offending behaviour and in preventing a recurrence of this type of offence. Crown notes that pursuant to s. 84(1)(a) of the *Wildlife Act*, the minimum fine for an offence under s. 22 is \$2,500 for each of the two counts, as set out in s. 84(2)(a) of the *Wildlife Act*. Crown notes that fines under the *Wildlife Act* can be characterized as a "three-tiered pyramid" and that offences under s. 22, that is, **trafficking** in wildlife meat, fall within the upper and most serious tier of offences, and those provide for the mandatory minimum fines whereas the next two less serious tiers do not have mandatory minimum fine provisions.

21 Crown says that in this case, minimum fines are not appropriate and it seeks total global fines on both counts in the range of between \$6,000 and \$8,000 with substantial time to pay. Individual fines between \$3,000 to \$4,000 on each count are, therefore, sought. These are characterized by Crown as being in the bottom of the minimum range.

22 In this case, Crown does concede that the mere fact that the Offender has been prosecuted and the minimum fines in themselves will be substantial; this will be a sufficient form of specific deterrence for this Offender in this case. However, Crown does submit that **trafficking** is very hard to detect and, in this case, it is fortuitous that the Conservation Officer Service was able to obtain the lead that led to their undercover investigation. Because these types of offences are hard to detect, general deterrence in these types of cases must be given significant emphasis.

23 Crown is also seeking an ancillary order under s. 84(6.2) for forfeiture of the total amount paid for the wildlife meat of \$140.

CASE AUTHORITIES RELIED UPON BY CROWN

24 Crown has submitted four case authorities for consideration by the court. Those case authorities are as follows:

1. *R. v. Shamrock Chemicals Ltd.*, 1989 CarswellOnt 2798 (Ont. Prov. Offences Ct.); (1989), 4 C.E.L.R. (N.S.) 315 (Ont. Dist. Ct.) ("*Shamrock Chemicals*");
2. *R. v. Abbott*, 2005 BCSC 1523 (B.C. S.C.) ("*Abbott*");
3. *R. v. Kim*, 2016 BCPC 113 (B.C. Prov. Ct.) ("*Sarah Kim*"); and,
4. *R. v. Kim*, Unreported, May 3, 2016, Port Coquitlam 93858-1 (BCPC) ("*Yon Kim*").

25 The decision in *Shamrock Chemicals* has been quoted extensively in environmental and wildlife offence sentencing cases in British Columbia courts. Crown refers to *Abbott* as an example of where the British Columbia Supreme Court applied the reasoning contained in *Shamrock Chemicals* to an environmental case in British Columbia for offences under the *Sewage Disposal Regulations* and the *Health Act*.

26 *Sarah Kim* is a decision of the Honourable Judge T.S. Woods. This particular case apparently involves a nine count information outlining at least seven charges against Sarah Kim. Those offences included **trafficking** in bear parts as well as two counts of **trafficking** in deer meat. The defendant in that case is described as an acupuncturist, a traditional Chinese medicine herbalist and a traditional Chinese practitioner. The facts in *Sarah Kim* are significantly different than in the case before this court. However, the Crown is relying on the statement of law by the court in *Sarah Kim* as being applicable to the case before this court involving Mr. Baldonaza.

27 *Yon Kim* involves an individual who was co-accused with Sarah Kim. That case is referred to because of the different circumstances that surrounded the defendant in that case, and in contrast with those in *Sarah Kim*. *Yon Kim* is referred to this court on the basis that Judge Spence was required to consider whether or not fines that were being imposed against that offender at the minimum fine level should be subject to consideration under s. 88 of the *Offence Act*, which requires the court to consider the means and the ability of a defendant to pay a fine. Under that section, if the court is of the view that the defendant is unable to pay the fine amount, then the court may impose a lesser fine amount that the court considers appropriate.

28 Notwithstanding the fact that the defendant in *Yon Kim* was a sympathetic accused person and one who had been involved in the acquisition of bear parts in order to assist in treating her son's illness and not for profit, the court considered that even in those circumstances, an appropriate fine would be the minimum amount prescribed by the *Act* and imposed the fine of \$2,500 on each of the two counts before the court. The court did permit time to pay at the rate of \$50 per month.

