

Most Negative Treatment: Check subsequent history and related treatments.

1998 ABPC 101
Alberta Provincial Court

R. v. Lamouche

1998 CarswellAlta 1215, 1998 ABPC 101, [1998] A.J. No. 1437, 236 A.R. 69, 40 W.C.B. (2d) 490

**Her Majesty The Queen and Kenneth Wilson Lamouche,
Shawn Lawrence Lamouche and Lawrence Francis Prince**

Ayotte Prov. J.

Judgment: December 14, 1998

Counsel: *Mr. Kevin Mott, Esq.*, for the Crown.

Kenneth Wilson Lamouche, Shawn Lawrence Lamouche and Lawrence Francis Prince, in person on their own behalf.

Subject: Public; Criminal

Related Abridgment Classifications

Natural resources

I Fish and wildlife

I.5 Offences

I.5.o Sentencing

I.5.o.iv Miscellaneous

Headnote

Fish and wildlife --- Practice and procedure — Sentencing — Miscellaneous penalties

Three defendants were convicted of 36 counts of **trafficking** in wildlife and related offences under **Wildlife Act** — Defendants were sentenced to five, nine, and 12 months' imprisonment, respectively — **Trafficking** grave threat to management and protection of wildlife resource — Wildlife offences were easy to commit and hard to detect — General and specific deterrence were most significant sentencing principles for these offences — Defendants **trafficked** for money and were experienced illegal hunters — Defendants displayed callous attitude to wildlife — Abuse of Treaty hunting rights to facilitate offences aggravating factor — Defendants were also directed to advise Wildlife Office of place of residence and report hunts for three years — **Wildlife Act**, S.A. 1984, c. W-9.1, s. 93.4.

Table of Authorities

Cases considered by Ayotte Prov. J.:

R. v. Mota (1991), 117 A.R. 42, 2 W.A.C. 42 (Alta. C.A.) — considered

Statutes considered:

National Parks Act, R.S.C. 1985, c. N-14

Generally — referred to

Wildlife Act, S.A. 1984, c. W-9.1

s. 36 — referred to

s. 92 — referred to

s. 93 — referred to

s. 93.4 [en. 1996, c. 33, s. 68] — referred to

s. 93.4(g) [en. 1996, c. 33, s. 68] — referred to

s. 93.4(i) [en. 1996, c. 33, s. 68] — referred to

s. 93.7 [en. 1996, c. 33, s. 68] — referred to

SENTENCING of defendants on 36 counts of **trafficking** in wildlife and related offences under Alberta *Wildlife Act*.

Ayotte Prov. J.:

1 On December 1, 1998 the defendants were convicted, after a lengthy trial, of 36 contraventions of the *Wildlife Act, S.A., 1984 c. W-9.1, as amended* ("the Act"). While the facts underlying those convictions are outlined in some detail in the written judgment delivered that day, suffice it to say here that all of them involved either **trafficking** in wildlife or offences related to the hunting of game for that purpose.

2 In his submissions to sentence for the Crown, Mr. Mott invites me to "send a message" to these three and to others tempted to engage in similar activities, citing the difficulty involved in apprehending offenders and the potentially disastrous effect of their actions on wildlife populations. For whatever reason, he chose not to specify with much precision the sort of message he thinks I should send, although he did provide me with a list of previously decided cases where, with one relatively minor exception, substantial fines were imposed. While it will become apparent that I share the concerns he expresses, if he intends to recommend that kind of a result in these cases, I find myself unable to agree that a substantial fine is the appropriate sentence for any of these defendants.

3 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, R.S.C. 1985, c. N-14* have, 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* (1991), 117 A.R. 42 (Alta. C.A.) at p. 43 when he said,

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.

I approach the question of sentence in this case against that background.

