

2005 ABPC 346
Alberta Provincial Court

R. v. Moosemay

2005 CarswellAlta 1837, 2005 ABPC 346, [2005] A.J. No. 1699, 69 W.C.B. (2d) 329

**Her Majesty the Queen and Beatrice Moosemay, Errol
Maurice Bear aka Errol Maurice Moosemay, Gloria Chartrand**

Fradsham Prov. J.

Heard:

Judgment: November 29, 2005

Docket: Calgary 990676651P101005, 01006, 01009, 01010, 01011, 01013, 01014, 07017, 01018, 01019,
01020, 01024, 01028, 01031, 01032, 01033, 01035, 01037, 01039, 01040, 01048, 01049, 03005, 03006,
03009, 03010, 03011, 03043, 03045, 03048, 03049, 03053, 03054, 03057, 03058, 05048, 05049, 05053, 05054

Counsel: D. Elliott for Crown

J. Lutz, A. Sanders for Defence

Subject: Natural Resources; Public; Constitutional

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

Accuseds were status aboriginals — Wildlife officer undertook undercover operation to look into accuseds' alleged wildlife violations — Accuseds carried loaded guns and fired at and killed moose while in officer's vehicle on several occasions — Accuseds carried loaded guns and shot and killed deer while riding in officer's vehicle — Accuseds did not possess hunting licenses — Accuseds sold moose meat to officer in large quantities on several occasions — Accuseds pled guilty to several counts of unlawfully hunting big game, discharging firearm from vehicle, hunting unsafely and illegal **trafficking** in moose meat — Hearing was held to determine sentences of accuseds — Accuseds were levied fines ranging from \$5,000 to \$10,000 — Accuseds were ordered to provide wildlife officials with updates as to permanent addresses and notice as to intention to hunt and any kills made while hunting — Several of offences breached were designed to specifically protect public, and fines for such offences needed to reflect court's concern for public safety — As natives, accuseds had hunting rights not normally available to others and had seriously abused those enhanced rights.

Table of Authorities

Cases considered by *Fradsham Prov. J.*:

R. v. Downey (1999), 1999 CarswellAlta 149, 231 A.R. 300 (Alta. Prov. Ct.) — considered

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

R. v. Moosemay (2001), 2001 ABPC 156, 2001 CarswellAlta 1259, [2002] 2 W.W.R. 581, 97 Alta. L.R. (3d) 387, 297 A.R. 34 (Alta. Prov. Ct.) — referred to

R. v. Moosemay (2004), 353 A.R. 123, 116 C.R.R. (2d) 1, 27 Alta. L.R. (4th) 346, [2004] 8 W.W.R. 523, 2004 CarswellAlta 577, 2004 ABPC 31 (Alta. Prov. Ct.) — referred to

R. v. Moosemay (2004), 369 A.R. 315, 2004 ABPC 172, 2004 CarswellAlta 1312 (Alta. Prov. Ct.) — referred to

R. v. Moosemay (2005), 2005 ABPC 13, 2005 CarswellAlta 242, 49 Alta. L.R. (4th) 146, 369 A.R. 373 (Alta. Prov. Ct.)

— referred to

Statutes considered:

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

Pt. XXIII — referred to

s. 718 — referred to

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

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

s. 718.2(b) [en. 1995, c. 22, s. 6] — referred to

s. 734(4) — referred to

s. 734(5) — referred to

Judicature Act, R.S.A. 2000, c. J-2

s. 24 — referred to

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

Generally — referred to

s. 26(1) — referred to

s. 27(1) — referred to

s. 29(1)(b) — referred to

s. 35(1)(c) — referred to

s. 35(1)(d) — referred to

s. 37 — referred to

s. 40(2) — referred to

s. 51(1)(b) — referred to

s. 61(1) — referred to

s. 92(1)(a) — referred to

s. 92(1)(b) — referred to

s. 92(1)(c) — referred to

s. 92(3) — referred to

s. 92(4)(b) — referred to

s. 92(4)(c) — referred to

s. 93 — referred to

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

Wildlife Amendment Act, 1996, S.A. 1996, c. 33

Generally — referred to

HEARING to determine sentences of accuseds convicted of various wildlife offences.