29 In *Sarah Kim*, the court imposed fines above the mandatory minimum such that, on each of the two counts before the court involving **trafficking** in deer meat, there was an additional amount of \$700 above the mandatory minimum fines. Thus, the fine imposed on each count was \$3,200 for each of the two offences relating to **trafficking** in deer meat.

DEFENCE POSITION ON SENTENCING OF THE OFFENDER

30 Defence seeks imposition of the mandatory minimum fine of \$2,500 on each of the two counts resulting in a global fine of \$5,000. Defence is also seeking significant time to pay those fines. Defence notes that, in addition to any fines imposed, there will be a 15-percent victim fine surcharge which will be imposed in addition to the fine amounts.

31 The position advanced on behalf of the Offender relies on the fact that there were very early guilty pleas and the fact that the Offender sought to resolve matters with the guilty pleas and not to proceed to trial. Defence also submits that the Offender in this case now understands the seriousness of the offences. It is submitted that he was not as aware as he should have been previously when he committed the offences. That lack of full understanding is not proffered as an excuse, but simply as the context for the offences. The Offender in this case does acknowledge that he knew what he was doing was illegal.

32 It is further submitted that the Offender in this case sought to obtain the meat for his personal use and that of his family when he committed the offence by completing the purchase, that being the subject matter of Count 3. That purchase is characterized as "opportunistic" in nature and was not part of a well-planned or organized **trafficking** scheme. It is also submitted on behalf

of the Offender that he did not acquire or participate in the **trafficking** of the wildlife meat for personal financial gain or, in fact, did he gain anything at all other than the acquisition of the wildlife meat itself.

33 It is submitted on behalf of the Offender that deterrence and denunciation are important, but rehabilitation is also important and should not be entirely trumped by deterrence and denunciation. It is submitted on behalf of the Offender that, through his actions by facing these charges and entering the guilty pleas, he has then taken steps to rehabilitate himself. It is submitted that specific deterrence is not required for this particular Offender and that he has learned his lesson.

34 It is noted that the Offender has imparted what he has learned about the seriousness of these types of offences and has been transparent about his own charges and the seriousness of those charges to his friends and to his community. Thus, there has been a beneficial educational effect that has been personally delivered by the Offender following the laying of the charges against him. It is submitted that in this case, the Offender is less blameworthy than the accused in *Sarah Kim* and his blameworthiness is more akin to the accused in *Yon Kim*.

35 Defence does not oppose the ancillary forfeiture order sought by Crown.

CASE AUTHORITIES RELIED UPON BY THE OFFENDER

36 The cases that have been presented to the court by Crown are also relied upon by defence.

PURPOSES, OBJECTIVE, AND PRINCIPLES OF SENTENCING

37 The purposes and principles of sentencing that are set out in s. 718 to s. 718.2 of the *Criminal Code* are also applicable to the offences before this court. Those sections codify the purposes and principles and plainly state the intention and the rationale for imposing particular sentences. Section 718 of the *Criminal Code* outlines the fundamental purpose of sentencing in the following fashion:

The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

38 Section 718.1 directs that a sentence must be proportionate to the gravity of the offence and the degree of the offender's responsibility.

39 Section 718.2 under the heading of "Other sentencing principles," states, in part, that:

A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender . . .

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

AGGRAVATING AND MITIGATING FACTORS

40 In the course of submissions, reference has been made to aggravating and mitigating factors that counsel say are operative in the circumstances of this particular case. There is no significant disagreement with those aggravating and mitigating factors, although there is a greater emphasis placed on some of those factors than others by both Crown and by defence.

Aggravating Factors

41 I find that although not seeking profit, there is a higher degree of blameworthiness in this case apparent from the circumstances of Count 4 and specifically by way of the Offender's willingness to engage knowingly and without any apparent compunction in the serious offence of unlawfully **trafficking** wild deer meat by contacting friends and thereby assisting in creating a market for wild meat. Thus, he is contributing to the significant harm that it causes to the resource. That blameworthiness also flows from his own personal acquisition of the deer meat being the subject matter of Count 3.