4 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, a maximum fine of \$100,000 or 6 months of imprisonment or both. To the obvious concern of the legislator might be added the common sense of the objective observer. 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. The sad truth is that those involved in **trafficking** usually seek the maximum profit with the minimum effort; they almost always would rather escape detection than accord the animals they kill a humane death. That also is evident from the facts of these cases. In practical terms the effect of that approach to the killing of wild game is potentially devastating to the wildlife resource, as Mr. Mott suggested. It leads to the abandonment

and waste of wounded game. It can lead to the slaughter not only of mature adults, but of the unborn they carry. Since the **trafficker** by definition tries to avoid apprehension, it also inevitably affects the proper management of the wildlife resource because the number, gender and species of animals taken in any one year is made more difficult to determine. That problem was explained by some of the witnesses called during the trial of these offences. The **trafficker** then presents a special obstacle to the protection of the wildlife resource.

5 Those obstacles are significant even without the **trafficking** problem. As has been pointed out elsewhere, wildlife offences are easy to commit and hard to detect. It is virtually impossible to adequately police the large geographical areas open to the hunter. The illegal hunter often operates in sparsely populated areas at a distance from main highways. He or she usually has no qualms about hunting under cover of darkness. Perhaps more than in any other area of law enforcement, wildlife officers depend on tips from concerned citizens to extend their reach further than would otherwise be possible. Where the chance of discovery is small, temptation increases. That is why general deterrence, usually expressed by high fines even for first offenders, plays such a significant role in sentencing for wildlife offences.

6 The **trafficker** has advantages even beyond those enjoyed by other illegal hunters. **Trafficking** is not complete until the offender "sells, buys, barter, solicits or trades" wild game or offers to do so. The offence then may be committed almost anywhere: on the telephone, in a gravel pit off the main highway at 2:30 in the morning, at midnight behind the Gainford Hotel or on a May afternoon in an alley behind a private home in Edmonton, to list some of the examples revealed by the evidence in this case. Their resources already stretched to the limit by the vast areas they have to patrol, it is clear that Fish and Wildlife Officers have virtually no chance of enforcing the laws against **trafficking** by traditional methods. They must depend on the unlikely intervention of informers or on undercover operations like the one which led to the charges in this case. Even then, the number of offenders actually caught will be relatively small considering the expense and effort involved in mounting such operations.

7 Given the serious threat they present to the wildlife resource and the temptation which inevitably results from the 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. The message which should be sent to **traffickers** and prospective **traffickers** alike is that the price will be very high indeed in the event they are caught. And I make it clear that I am not talking only about money when I use the word "price". There may be cases where high monetary penalties are appropriate, but courts should neither forget nor ignore the other resources they are given by the legislation. They were provided for a reason. Where **trafficking** is concerned, I have concluded that the most effective message that can be sent to those who are inclined to engage in that activity is one which makes it clear that the prospective **trafficker** gives in to temptation at the very real risk of his or her own liberty. Fines are sometimes no more than a temporary inconvenience. Even high ones may be paid over time, sometimes, given the availability of fine option, with little real effect on one's daily life. In the worst cases they may be paid by continuing, more carefully, the same activity which attracted the fine in the first place. Gaol, on the other hand, sends a much more direct and in my view a much clearer message.

8 That is why I have concluded that offences related to **trafficking** in wildlife should generally attract a term of imprisonment. In saying that, I do not suggest that every **trafficker** must automatically go to gaol. There may be circumstances, either surrounding the offence itself or peculiar to the individual offender, which would lead a court to conclude that some other sanction is more appropriate. I do suggest, however, that the special need for deterrence, both individual and general, in these cases should cause a court to resort first to the imprisonment option unless there are very good reasons to invoke some other sanction.

9 Before I consider the appropriate dispositions in the present cases, I want to make it clear that I believe the approach I suggest should apply to buyers as well as sellers. While I am dealing with suppliers here, buyers are **traffickers** too. Without markets for their kill, hunters have little incentive to engage in **trafficking** activities. Buyers should understand that they too risk their liberty by encouraging others to break the law by their purchases.