Fradsham Prov. J.:

Introduction and Issues

1 After a very lengthy trial, the accused persons were convicted of various offences under the *Wildlife Act* S.A. 1984, Chap. W-9.1, as amended.¹

2 The issues now before me relate to the appropriate sentences to be imposed.

Facts

3 The facts are set out in detail in the Reasons for Judgment (see footnote 1). I will not repeat them in full in these Reasons, but I do rely upon the entirety of my previous findings. For the convenience of the reader of these Reasons, I will summarize the facts.

4 At no time did any of the accused, who were status Indians, have a hunting licence.²

5 On March 2, 1997, the accused Ms. Moosemay, one of the accused's sons-in-law (Terry Marr), and an undercover wildlife officer (identified as "A9")³, drove in A9's motor vehicle to the Sundre area in Alberta. While travelling in the vehicle, Ms. Moosemay had in her possession a loaded rifle. While sitting in that vehicle, she shot at a deer. Ms. Moosemay was convicted of unlawfully transporting a loaded firearm in a vehicle [section 35(1)(d) of the *Wildlife Act*, *supra*, ("the Act"); count 17], and unlawfully discharging a firearm from a vehicle (section 35(1)(c) of the Act; count 18).

6 On March 9, 1997, Ms. Moosemay, the accused Bear (Ms. Moosemay's son), Marr, and A9 again drove in A9's vehicle to the Sundre area, and again Ms. Moosemay had in her possession a loaded rifle. The party saw a moose, and Ms. Moosemay, while standing on the roadway, shot at the moose with a loaded rifle. Bear also shot at the moose while Bear was standing on the road. Ms. Moosemay hit the moose; Bear did not. There was no season for hunting moose at that time. Both Ms. Moosemay and Mr. Bear were convicted of unlawfully discharging a firearm from a road allowance (section 51(1)(b) of the Act; count 5). Ms. Moosemay was also convicted of unlawfully transporting a loaded firearm in a vehicle (section 35(1)(d) of the Act; count 19) and of unlawfully hunting big game out of season (section 27(1) of the Act; count 20).

7 On September 27, 1997, Ms. Moosemay travelled in A9's motor vehicle while she had in her possession her loaded rifle. She was convicted of unlawfully transporting a loaded firearm in a vehicle (section 35(1)(d) of the Act; count 24).

8 On September 28, 1997, Ms. Moosemay, Marr, and A9 travelled to the Sundre area in A9's motor vehicle. Ms. Moosemay, who had her loaded rifle with her in the vehicle, shot and killed a doe mule deer and her fawn. There was road equipment 300-400 yards behind where the two deer stood when Moosemay shot at them. From where she was, Ms. Moosemay could not tell if there were people in that equipment. Later in the day, Ms. Moosemay also shot at two moose. A hind quarter of the doe and the fawn were given to A9 for the use of his truck. Ms. Moosemay kept one hind quarter of the fawn to give to her sister. The rest of the deer was sold to John Soo⁴ for \$60.00, one-half of which went to each of Ms. Moosemay and A9. Ms. Moosemay was convicted of two counts of **trafficking** in big game (section 61(1) of the Act; counts 13 and 14), unlawfully hunting big game without a licence (section 26(1) of the Act; count 28), unlawfully transporting a loaded firearm in a vehicle (section 35(1)(d) of the Act; count 31), unlawfully hunting without due regard for the safety of others (section 29(1)(b) of the Act; count 32), and unlawfully hunting moose without a licence (section 26(1) of the Act; count 33).