Mitigating Factors

42 I consider the following to be mitigating factors in this case:

1. the early guilty pleas and an expressed intention to deal with the matter at the earliest opportunity by way of guilty pleas;
2. the apparent cooperation of the Offender throughout the investigation once he was charged with the offence;
3. the fact that the Offender has no criminal record or prior offences under the *Wildlife Act*, nor, as I understand it, any subsequent offences;
4. the fact that he is a contributing member of society who has been steadily and gainfully employed and has, as I understand it, a record of voluntary service to the community;
5. the fact that he is well regarded within the community;
6. his genuine expression of remorse for his offending behaviour;
7. the fact that in this particular set of circumstances, that the offence was more opportunistic in nature rather than being part of a planned and well-organized scheme, and that there was little in the way of any profit motive, if any, for the Offender in this case;
8. the willingness of the Offender to pay a fine; and
9. the steps that he has taken towards his own rehabilitation by sharing his experience with members of his community, thus bestowing an educational benefit upon both those individuals and to the community at large.

ANALYSIS

43 The law that is relevant to offences of this nature is clearly set out in the *Shamrock Chemicals* case, but also is carefully and amply explained by the Honourable Judge T.S. Woods in *Sarah Kim*. At paragraph 65 of *Sarah Kim*, the Honourable Judge Woods notes the application of *Shamrock Chemicals* and says in part as follows:

[65] . . . The sentencing judge in *Shamrock Chemicals* had before him a publication and His Honour cites from that publication and some of the passage I am going to read into the record now draws from that publication. The publication is titled "Sentencing in Environmental Cases: A Study Paper Produced by The Law Reform Commission of Canada". Judge Phillips says:

I have a publication entitled 'Sentencing in Environmental Cases: A Study Paper Produced by The Law Reform Commission of Canada' for reference in dealing with the principles of sentencing which are applicable in these cases. While this is a somewhat lengthy dissertation, nevertheless, it is important to have these principles on record to indicate that the court has considered the applicable principles of sentencing. In the introduction, it says:

The true measure of the effectiveness of prosecutions for violation of environmental legislation is not in laying charges or obtaining a conviction but in the result of the conviction. The ultimate goals are to stop the offending behaviour --

Dropping down the page a little:

- - and to prevent a recurrence of the offence. In addition to having the effect of specific deterrence, the prosecution should also deter others from engaging in similar behaviour.

Prosecutions also reinforce societal values. They provide a dramatic and visible demonstration of the government's will to protect certain values and an affirmation that the community continues to hold those values strongly. The sentences imposed play a vital role in achieving those goals.

Dropping down the page on page 4:

The provable harm arising from a violation may be harm not to any individual but to the public as a whole or even harm to the environment in which it is difficult to prove any human interest. The diffuseness of such harm makes it difficult to establish the gravity of the offence, a key consideration in sentencing.

Activities that contribute incrementally to the gradual deterioration of the environment, even when they cause no discernible direct harm to human interest, should also be treated seriously. Each actor must bear his share of the responsibility for any ultimate harm, if there is to be an effective deterrent to eventual destruction which will harm human interests.

In dealing with an examination of current principles in [fining and] sentencing, the report has this to say under the heading "Protection of the Public":

In environmental cases, the effect of the principle that the protection of society is paramount, is to underline the serious nature of the offence and prevent its trivialization. It supports the use of strong deterrence and punishments even in the absence of serious harm to individuals or the environment.

Dropping down the page:

There is a descending scale of immorality with extremely shocking behaviour and morally-neutral behaviour only at the extremes.