10 For the reasons which follow, then, I have concluded that each of these defendants should serve a term of imprisonment as part of the sentence I impose. In doing so I return again to some of the comments made by Mr. Justice McClung at page 43 of *Mota* (supra) because they are, unwittingly, most appropriate to these defendants and to the facts of these cases:

....Apart from profit considerations he shows little discrimination in what he hunts, when he hunts and where he hunts....

And later:

....When the illegal and repetitive killing of wildlife is detected it must be exposed and exemplified. Where it is done for profit, no effective answer is to be found in admonition or remonstrance but only in condign sentencing. So we affirm these sentences.

The sentences in that case included both a substantial fine and imprisonment.

11 In determining the sanctions to be imposed on these three defendants, I make it clear that I have considered the things they told me at the sentence hearing. That was essentially that they do not traffic in wildlife regularly or for a living, that they were encouraged by the alcohol provided to them to engage in these activities and that they will never traffic again. Shawn Lamouche told me that he has alcohol and drug problems which he is now dealing with. Lawrence Prince reminded me that he has a wife and two children. They all, in effect, asked for leniency.

12 However, those statements must be contrasted with what they did and said when they weren't in a courtroom facing sentence, when they didn't know the person to whom they were speaking was in fact an undercover operative, one of whose jobs was to remember and record both their statements and their actions. Those statements and actions, made and done voluntarily and without pressure, reveal the real people behind the image they tried to present to the court. They show a long experience in this sort of activity, a knowledge of how the "fish cops", as they liked to call wildlife officers, operated and the restrictions by which they were bound. They portray illegal hunters knowledgeable enough to plan cover stories in case they were interrupted. In the case of Kenneth Lamouche, they show a man prepared to provide his customer with his own Treaty number and the address of another Treaty person in Edmonton to back up the cover story he had manufactured. In Kenneth's own words, "If you follow my directions, you will never get caught." That statement bespeaks a person secure in his own methods, a man confident in his own experience. I might add that while alcohol was present during the commission of some of these offences, it was not during others. Furthermore, there is no cogent evidence that its use affected the judgment of the defendants or was the primary reason for their activities. As I indicated in convicting them, the reason was money, pure and simple. All three defendants displayed a reckless, indeed a callous, attitude toward the wildlife they were hunting. Far from being enticed, they were willing, indeed eager, participants in all that occurred. The videotape of Kenneth Lamouche selling to Matt in a back alley in Edmonton shows, not a man enslaved by alcohol, but a calm, careful businessman intent on profit.

13 I find little then in the evidence or in the men themselves to suggest leniency in this case. There is nothing to support a sentence other than the imprisonment which, for the reasons I have already stated, is appropriate for **trafficking** related offences. In fixing the length of the sentence to be imposed on each, I have considered the cumulative effective of the terms imposed. Where I have opted for consecutive sentences, that is to emphasize the distinct events involved, but always with the global effect in mind.

Lawrence Prince

14 Lawrence Prince was convicted of a total of 10 offences, one committed jointly with Shawn Lamouche, the others as the sole defendant. They arise from four separate hunting trips during the period October, 1996 to March, 1997.

15 On October 29th, 1996 Prince and Lamouche went hunting with "Matt", the undercover operative, to try to kill moose or elk for him at an agreed upon price of \$200 for moose and \$250 for elk (Count #2). Although Prince did discharge his rifle once at a deer, the hunt was ultimately unsuccessful. He used a spotlight during this hunt, an offence for which he was not charged, and also transported a loaded firearm in the vehicle, one for which he *was* charged (Count #25).

16 While they were looking for animals to kill, he and Shawn arranged a cover story with Matt which was intended to use their Treaty status to shield the white man from liability and to obscure the real reason for the hunt. For reasons I will detail more fully when dealing with Kenneth Lamouche, I find the use of Treaty rights to facilitate the commission of **trafficking**

offences an aggravating circumstance. In the result I impose a sentence of one month's imprisonment for hunting for the purpose of **trafficking** (Count #2) and 14 days concurrent for the loaded firearm (Count #25).