9 On November 16, 1997, Ms. Moosemay, Marr, and A9 drove to the Sundre area in A9's truck. Moosemay shot her loaded rifle at a moose while she was seated in the truck. There was no hunting season for moose at that time. Ms. Moosemay was convicted of unlawfully hunting moose out of season (section 27(1); count 35), and unlawfully discharging a firearm from a vehicle (section 35(1)(c); count 37).

10 On October 17, 1998, Ms. Moosemay, Mr. Bear, and the accused Gloria Chartrand (Bear's fiancé), and A9, drove in Chartrand's truck to an area west of Calgary.⁵ After driving through a wildlife sanctuary, both Ms. Moosemay and Mr. Bear loaded their rifles and had them with them as they travelled in the vehicle. At one point, the group saw a moose which disappeared into some trees. Ms. Moosemay, while sitting in the passenger seat of the truck, shot into the trees in an effort to flush out the moose. However, there was a vehicle parked on the same road less than a hundreds yards away. It was empty, and no one could be seen (i.e., Ms. Moosemay did not know where the operator of that parked vehicle was). As it was hunting season, it was entirely possible that a hunter had driven there, parked his or her vehicle, and was in the vicinity when Moosemay shot into the trees. Ms. Moosemay was convicted of unlawfully discharging a firearm from a vehicle (section 35(1)(c) of the Act; count 39), and unlawfully hunting without due regard for the safety of others (section 29(1)(b) of the Act; count 40). Ms. Moosemay and Mr. Bear were both convicted of unlawfully transporting a loaded firearm (section 35(1)(d) of the Act; count 6).

11 On October 18, 1998, Ms. Moosemay, Ms. Chartrand, Mr. Bear, and A9 drove to an area south of Longview, Alberta, and then into the Porcupine Hills. At Ms. Chartrand's request, A9 drove Chartrand's truck. Ms. Moosemay and Mr. Bear had their loaded rifles in the truck during the trip. Deer were spotted, and Ms. Moosemay and Mr. Bear stood on the road and shot at the deer, with no result. The trip continued (with Ms. Chartrand now driving), and deer were again seen. Mr. Bear, while standing on the road, shot a white tail buck. The deer was placed in the truck, and the journey continued. Again deer were spotted, and Mr. Bear said he would shoot one for A9. Bear got out of the truck and shot at the deer, but with no result.

12 The trip continued and three mule deer were seen in fenced, cleared land. A residence was visible, and a driveway to that residence was 20 to 30 yards away. Bear shot at the deer (i.e., into the fenced property) and hit it. The landowner appeared to complain about the hunting, and the accused persons took the deer and left. When the group returned to Calgary, A9 was given the second deer that was shot.

13 As a result of the events of October 18, 1998, both Ms. Moosemay and Mr. Bear were convicted of unlawfully transporting a loaded firearm (section 35(1)(d) of the Act; count 9), unlawfully discharging a firearm from a road allowance (section 51(1)(b) of the Act; count 10), unlawfully hunting big game for the purpose of **trafficking** (section 37 of the Act; count 11). Mr. Bear was convicted of unlawfully hunting big game for the purpose of **trafficking** (section 37 of the Act; count 43), and unlawfully discharging a firearm from the road (section 51(1)(b) of the Act; count 45). All three accused were convicted of unlawfully hunting big game for the purpose of **trafficking** (section 37 of the Act; count 48), and unlawfully hunting big game on occupied land without consent (section 40(2) of the Act; count 49).

14 On October 23, 1998, Ms. Chartrand and Mr. Bear sold to A9 190 pounds of moose meat for \$220.00. They were both convicted of unlawfully **trafficking** in big game (section 61(1) of the Act; count 53).

