

2007 BCPC 181

British Columbia Provincial Court

R. v. Scalplock

2007 CarswellBC 1309, 2007 BCPC 181, [2007] B.C.W.L.D. 4453

## **Regina v. Irvine Scalplock**

W. Young Prov. J.

Heard: May 2, 2007

Judgment: May 2, 2007

Docket: Chilliwack 52763

Counsel: J. Macaulay, for Crown

B. Juriloff (Agent), for Accused

Subject: Natural Resources; Public

### **Related Abridgment Classifications**

Natural resources

I Fish and wildlife

I.5 Offences

I.5.e Illegal sale of fish or wildlife

### **Headnote**

Natural resources --- Fish and wildlife — Offences — Illegal sale of fish or wildlife

### **Table of Authorities**

#### **Cases considered by *W. Young Prov. J.*:**

*R. v. General* (2007), 2007 CarswellBC 1049, 2007 BCPC 130 (B.C. Prov. Ct.) — considered

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

*R. v. Lamouche* (2000), 2000 ABQB 461, 2000 CarswellAlta 707, 267 A.R. 347, 86 Alta. L.R. (3d) 330 (Alta. Q.B.) — considered

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

*R. v. Walter* (2006), 2006 ABPC 135, 2006 CarswellAlta 572 (Alta. Prov. Ct.) — considered

*R. v. Walter* (2007), 2007 ABQB 9, 2007 CarswellAlta 13 (Alta. Q.B.) — considered

#### **Statutes considered:**

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

s. 84 — referred to

s. 84.1 [en. 1999, c. 24, s. 17] — considered

#### **Regulations considered:**

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

*Wildlife Act Commercial Activities Regulation*, B.C. Reg. 338/82

s. 2.09(1) — referred to

#### ***W. Young Prov. J.*:**

THE COURT: Irvine Scalplock has pleaded guilty to a charge that on or about the 16th day of April, 2006, at or near 44140 Luckakuck Way, in the City of Chilliwack, in the Province of British Columbia, he did unlawfully traffic in dead wildlife or a part thereof, to wit: Falconiformes (eagles, falcons, hawks, vultures), contrary to s. 2.09(1) of the Commercial Activities Regulation, B.C. Reg. 338/82 made pursuant to the *Wildlife Act*, R.S.B.C. 1996, c. 488 as amended.

2 The facts are that a Conservation Officer, Peter Busink, was introduced to a person who would sell the officer bald eagle parts. That was in January 2006.

3 Over the next several months, the officer and the other person formed a business relationship and on several occasions the person said that he would attend the Chilliwack Pow-Wow to traffic in eagle parts to possible buyers. This person said he would bring wings and tails to the Pow-Wow to be held in April 2006 in Chilliwack.

4 The undercover officer made an agreement that they would attend together and that this person would introduce the officer to others who wanted to purchase the feathers.

5 On April 13th, the officer and his contact attended the Pow-Wow and the contact person introduced the officer to a First Nations male from Campbell River. This person said he knew others who wanted to purchase an eagle each and asked the officer the price of an eagle. The officer said the price was \$250.00 each and this other person said that he would let people know.

6 Then on April 16th, 2006, the officer again attended the Chilliwack Pow-Wow and at 1:40 in the afternoon, this other individual asked the officer if he was interested in looking for people to whom to sell parts.

7 Through this contact, the undercover officer eventually came to meet the accused. A third person introduced the accused as a potential buyer of eagle parts. The accused was wearing a bustle of eagle feathers and holding a fan of eagle feathers.

8 All persons, including the accused and the undercover officer, walked to the undercover officer's vehicle in the parking lot.

9 The officer showed the accused several different bags of feathers, and the accused said he wanted immature bald eagle wings. The officer opened one bag and showed the accused bald eagle wings in good shape. The accused asked if he had immature bald eagle wings with longer feathers. The officer showed some to the accused. The accused looked at the first set and said he would buy the second set. He asked if the price was \$150.00 and the officer said, "Yes". The accused said he would take them but he would have to get the money from his wife.

10 At 1500 hours the officer again saw the accused, and there was further conversation.

11 At 4:11 in the afternoon, the officer received a call from the accused who said he could meet the officer anytime. When the accused went to his vehicle and met him there, the officer showed him the wings and reaffirmed that he wanted the wings and asked if he had a bag to put them in. The officer did and ultimately put the bag with the feathers into a duffel bag and handed the wings to the accused.