I pause here to say Sarah Kim knew that what she was doing for the great majority of the time she was doing it was contrary to law. We are in a situation where one can place Sarah Kim on that continuum referred to by Judge Phillips not at the extremes but nevertheless on the continuum. Carrying on further down the page:

In dealing with the subject of deterrence, it is said, "In the analogous areas of trade offences and tax evasion, deterrence is the major sentencing objective. The classic statement with respect to deterrence repeated in a number of subsequent cases is that the fine 'must not be a license fee, something capable of being regarded as a probable cost of or necessary risk in doing business in the manner in question. The basic rule in environmental cases --

I lay emphasis on this passage:

-- as in other cases is that, without being harsh, the fine must be substantial enough to warn others tha[t] the offence will not be tolerated. It must not appear to be a mere license fee for illegal activity."

44 At paragraph 66 of *Sarah Kim*, Judge Woods then goes on to deal with the decision of *R. v. Lamouche*, [1998] A.J. No. 1437 (Alta. Prov. Ct.), which was a Provincial Court sentencing decision relating to *Wildlife Act* offences committed by hunters in Alberta who were **trafficking** in wildlife. Judge Woods notes that *Lamouche* has also been frequently cited with approval by the Provincial Court of British Columbia. At paragraph 68 of *Sarah Kim*, Judge Woods notes as follows:

[68] In *Lamouche*, at page 2 this statement is found:

The task of imposing a fit sentence is the most difficult challenge a judge faces. In our system, with few exceptions, he or she cannot hide behind mandatory sentences imposed by statute. Instead, the judge is required to choose among the options provided by the lawmaker, all the while attempting to do justice to each of the competing interests involved. It is an obligation more easily expressed than fulfilled. While both the circumstances of the offender and of the offence itself must be weighed in choosing an appropriate sanction, judges do not always make it clear that the objectives of the legislation being enforced are an essential part of the framework within which that choice must be made. In that regard courts have long recognized that the provincial *Wildlife Act* and federal statutes like the *National Parks Act* [citation given], as one of their objectives, the management and ultimately the preservation of the wildlife resource. Mr. Justice McClung, for the Alberta Court of Appeal, articulated the importance of that task in *R. v. Mota* --

Mota is a case to which I had recourse a few minutes ago. The quotation from *Mota* in *Lamouche* is:

To survive in any abundance Canada's wildlife must be accorded the priority of a treasured national heritage - which it is. It must be protected and, within the resources of the law, defended.

Of course, not all wildlife offences are the same. That is evident from the fact that sections 92 and 93 assign five different maximum penalties for contraventions of the *Act*, depending on the type of offence involved. Nevertheless, **trafficking** in wildlife and hunting for that purpose pose one of the greatest threats to the management and protection of the wildlife resource. The lawmaker has made that clear by specifying that those offences carry the highest penalty permitted by the *Act* --

I pause to say that here, in this case, in this British Columbia case, the fines are the highest available under the *Wildlife Act*. Carrying on in *Lamouche*:

There are natural controls on those who hunt for food for themselves, even when they do so illegally. There is a limit to how much they can eat, how fast they can eat it and how much they can reasonably store. While there may be exceptions to the general rule, those simple realities limit how many animals will likely be taken by those types of illegal hunters. The **trafficker** is different. Since he or she is, in effect, hunting for sale to others, the take is limited only by the number of willing buyers and by his or her own greed. As is so amply demonstrated by these prosecutions, the goal is money, and usually quick money, not the future of the hunter's own food supply. In the result, the **trafficker** often shows little regard for the preservation of the resource he or she exploits.

45 At paragraph 70 of *Sarah Kim*, Judge Woods goes on to point out that the proper management of a wildlife resource is, in itself, a very difficult undertaking and, in that regard, relies upon the provisions found on page 3 of *Lamouche*. Judge Woods also agrees with the proposition put forward by Crown in this case before me that is also set forth in *Lamouche*, namely, that illegal hunting (and, in this case, the **trafficking** in wildlife and wild meat) is a very difficult offence to detect and, in many cases, to enforce the laws against that activity; such is the situation in the case before this court.

46 Judge Woods also points out that in *Lamouche* at page 5, it is clear that with individuals who are involved in **trafficking** in wildlife meat and in animal parts, that they are essentially providing the market for the illegal hunting of wildlife; Judge Woods accepts, and I also adopt, the statement put forward in *Lamouche* as follows:

Buyers should understand that they too risk their liberty by encouraging others to break the law by their purchases.