15 On November 1, 1998, Mr. Bear, Ms. Chartrand, and A9 travelled to an oil lease road in the Nojack area of Alberta. Mr. Bear had with him in the vehicle a loaded rifle. A moose was spotted and Bear tried to shoot it but could not get a clear shot. The purpose of hunting that moose was to sell it to A9. Mr. Bear was convicted of unlawfully transporting a loaded firearm (section 35(1)(d) of the Act; count 57), and unlawfully hunting big game for the purpose of **trafficking** (section 37 of the Act; count 58).

16 On November 16, 1998, Mr. Bear and Ms. Chartrand sold moose meat to A9 for \$345.00. They were both convicted of unlawfully **trafficking** in moose (section 61(1) of the Act; count 54).

17 Ms. Moosemay has previously been convicted in the 1990s (counsel could not be more specific) of hunting on occupied land, and was fined \$1250.00. The other two accused do not have records.

18 Ms. Moosemay is single and 60 years of age. She is employed by the City of Calgary as a "Preventative Maintenance Person" in the transit department. She earns \$22.38 per hour and has a base annual salary of \$46,080.40. She has five children. I was told by defence counsel that "ostensibly they've all grown up", but I was also told that one remains within Ms. Moosemay's care.

19 Mr. Bear is 37 years old, and is married to Ms. Chartrand. Bear is unemployed and receives social assistance. I am told that, on the basis of a learning disability, he will be making an application for AISH (Assured Income for the Severely Handicapped). He and his wife do volunteer work involving the native culture.

20 Ms. Chartrand is 38 years old. She and Mr. Bear have three children. She works for the Boys and Girls Club of Calgary (doing family work with native children). She earns about \$2000 per month.

Law and Analysis

21 It is agreed between the Crown and the defence that the appropriate penalties are fines. There is not agreement about the amount of the fines.

22 Further, the Crown, in relation to each of the accused, seeks an order under [section 93.4 of the *Wildlife Act*, supra.](#)⁶ That section reads as follows:

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 any 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 such harm that may result, from the act or omission constituting the offence;
- c) to publish the facts relating to the act or omission;
- d) to pay money as compensation for the whole or part of a cost of any remedial or preventive 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.

23 Mr. Elliott for the Crown made it clear that it is not the Crown's intention to restrict the ability of the accused persons to hunt. Rather, the intent is to allow Fish and Wildlife to monitor the hunting activities of the accused persons. A form of Order was provided to me, and the one relating to Ms. Moosemay⁷ reads as follows:

It is HEREBY ORDERED that for a period of 5 years, BEATRICE MOOSEMAY follow the following conditions:

- 1) That she must, by _____ 200____, advise the Fish and Wildlife Officer nearest her place of residence of her address and thereafter for 5 years to advise that office in advance of any change of address.
- 2) Report to that office of her intent to hunt prior to going to hunt for wildlife. If the hunt is successful, she must report any kill within 24 hours to that Fish and Wildlife office. 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) That she must report to that office within 24 hours of her coming into possession of any wildlife. The report is to include the name of the person who killed the wildlife, the name of the person who provided the wildlife to her and the number, species and gender of that wildlife.

4) She must report to that office within 24 hours of transferring the possession of any wildlife to another person. The report is to include the name and address of the person or persons who were given possession of the wildlife and the amount and species of wildlife transferred.

5) She must, by, _____ 200 ___, meet with the Fish and Wildlife Officer in charge of the Fish and Wildlife office nearest her residence to discuss the order.

24 Counsel for the accused persons oppose the Orders sought on the grounds that none of them have since 1998 offended the legislation regulating hunting, and that the Orders will hamper spontaneous decisions to hunt.

25 In my view, the Orders sought are reasonable. They do not impose onerous restrictions on the accused persons. The evidence before me shows that in the past the hunting activities of the accused persons have had some planning behind them, and are not the product of spur of the moment decisions. Any additional advance planning which would be required of the accused persons by the Orders is justifiable when compared to the problem the Orders are addressing. The nature of hunting is such that it is difficult for wildlife officers to monitor those participating in the activity. To a large extent, society relies on the honour of hunters to abide by the rules. The accused persons (and in particular Ms. Moosemay who was previously convicted of unlawfully hunting on occupied land) have evidenced a willingness to exploit the opportunities to abuse their rights which are afforded by the self-regulatory nature of the legislation. The Orders sought result in a minimal inconvenience for the accused persons, and are quite justifiable in the circumstances. I will grant them against each of the accused persons.