17 Lawrence took Matt hunting again on the evening of February 13th and again the next morning. He offered to sell what was killed at "\$175 per animal, moose or elk" (Count #26). During these trips he once again carried a loaded firearm on the seat beside him (Count #28) and discharged that firearm from the vehicle three times (Count #29). Both hunts were unsuccessful, but before Matt left, Prince said he would be hunting again in the next few days and if successful would call Matt. He suggested that they could meet at Nojack to make the exchange (Count #27). For this series of events I impose a sentence of one month consecutive for hunting for the purpose of **trafficking** (Count #26) and 14 days concurrent for each of the other three (#27-29).

18 The last, and most serious, incident involving Lawrence Prince concerned a hunt with Matt on the Brule Road on March 16th, 1997. The price for moose or elk was still \$175 to which was added \$50 for deer (Count #30). During that hunt he discharged his firearm from the vehicle numerous times (Count #33), once through the driver's window with Matt still in the driver's seat, to the latter's obvious concern (Count #32). Throughout the hunt he refused to stop and look for animals he may have wounded. A deer which had turned back onto the road was shot and dragged wounded, but alive, to the back of the vehicle, despite Matt's suggestion that its throat be cut to kill it. Because there was an oncoming car, the animal was thrown still kicking into the pick-up. After the other vehicle passed, they drove on without killing it despite a further suggestion by Matt to cut its throat. It eventually died on its own. Lawrence received \$50 from Matt for that deer (Count #31). For this series of events I impose a sentence of three months consecutive for **trafficking** (Count #31), one month concurrent for hunting for the purpose of **trafficking** (Count #30) and 14 days concurrent on each of the remaining two counts (#32 & 33).

19 So there might be no mistake, the total sentence imposed on Mr. Prince is five months of imprisonment.

Shawn Lamouche

20 Shawn Lamouche was convicted of 16 contraventions of the *Wildlife Act*. In addition to the October 29th hunt with Lawrence Prince, there were three offences committed jointly with Kenneth Wilson Lamouche. He was convicted of the rest as a sole defendant, although he was originally charged jointly with others on some of them.

21 The October 29th hunt with Matt and Lawrence Prince was preceded by a telephone call from Shawn to Matt on October 25th during which he offered to sell elk for \$300. Matt wouldn't agree to that price and they decided to talk again the next day. During that second conversation they agreed on a price of \$250 if Matt supplied his vehicle for the hunt (Count #18). The earlier described hunt with Prince took place the following day (Count #2). Although this series of events spawned two charges, I am prepared to treat it as one rather drawn out transaction. Accordingly there will be a sentence of one month's imprisonment on Count #2 and one month concurrent on Count #18.

22 After they had taken Lawrence Prince home on the evening of October 29th because he was tired, Shawn and Matt went out again after midnight and hunted unsuccessfully for two more hours. They also went out the next morning and again were unsuccessful (Count #19). During both hunts Shawn had a loaded firearm in the vehicle (Count #20) and discharged it once during the morning hunt though, on the evidence, not from the vehicle. He also made it clear in conversation with Matt that he was aware of the serious consequences of selling wild game but allowed that "the risk was worth it" because the money was good. For these offences there will be a sentence of one month consecutive for hunting for the purpose of **trafficking** (Count #19) and 14 days concurrent for the loaded firearm in the vehicle (Count #20).

23 On December 30th, 1996 Shawn phoned Matt offering meat for sale. At his urging, Matt eventually wired him \$60 as an advance "on his cut" (Count #21). The meat never arrived. Instead Matt got a call from Shawn in Edmonton advising that he was in the hospital there as the result of a minor accident. Eventually a hunt was arranged for January 2nd in the Drayton Valley area. Matt supplied the truck, and at the request of Harley Lamouche, the other participant, a case of beer. During that night and the next day they cruised the rural areas around Drayton Valley hunting on occupied land without the consent of at least five owner/occupiers (Count #8), outside the open season (Count #5), with a spotlight (Count #7) and after sunset (Count #6). I note here that even status Treaty people are subject to the provisions of the *Wildlife Act* when they hunt on occupied land.