47 I, therefore, accept the statement of law set out in *Sarah Kim* as being applicable to the case before me involving Mr. Baldonaza.

48 Having considered both *R. v. Kim* cases, it is important for me to specifically consider the particular offence committed by the Offender in the case before me and, also, to deal with it on an individual basis. Sentencing is a unique process for each defendant. It is clear that there are applicable ranges of sentences that may be imposed in this case. *Sarah Kim* shows a range of fines which are certainly significantly above the mandatory minimum amount of \$2,500 for each of the offences committed.

49 In imposing the higher fines in *Sarah Kim*, Judge Woods was very cognizant of the profit motive and the degree of sophistication of the scheme undertaken by Sarah Kim in committing the offences. I also note that the purchases of deer meat in that case were but two of the total of seven offences charged against her, all under the *Wildlife Act*; quite significantly, all or at least a large portion of those offences were committed and conducted as part and parcel of her business enterprise that she was carrying on under the characterization of a traditional Chinese medicine herbalist and traditional Chinese medicine practitioner. Hence, the blameworthiness of Sarah Kim, in my view, is much greater than the blameworthiness of Mr. Baldonaza in the matter before me.

50 That said I am of the view, in keeping with the law as stated by Judge Woods in *Sarah Kim*, that the fine still must be significant in order to meet the goals and objectives of general deterrence and the protection of wildlife resources within the Province of British Columbia.

CONCLUSIONS

51 Having taken into account all of the factors and the law as set out above, I am of the view that on Count 3, the sentence to be imposed should be the mandatory minimum fine of \$2,500. I am also of the view on the same basis that the fine on Count 4, being the second offence, should be in the amount of \$3,000. Hence, the total global fine amount will be \$5,500.

52 In addition to that, there will be the mandatory application of the victim fine surcharge.

53 Given the financial circumstances of Mr. Baldonaza, I am of the view that he will require sufficient time to pay. Having done a rough calculation, if I were to give him 36 months to pay, that would entail him paying roughly \$152 per month. It is important that there be some structure placed upon the payment of the fine amounts. I am not going to order an application of strict monthly payment, but I am going to require that he pay no less than half of the total amount of the fines of \$5,500 within 18 months of today's date, and that the balance of the fine amounts must be paid inside of the full 36 months from today's date.

54 That concludes my reasons for sentencing.

55 MR. ALBERTO: Thank you, Your Honour.

56 THE CLERK: So that is to be paid within? Sorry I missed the -- 36?

57 THE COURT: Thirty-six -- 36 months --

58 THE CLERK: Thank you.

59 THE COURT: -- the remaining half balance paid within 36 months.

60 MR. BLACKMAN: Just a question of Madam Registrar, does Madam Registrar require me -- that the order under the *Wildlife Act* for the forfeiture --

61 THE CLERK: Mm-hmm.

62 MR. BLACKMAN: -- of that \$140. Okay, I will do that --

63 THE COURT: Yes, the --

64 MR. BLACKMAN: -- and have it, filed.

65 THE CLERK: And there is a forfeiture order that has been pronounced.

66 THE COURT: The forfeiture will go as requested by Crown with respect to the cash payments; so that it is clear, not only is the fine amount subject to the time to pay, but also the victim fine surcharge will also be subject to the schedule of the payment of those fine amounts. So it is the global fine amount plus the victim fine surcharges which will be paid half with inside of 18 months --

67 MR. ALBERTO: Half the total of that, okay.

68 THE COURT: -- and the remaining half with inside of 36 months of today's date.

69 THE CLERK: And the cash amount in the amount of \$140 --

70 MR. ALBERTO: A hundred and forty.

71 THE COURT: Correct.

72 THE CLERK: -- is to be seized or --

73 THE COURT: Forfeited.

74 THE CLERK: -- is to be forfeited -- to the Crown. Yes.

75 MR. BLACKMAN: Yes.

76 THE COURT: And Crown will prepare the form of the order.

Accused fined \$5,500.