12 The accused stated he was interested in purchasing golden eagle feathers. The officer said he would get them; that they were not then available, and that he would ship them to the accused. The officer took down the accused's address in the Province of Alberta. The officer also obtained the licence plate number from the accused's vehicle.

13 The accused paid \$150.00 for the feathers that he purchased from the undercover officer.

14 The officer told the accused that he would call him when he had golden eagle feathers to sell.

15 The Crown seeks a penalty of \$5,000.00 to be divided as follows: \$1,000.00 as a general fine, and \$4,000.00 to be paid to the Habitat Conservation Trust Fund, pursuant to s. 84.1 of the *Wildlife Act*.

16 This is a joint submission by counsel. The accused is seeking six months in order to pay that penalty.

17 The Crown has drawn my attention to a number of decisions and they are the following: *R. v. Shamrock Chemicals Ltd.* [1989 CarswellOnt 2798 (Ont. Prov. Offences Ct.)], an unreported decision from Ontario, February 1989; *R. v. Lamouche* [1998 CarswellAlta 1215 (Alta. Prov. Ct.)], December 14th, 1998, unreported, a decision of Judge Ayotte of the Provincial Court in Alberta; *R. v. Lamouche*, 2000 ABQB 461 (Alta. Q.B.); *R. v. Wheatman*, August 6th, 2002 a decision of Judge Bayliff, Williams Lake File No. 24240, *R. v. Collins*, March 2007, an unreported decision of Judge Borowicz from Surrey, File No. 154700; *R. v. Walter*, [2006] A.J. No. 535 (Alta. Prov. Ct.); *R. v. Walter*, [2007] A.J. No. 12 (Alta. Q.B.) that being a decision of the Queen's Bench as a result of an appeal, and *R. v. General* [2007 CarswellBC 1049 (B.C. Prov. Ct.)], April 16th, 2007, unreported, a decision of Judge Hicks, Surrey Registry File No. 157510-2.

18 In *Shamrock Chemicals*, *supra*, the court held that both specific and general deterrence are important sentencing considerations. The prosecution should deter others from engaging in similar behaviour in these types of cases.

19 In *Lamouche*, *supra*, the Provincial Court referred to **trafficking** including selling, buying and bartering in wild game. So here, the accused purchased feathers. That does constitute **trafficking**. The court held the following in *Lamouche*, *supra*:

Given the serious threat they present to the wildlife resource and the temptation which inevitably results from a prospect of monetary gain with little risk to the offender, sentencing for **trafficking** offences must in my view emphasize before all else individual and general deterrence.

20 Here, it is the position of counsel that the accused has learned his lesson and indeed felt very remorseful shortly after the purchase.

21 It is agreed that the applicable sentencing provision here is general deterrence. In other words, the message must be sent to **traffickers** and prospective **traffickers** that the price will be high if they get caught.

22 In *Wheatman*, *supra* Judge Bayliff dealt with a case where the accused had shot a number of eagles which had been bothering the accused's cattle. He had not reported this shooting of eagles to the authorities. At para. 41 she referred to the need for general deterrence in this type of case. She agreed to the joint submission proposed in that case of a fine of \$10,000.00.

23 In *Collins*, *supra*, Judge Borowicz dealt with an individual who pleaded guilty to **trafficking** in dead wildlife by selling a bustle and dancing stick which had eagle parts. She imposed a fine of \$1,000.00 to be paid to the Habitat Conservation Trust Fund in addition to a fine of \$450.00.

24 In *Walters*, *supra*, the Alberta Provincial Court dealt with a case where an undercover operator purchased a hawk eagle, bald eagle, owl and golden eagle from the three accused. The accused were clearly involved in the selling of birds of prey as an illegal activity. The court found that entrapment did not apply and this is not in any event being argued in this case before me. Mr. Martin Walter was fined \$5,000.00 with respect to each of five counts. Mr. Edward Walter was fined \$5,000.00 on one count, and Mr. Stephen Walter was fined \$3,500.00 on each of four counts. The court considered the paramount sentencing principles to be denunciation and deterrence. The court chose to impose substantial monetary penalties to underscore the court's concern with respect to this sort of conduct.