Although they were ultimately unsuccessful, they were clearly hunting for the purpose of selling the game they killed to Matt (Count #4). During these hunts, they were forced to resort to a white accomplice, Sean Duffault, to provide a spotlight and eventually decided to spend the night at his home. During that stay the group discussed the use of native people "to cover kills". Duffault himself joined them briefly the next day in their hunting activities and of course during that time they were parties to the offences he was committing, some of which are also covered in the aforementioned counts. The hunt having been unsuccessful, Shawn and Harley promised Matt "a free one" on his next purchase to cover the cost of this hunt. Although one case of beer was purchased before they started out, there is no suggestion in the evidence that alcohol played a significant role in their activities.

24 Again I am prepared to treat the events of December 30th to January 3rd as one extended transaction. I impose a sentence of 2 months consecutive for hunting for the purpose of **trafficking** (Count #4) and one month concurrent on each of the others (Counts #5-8 and #21).

25 Between February 7 and 9, 1997 Matt received calls from Shawn Lamouche offering to sell meat. There was some negotiation over price and when Matt asked whether the animals were elk or moose, the response was "Either one. It's all money to me." (Count #22). This negotiation did not result in an actual sale as Shawn did not call back as promised. For that reason and considering the totality principle, I impose a sentence of one month's imprisonment concurrent.

26 On the morning of March 18th, Matt went hunting with Kenneth Wilson Lamouche. Late in the day they were joined by Shawn Lamouche. There followed an extended hunt during which Kenneth and Shawn tried unsuccessfully to bag an animal for Matt (Count #9). Kenneth, who had been drinking beer and sharing a marijuana cigarette with Shawn, became tired and turned the main responsibility over to Shawn while he himself went to sleep. Over the next few hours Shawn discharged his firearm numerous times from the vehicle (Count #23), once in the direction of another vehicle travelling 1 or 200 yards ahead of them (Count #24). During that hunt he killed two deer and one elk which were recovered. He sold those animals to Matt for \$220 (Count #11). There were other animals hit during this spree but Shawn showed a reluctance to search for deer he had apparently wounded. On two occasions Matt himself marked the spot on the highway so they could return to look for them. Later, they did follow the trail of one deer and found it wounded, but still alive. Kenneth Lamouche, who was awake by now and helping them, insisted that they leave the animal and so they did. When wildlife officers returned later, having been provided with a rough map by Matt, they found parts of the elk which had been killed, including a head and a foetus, and the remains of a mule deer and a white-tailed deer. The next morning, as he and Shawn were cleaning the animals which had been taken, Matt offered to drive Shawn back to look for the others. He refused (Count #10). At the time he asked Shawn if he needed the meat. The response was, "No, if I do, I'll just kill more."

27 For this series of offences I impose a sentence of three months consecutive for **trafficking** in wildlife (Count #11) and one month concurrent on each of the remaining counts (Counts #9, 10, 23 and 24).

28 On April 10, 1997 Matt received a telephone call from Shawn Lamouche offering to sell him wild game. Negotiations between them culminated in the sale of an elk for \$250 (Count #1). The exchange took place at around 2:30 A.M. in a gravel pit near Entwistle, Alberta. Others were involved with Shawn, but it was Shawn who made the contact and negotiated the deal. For this offence I impose a sentence of three months consecutive.