26 The maximum penalties applicable to the various offences which are before me for sentencing are as follows:

1. [Section 35\(1\)\(d\)](#) — Unlawfully transport a loaded firearm in a vehicle — a fine of \$2000 or imprisonment for one month, or both.⁸

2. [Section 35\(1\)\(c\)](#) — Unlawfully discharge a firearm from a vehicle — a fine of \$2000 or imprisonment for one month, or both.⁹

3. [Section 51\(1\)\(b\)](#) — Unlawfully discharge firearm from a road allowance — a fine of \$2500 or imprisonment for one month or both.¹⁰

4. [Section 27\(1\)](#) — Unlawfully hunt big game out of season — a fine of \$2500 or imprisonment for one month or both.¹¹

5. [Section 61\(1\)](#) — Unlawfully traffic in big game — a fine of \$100,000 or imprisonment for six months or both.¹²

6. [Section 26\(1\)](#) — Unlawfully hunt big game without a licence — a fine of \$2500 or imprisonment for one month or both.¹³

7. [Section 29\(1\)\(b\)](#) — Unlawfully hunt without due regard for safety of others — a fine of \$10,000 or imprisonment for six months or both.¹⁴

8. [Section 37](#) — Unlawfully hunt big game for purpose of **trafficking** — a fine of \$10,000 or imprisonment for six months or both.¹⁵

9. [Section 40\(2\)](#) — Unlawfully hunt big game on occupied land without consent — a fine of \$2000 or imprisonment for one month or both.¹⁶

27 [Part XXIII of the Criminal Code](#) applies to sentencing proceedings under the *Wildlife Act*, *supra*: *R. v. Lamouche* (2000), 267 A.R. 347 (Alta. Q.B.). Therefore, a review of the relevant provisions of that Part of the [Criminal Code](#) is appropriate.

28 The fundamental purpose of sentencing is "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 objectives set out in [section 718\(a\) to \(f\)](#) inclusive: [section 718](#).

29 [Section 718](#) sets out six sentencing objectives (though not all apply in every case):

1. Denounce unlawful conduct.
2. Deter the accused and other persons from committing offences.
3. Separate the offender from society, where necessary.
4. To assist in the rehabilitation of offenders.
5. To provide reparations for harm done to victims.
6. To promote a sense of responsibility in the offender, and acknowledgment of the harm done to the victim and to the community.

30 In my view, the objectives applicable to the matters before me are denunciation and deterrence, rehabilitation of the offenders, and the promotion of a sense of responsibility in the offenders.

31 [Section 718.1](#) also requires that the sentence imposed be "proportionate to the gravity of the offence and the degree of responsibility of the offender."

32 [Section 718.2](#) provides that "a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender."

33 The other principle which must be considered in this case is: "A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances": [section 718.2\(b\)](#).

34 Both the Crown and the defence have submitted that fines should be imposed in respect of the matters before me for sentencing. I agree that fines are appropriate in these matters. I am particularly mindful that two of the accused have no records.

35 Having said that, I do agree with the Crown that the three accused evidenced a cavalier disregard for the provisions and intent of the *Wildlife Act*, *supra*. As individuals with Indian status, the accused persons have rights not enjoyed by others in Alberta. In my view, the accused persons, when they committed the offences of hunting for the purposes of **trafficking** and **trafficking**, seriously abused those enhanced rights, and the penalties imposed should reflect that.