25 Lastly, Judge Hicks in *R. v. General*, *supra*, recently imposed a global penalty of \$25,000.00 in fines. That offence arose during the same Pow-Wow in April 2006. However, the facts there were more aggravated than the facts in this case. Judge Hicks emphasized that both specific and general deterrence are the overwhelming matters of concern that a court should attend to in addressing the appropriate sentence in cases of this nature. He pointed out that illegal **trafficking** in natural animal parts is one of the means by which the exploitation of the natural environment occurs and places its future at risk.

26 The accused here is 53 years of age. He is divorced and the father of five children. He is employed as the Director of the Cultural Centre of the Siksika Nations in Alberta near Calgary. He is very involved with his culture. He is a leader and has received awards for his contributions for tribal and cultural affairs. He is a dancer and attends Pow-Wows in Canada and the United States.

27 He had just finished dancing at the Pow-Wow in Chilliwack when he was approached about buying the eagle feathers. He decided to buy them, but was remorseful shortly afterwards.

28 He indicated an intention shortly after the charges were laid that he would plead guilty. The accused wants to stress that this is an isolated incident where he engaged in bad judgment. He has not done anything of this nature before and as counsel has pointed out, he has lost a feeling of trust now in Pow-Wows as a result of this incident involving as it did an undercover officer approaching him.

29 It is agreed by counsel that specific deterrence does not apply in this case, and I agree with counsel's assessment. This is a case where general deterrence is the appropriate principle of sentencing. As well, a fine of course must be proportionate to the gravity of the offence and the degree of responsibility of the offender, and I of course have considered the authorities provided by Crown counsel.

30 I have no reason to depart from the joint submission of counsel. Having heard the facts, read the authorities, heard the submissions of counsel and having considered the appropriate principles of sentencing, there is a fine here, sir, of \$1,000.00. Firstly, that is pursuant to [s. 84 of the Wildlife Act](#). As well, there is a fine of \$4,000.00 to be paid to the Habitat Conservation Trust Fund, and that is pursuant to s. 84.1 of the Act. Mr. Scalplock, you will have until November 16th, 2007 to pay those fines at the Registry.

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THE COURT: Is the Crown asking for an order of forfeiture or not, or is that even applicable?

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MR. MACAULAY: Your Honour, I spoke with Mr. Rice, Mr. Scalplock's counsel in Calgary this morning with respect to that. I am not certain Your Honour can make that order because the items were not seized, but I did point out to Mr. Rice that in all likelihood those feathers are illegally possessed in Alberta and I think Mr. Rice and Mr. Scalplock will make arrangements to have those turned over to the authorities there, but I do not think Your Honour has the authority to make that order. While I am on my feet, Your Honour, the Crown directs a stay of proceedings with respect to count 2 on this matter. I spoke with Mr. Rice as well this morning about the victim surcharge and Madam Clerk has asked about that as well. I do not take any position on it, however, His Honour Judge Hicks asked the same question, and my answer to Your Honour will be the same as the one that I made to His Honour Judge Hicks. What courts have been considering with respect to this is the order to the Habitat Conservation Trust Fund in a sense is money back to the victims; it is money back to the environment, so many courts are not imposing a victim fine surcharge on these sorts of offences and —

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THE COURT: Yes and I see Judge Hicks declined to do that.

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MR. MACAULAY: — and I take no position and these penalties are significant in and of themselves. So I take no position and I advised Mr. Rice that I would raise that with Your Honour and advise that I would take no position.

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THE COURT: Yes, I tend to agree — I will follow my brother Judge Hicks in that. I decline also to impose the victim fine surcharge in this matter. The penalty indeed is a hefty penalty.

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MR. MACAULAY: Your Honour, I also advised Madam Clerk I will draw up the order. I will send a copy to my friend, Mr. Juriloff as agent for his approval as to form and it will then make its way to Your Honour and —

37

THE COURT: All right. So there is nothing that he needs to sign today then.

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MR. MACAULAY: Time to pay he will.

39

THE COURT: Yes, all right. Downstairs at the registry.

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MR. JURILOFF: All right.

41

MR. MACAULAY: And then once I receive it back I will send a copy to Mr. Juriloff for his records and I will send a copy to Mr. Rice for his records.

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THE COURT: All right.

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MR. MACAULAY: Thank you, Your Honour.

(REASONS FOR SENTENCE CONCLUDED)