29 Again for the sake of clarity, the total term imposed on Shawn Lamouche is nine months of imprisonment.

Kenneth Wilson Lamouche

30 Kenneth Wilson Lamouche was convicted of 12 contraventions of **the Act**, jointly with Shawn Lamouche on three of the counts arising from the March hunt, singly on eight others and once as a co-accused with a defendant not before the court. He is, after a fashion, the most sophisticated of the three defendants. For example, one of the recurring themes in his dealings with Matt is the ease with which Treaty rights might be used to frustrate "the fish cops" and, as will become apparent shortly, his willingness to go beyond talking about the rights and actually put plans in place to exploit them. He made several admissions to Matt that he knew his **trafficking** activities were illegal. "It is even against the law for Indians to sell fish or game. I can't even give fish away to white people." is an excerpt from just one of those conversations. That he was aware of the importance

of being careful is reflected in one of the sly jokes he tried to make when he first met Matt to talk about hunting: "I don't charge; I get gifts." It became apparent, as indicated in the judgment convicting him, that he expected "gifts" of \$100 per moose or elk plus beer and tobacco and the use of Matt's truck.

31 Shortly after Matt and Lawrence Prince had arrived home from their March 18th hunt, they received a call from Kenneth Lamouche inquiring about their success. Then he learned that only a deer had been taken, he invited Matt and Shawn Lamouche, who was there also, over to his house to discuss another hunt that morning. After the aforementioned "gift" had been agreed upon, they went to sleep. During those discussions, Kenneth first brought up his activities killing trophy big horn sheep at a nearby mine site, of which more later. He also warned of the dangers of hunting for **trafficking** purposes, noting that it was illegal "even for me, but it's good money". While Matt and Shawn did bring a 6 pack of beer with them, there is nothing in the evidence to suggest that Kenneth was intoxicated or incapable of understanding what it was he was saying.

32 Kenneth and Matt headed out together at 6:30 the next morning. By late morning they had arrived at the Hanlon Gas Plant near Robb, Alberta, the hunt to this point having been unsuccessful. Throughout there was a loaded firearm in the vehicle (Count #40). During their travels, Kenneth outlined a cover story whereby they would tell anyone who stopped them that Ken's truck had broken down and that he had hired Matt to drive him around. Ken noted that "the fish cops can't do anything. I'm treaty. The fish cops can't do anything as long as I don't sell or give to a white man." He also discussed again the killing of a trophy ram and asked Matt if he could arrange the sale of one to a wealthy American through his boss. Matt was noncommittal.

33 At the gas plant, they saw a mule deer which Ken shot at and wounded. He began to follow the blood trail when they were interrupted by a grader operator. There followed a confrontation during which the operator, Ken Austin, asked Kenneth to produce his Treaty card and the latter refused, hurling both invective and threats at Austin, who had tried to block their escape with his grader. They eventually got around him and drove off. As they were leaving, Matt inquired about the deer Ken had shot. The jovial response was, "I'll pick it up when the snow melts." When Matt observed that the deer would be nothing but bones by then, Kenneth just laughed. Austin phoned in a complaint about the incident and the dead mule deer was discovered later that day (Counts #38-39). It should be noted that while a case of beer was purchased during this hunt, that occurred in Edson after this incident had concluded.

34 For this series of offences I impose two months of imprisonment for hunting for the purposes of **trafficking** (Count #38), one month concurrent for abandoning the meat (Count #39) and 14 days concurrent for the loaded firearm (Count #40). In arriving at those sentences I note that Lamouche was a Treaty Indian and could legally have retrieved the meat despite Austin's intervention. I find that he did not do so to avoid any questions about whether he was in fact just hunting for food.

35 As explained above, the two returned eventually that afternoon to Hinton to pick up Shawn Lamouche and continue the hunt which resulted in the charges representing Counts #9 and #10. I note here that when Kenneth Lamouche turned over the rifle to Shawn so that he could have a sleep, his parting words, as recorded by the undercover officer, were, "Shoot everything you can until there is nothing standing. We don't want Matt to go home empty-handed." Even though his tongue was no doubt loosened by the beer he had consumed and the marijuana cigarette he had shared with Shawn, those words say much about the man. I note as well that the abandonment of the still live deer by the Brule Road was primarily at Kenneth's urging. In the result I impose a sentence of two months consecutive on Count #9 (hunting for the purposes of **trafficking**) and one month concurrent for the abandonment (Count #10).