36 Defence counsel referred me to the decision of my sister judge, Judge Hamilton, in *R. v. Downey* (1999), 231 A.R. 300 (Alta. Prov. Ct.). Defence counsel submitted that Hamilton, J.'s decision is support for the proposition that a sentence may be modified to take into account the length of the proceedings involving the accused.¹⁷ In *Downey*, Her Honour concluded that the unique circumstances of that case (i.e., the length of time the trial took and its effect on the accused persons) permitted a non-custodial sentence to be imposed for drug related crimes which usually attract gaol sentences. I take no exception to the disposition arrived at in *Downey*, but I am of the view that the circumstances in the case at Bar fall far short of those which existed in *R. v. Downey*. While this trial has taken a long time, the reasons for that did not relate to poor planning on the part

of either defence or the Crown. In addition to the time it took to hear all the evidence, a number of complex issues were raised the resolution of which occasioned delays.¹⁸ I am not of the view that the length of time this matter has taken should result in a modification of the penalties to be imposed.

37 Defence counsel submitted that the Crown could have laid charges much earlier than it did, but it chose to wait while the accused committed more offences. In my view, that is not a mitigating factor. If anything, it points out that the accused persons did not think better of their acts, and did not voluntarily desist. They continued to commit offences.

38 I am mindful of the economic circumstances of the three accused persons, and the cumulative effect of the fines I will impose¹⁹. I am also aware that the offences of unlawfully transporting a loaded firearm in a vehicle, discharging a firearm from a road allowance, discharging a firearm from a vehicle, and hunting without due regard for the safety of others, are designed, in whole or in part, to advance public safety. The fines for those offences must reflect the court's concern for safety.

39 I impose the following fines:

BEATRICE MOOSEMAY

On each of counts 17, 19, 24, 31, 6, and 9 — unlawfully transport a loaded firearm in a vehicle — I impose a fine of \$300 or 5 days in default of payment.

On each of counts 18, 37, and 39 — unlawfully discharge a firearm from a vehicle — I impose a fine of \$250 or 4 days in default of payment.

On each of counts 5, and 10 — unlawfully discharge a firearm from road allowance — I impose a fine of \$250 or 4 days in default of payment.

On each of counts 20 and 35 — unlawfully hunt big game out of season — I impose a fine of \$200 or 3 days in default of payment.

On counts 13 and 14 which involve unlawfully **trafficking** in big game, and noting that the two offences occurred on the same day, I impose a fine of \$2500 or 44 days in default of payment in respect of count 13, and I impose a fine of \$1500 or 26 days in default of payment in respect of count 14.

On each of counts 28 and 33 — unlawfully hunt big game without a licence — I impose a fine of \$250 or 4 days in default of payment.

On each of counts 32 and 40 — unlawfully hunt without due regard for safety of others — I impose a fine of \$300 or 5 days in default of payment.

On counts 11 and 48 which involve unlawfully hunting big game for the purpose of **trafficking**, and noting that the two offences occurred on the same day, I impose a fine of \$2500 or 44 days in default of payment in respect of count 11, and I impose a fine of \$1500 or 26 days in default of payment in respect of count 48.

On count 49 — unlawfully hunt big game on occupied land without consent — I am mindful that the accused has been convicted of this offence before. I impose a fine of \$1000 or 17 days in default of payment.

ERROL BEAR

On each of counts 5, and 10 — unlawfully discharge a firearm from a road allowance — I impose a fine of \$250 or 4 days in default of payment. On count 45 which involves the same offence on the same day, I impose a fine of \$200 or 3 days in default of payment.

On each of counts 6, 9, and 57 — unlawfully transporting a loaded firearm in a vehicle — I impose a fine of \$300 or 5 days in default of payment.

On counts 11, 43, 48, and 58 — unlawfully hunting big game for the purpose of **trafficking** — I impose a fine of \$2500 or 44 days in default in respect of count 11, and I impose of fine of \$1000 or 17 days in default in respect of each of counts 43, 48, and 58.

On count 49 — unlawfully hunt big game on occupied land without consent — I impose a fine of \$600 or 10 days in default of payment.

On counts 53 and 54 — unlawfully traffic in big game — I impose a fine of \$2500 or 44 days in default in respect of count 53, and I impose a fine of \$2000 or 35 days in default in respect of count 54.

GLORIA CHARTRAND

On count 48 — unlawfully hunting big game for the purpose of **trafficking** — I impose a fine of \$2500 or 44 days in default of payment.

On count 49 — unlawfully hunt big game on occupied land without consent — I impose a fine of \$600 or 10 days in default of payment.

On counts 53 and 54 — unlawfully traffic in big game — I impose a fine of \$2500 or 44 days in default of payment in respect of count 53, and I impose a fine of \$2000 or 35 days in default of payment in respect of count 54.

All default periods for all the fines I have imposed in the sentencing of these three accused persons are consecutive one to the other.

In respect of each fine I have imposed this day, there is added the provincial surcharge of 15% or in default of payment a period of incarceration calculated using the formula set out in [sections 734 \(4\) and \(5\) of the Criminal Code](#).²⁰

Order accordingly.

Footnotes

- 1 The Reasons for Judgment are reported at [\(2004\)](#), [369 A.R. 315](#), [2004 ABPC 172](#) (Alta. Prov. Ct.).
- 2 I will not repeat my analysis regarding the accuseds' Indian status and its effect on my findings.
- 3 The undercover officer was permitted to testify under a pseudonym [see: *R. v. Moosemay* [\(2001\)](#), [297 A.R. 34](#), [\[2002\] 2 W.W.R. 581](#), [97 Alta. L.R. \(3d\) 387](#) (Alta. Prov. Ct.)]
- 4 Prior to the trial, Soo pleaded guilty to **trafficking** (buying) wildlife and was fined \$2250 (including provincial surcharge).
- 5 At Chartrand's request, A9 drove.
- 6 Section 93.4 was added to the Act by virtue of the *Wildlife Amendment Act*, 1996, S.A. 1996, Chap. 33. It came into force on August 14, 1997 (see: *Proclamation*, 14 August 1997, A. Gaz. 1997.I.1616).
- 7 The contents of the proposed Order are the same for each accused except for names.
- 8 See [section 93 of the Wildlife Act](#), *supra*.
- 9 See [section 93 of the Wildlife Act](#), *supra*.

- 10 See [section 92\(1\)\(a\)](#) of the *Wildlife Act*, *supra*.
- 11 See [section 92\(1\)\(c\)](#) of the *Wildlife Act*, *supra*.
- 12 See [section 92\(4\)\(c\)](#) of the *Wildlife Act*, *supra*.
- 13 See [section 92\(1\)\(b\)](#) of the *Wildlife Act*, *supra*.
- 14 See [section 92\(3\)](#) of the *Wildlife Act*, *supra*.
- 15 See [section 92\(4\)\(b\)](#) of the *Wildlife Act*, *supra*.
- 16 See [section 93](#) of the *Wildlife Act*, *supra*.
- 17 This argument was put forward only on behalf of Ms. Moosemay because the other two accused did not attend much of the trial (by agreement between Crown and defence, and with my concurrence).
- 18 Apart from a ruling on the use of a pseudonym (see footnote 3), and Reasons for Judgment (see footnote 1), the other rulings, which resulted in reported Reasons, concerned [section 24 of the *Judicature Act*](#) (see: [2004] 8 W.W.R. 523, 116 C.R.R. (2d) 1, 27 Alta. L.R. (4th) 346 (Alta. Prov. Ct.)), and the doctrine of entrapment (see: 369 A.R. 373 (Alta. Prov. Ct.)).
- 19 The economic circumstances of the accused, and the cumulative effect of the fines, have resulted in a modification of the fines I would otherwise impose.
- 20 The provincial legislation does not permit me to waive the surcharge.