36 The next day before Shawn and Matt left to clean the animals Shawn had killed the night before, Kenneth offered to bring Matt some moose at a later time with the words, "You'll have to pay *me* next time." (Count #42). He also warned Matt to be careful on the way home and gave him a cover story to use if he was stopped. That was to tell the wildlife officer that he was transporting the meat for Kenneth to another Treaty person in Edmonton, and he provided the name and address of the person to use. It is clear that throughout these events he was a party to Shawn's **trafficking** (Count #11). I impose a sentence of one month imprisonment consecutive on Count #42 and one month concurrent on Count #11..

37 As indicated in the reasons for judgment convicting him, Kenneth and Matt had a number of discussions between May 8th and 14th, 1997 during which Kenneth actively solicited the arrangement by Matt of a deal to sell a trophy ram. The seriousness

of this offer is reflected in the extensive discussions about price, to be in the thousands of dollars, how it would be split between the two, how much notice would be required and how it was important to keep Lamouche's name out of the transaction. Those discussions show Lamouche's understanding of how serious an offence he was proposing to commit and an attempt to keep his exposure to risk to a minimum. They, together with the earlier discussions in March about sheep, constitute the facts supporting the conviction on Count #37. For that offence I impose a sentence of one month consecutive.

38 During the discussions about the sale of the sheep at Kenneth's house on May 14th, he also offered to supply moose from time to time and negotiated prices if the meat were delivered or not and if it were sold piecemeal "cut and wrapped" (Count #43). Offering to sell is **trafficking**; in this case I have no doubt the offer was serious. That is borne out by both prior and subsequent events. There will be a sentence of one month concurrent on Count #43.

39 True to his offer of May 14th, Kenneth contacted Matt and arranged the sale of an elk behind the Gainford Hotel late on the night of May 21st. He received \$145 for that animal (Count #12). He provided Matt with the same cover story he had suggested in March, giving it more credibility by giving Matt his Treaty number. That is when he told the undercover officer, "If you follow my directions, you will never get caught." Kenneth also received an advance that night on a delivery of more meat in a few days. On Count #12 I impose imprisonment for three months consecutive.

40 Kenneth made good on his advance by delivering more elk to Matt on May 25th. That transaction occurred in an alley behind a private residence and was videotaped by Officer Peters. Matt paid \$100 for the meat (Count #15) and gave Kenneth a \$20 advance on the next sale when Kenneth offered to provide "another one" the following week. (Count #44). For these offences I impose a sentence of three months consecutive for the meat actually sold and one month concurrent for the offer to provide more.

41 Count #45 represents an offer to provide elk meat on June 25th. It was made in the context of a sale of fish and was declined by Matt. Considering the totality of the sentences imposed, there will be a sentence of 14 days concurrent for that offence.

42 The total term of imprisonment for Kenneth Lamouche, then, is twelve months. In imposing a sentence of that length I have considered it aggravating that Kenneth Lamouche, if not the owner, was certainly the custodian and provider of the rifle used by all three defendants in the commission of these offences and also that, of the three, he was the least in need of money. As he took some pains to point out, both during the trial and at the sentence hearing, he has a steady, well-paying job. In saying that, I do not mean to suggest that the need for money can ever be an excuse for offences like these, but only that his motives are shown to be rooted in simple, unrestrained greed.

43 Finally, I make it clear that I consider the use of native Treaty rights to facilitate the commission of offences like these an extremely aggravating factor, one which played a part in the activities of all of these defendants, especially those of Kenneth Lamouche. One of the few advantages wildlife officers have in their enforcement efforts is the fact that most illegal hunters must use our highways to transport their kill. It is then that they are most vulnerable to wildlife check stops and similar enforcement methods. But the production of a Treaty card is, in most cases, an absolute answer to such inquiries, as was pointed out by all three defendants to Matt. When used improperly, Treaty rights have a major potential to frustrate efforts to protect the wildlife resource. When they are shown to have been used to facilitate the commission of wildlife offences, courts should, in my view, consider that a significant aggravating factor.

44 In saying that I do not disparage Treaty rights in the least. They are an important, constitutionally protected, obligation assumed by our society long ago. However, when they are prostituted to satisfy the avarice of unscrupulous defendants like these, that fact should be duly recognized. Not only does that kind of activity jeopardise the very resource which is meant, in part, to provide food for native people, it often, and unfairly, brings into disrepute in the minds of the public, not only the offenders themselves, but also the vast majority of native people who use the Treaty right to hunt for food lawfully and for the precise purpose for which it was intended.

45 In sentencing, courts should use all of the appropriate resources provided by the law to protect that national heritage of which Mr. Justice McClung spoke in *Mota*. One of those resources is the right to order the forfeiture of certain seized items.

I have no hesitation in this case in ordering the forfeiture to the Crown of the rifle used in the commission of many of these offences and put into evidence in this trial as exhibit #12.

46 That does not end the matter. In addition to the other resources provided by the Act, section 93.4 permits the court to require an offender to comply with certain directions. While the order foreseen by that section is not exactly a probation order, it shares many characteristics with that well-known sentencing option. It would appear that the section is rarely used, but since I intend to use it in this case I set it out here in its entirety.

93.4 Where a person is convicted of an offence against this Act, the Court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order against the person containing one or more of the following directions, which may contain such substance or conditions as the court considers appropriate:

- (a) to refrain from doing anything that may result in the continuation or repetition of the offence;
- (b) to take action to remedy any harm to any animal or endangered organism or its habitat that resulted, or to avoid any harm that may result, from the act or omission constituting the offence;
- (c) to publish the facts relating to that act or omission;
- (d) to pay money as compensation for the whole or part of the cost of any remedial or preventative action taken by or on behalf of the Minister as a result of that act or omission;
- (e) to perform community service;
- (f) to pay money for the purpose of promoting the proper management and control or conservation and protection of wildlife or endangered species, or both, or their habitats;
- (g) to submit to the Minister, on application to the court by the Minister within 3 years after the date of the conviction, information respecting the activities of the person in relation to matters within the scope of this Act;
- (h) to post a bond or pay money into court for the purpose of ensuring compliance with any direction under this section;
- (i) to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing his repeating the offence or committing other offences against this Act.

Section 93.7 makes it an offence to contravene a direction made under s. 93.4, one carrying the same maximum penalty as the original offence.

47 Remembering the problems activities like these present to the adequate management of the wildlife resource, I order, pursuant to s.93.4 (g) and (i), that each of these defendants comply with the following directions:

1. Within two weeks of the date of their release from the terms of imprisonment imposed today, to advise the Fish and Wildlife Office nearest their place of residence of their address and thereafter for three years to advise that office in advance of any change in that address;
2. For the three years following the release date referred to in direction 1, to report in writing to that office every successful hunt for wildlife in which they engage. The report is to include a description of the area in which the hunt took place, the names of the persons who participated in the hunt and the number, species and gender of animals killed by their party;
3. Upon the request of a Fish and Wildlife Officer to provide proof of the information contained in the report provided pursuant to direction 2.

48 In making the foregoing order, I recognize that the defendants' Treaty right to hunt will not be affected in any way by these convictions. This order does not, nor is it intended to, restrict that right. They may still hunt for food for themselves and

their families in accordance with their Treaty privileges. They are only required to provide information that will enable the proper management of the wildlife resource to be better accomplished and to assist the authorities in ensuring that their illegal activities do not resume.

49 In conclusion I direct that a certified copy of the order, once it is prepared and signed by the court, be served by the Crown on each of these defendants and proof of that service filed with the Clerk of the Provincial Court at Hinton, Alberta to be attached to the information which grounds this prosecution.

Defendants sentenced to five, nine, and 12 months' imprisonment respectively.