

2007 BCPC 130
British Columbia Provincial Court

R. v. General

2007 CarswellBC 1049, 2007 BCPC 130, [2007] B.C.W.L.D. 3703, [2007] B.C.W.L.D. 3704

Regina v. Brian General

M.B. Hicks Prov. J.

Heard: April 16, 2007
Judgment: April 16, 2007
Docket: Surrey 157510-2

Counsel: J. MacAulay, for Crown
A. Brown, 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

Natural resources

I Fish and wildlife

I.5 Offences

I.5.o Sentencing

I.5.o.ii Forfeiture

Headnote

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Table of Authorities

Statutes considered:

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

Generally — referred to

M.B. Hicks Prov. J.:

1

THE COURT: Mr. General, I am going to make a few remarks and then I will impose a sentence with respect to these two offences that you've pled guilty to today.

2 You have pled guilty, firstly, to a charge on the 15th of April 2006, that you unlawfully **trafficked** in dead wildlife or parts thereof, and violated the regulations of the *Wildlife Act of British Columbia*, in particular with reference to the wings and feathers of bald eagles.

3 Secondly, you are charged on Count 8 of the Information and you have pled guilty to the offence that on the 23rd of April 2006, near the U.S./Canada border crossing at Surrey, British Columbia, while not in possession of an authorized permit issued

under the *Act*, or under the international convention that applies, you exported from British Columbia wildlife or wildlife parts, being the feathers of bald eagles.

4 The circumstances, as I understand them, are that there has been a long-running investigation into the poaching and **trafficking** of bald eagle parts for commercial purposes in British Columbia. A significant market exists for these articles, and that market includes those who participate in the international pow-wow circuit, which you do.

5 On January 9th, 2006, I understand that conservation officers in British Columbia were pursuing their investigation and an undercover officer was introduced to an individual with parts of bald eagles to traffic. There was a large, international pow-wow scheduled for Chilliwack, British Columbia in the near future. On April 15th of 2006, the undercover officer attended that Chilliwack pow-wow in company with this individual who he had become associated with, and it was through contacts at that location that he was introduced to you. You were present at that pow-wow. You were on a two-month trip from your home in Ontario to British Columbia and to the United States to participate in pow-wows of this sort, and you were travelling with several other people. You had with you a truck and a trailer in order to be able to stow and carry your regalia that you used during your participation in the pow-wow.

6 In respect to Count 1, I understand that the undercover officer was present when you purchased two pairs of bald eagle wings from the associate of the undercover operator I have referred to, the price I understand to have been \$120 in U.S. funds for each of the pair of wings. You purchased one pair with cash. I understood that you took delivery of the second pair but you were to provide payment at some later time. Both pairs of wings were taken in a duffel bag and stowed in your vehicle. Later, I understand that you reconnected with the undercover operator and you purchased two bald eagle tails for \$200 which you paid for in cash, and again carried those in a duffel bag and stowed them in your vehicle.

7 The information provided to the undercover operator was that you were travelling on to Bella Coola, I presume to a similar gathering, and then you and others would be travelling to the United States. When you were asked how you intended to transport these materials that you had acquired into the United States, and were cautioned by the undercover officer about the need for permits in order to transport this material, you said that you would be able to hide the tails.

8 The information with regard to your plans to enter the United States was placed on the appropriate computer systems and you were flagged, and on April 23rd, 2006, when you arrived with others you were travelling with at the border crossing into the United States at Blaine, Washington, and attempted to cross, you were apprehended and investigated at that time. I understand at that point you were travelling to Albuquerque, New Mexico, to participate in another program similar to the ones you had attended in British Columbia.

9 I am advised that initially you stated that you had no animal or wildlife parts to declare, but later admitted that you had purchased eagle parts at the pow-wow in Chilliwack. A search of your belongings produced 35 tail feathers, 81 wing feathers, and a bag of plume feathers, all associated to bald eagles. Although they appeared to have been secreted in your belongings to avoid detection, I don't believe the Crown has contested your explanation that you did not have this intention, and you provided an explanation that the purpose in acquiring the feathers was not for commercial purposes, or necessarily for personal use in the strict sense of the word, but in order to make ceremonial regalia for your children. The parts were seized and you were charged.

10 The Crown and your counsel have proposed that I impose a sentence which they jointly submit to be a global fine in the range of \$25,000, with a designation that \$24,000 of that be applied to the Habitat Conservation Fund as provided in the *Wildlife Act*.

11 I understand that you are 32 years of age, that you are a member of the Seneca Nation, one of the six nations of the Iroquois Confederacy, that you are married, you're currently residing with your wife and one child, and I understand that you have another child on the way, and that you are also the father of three other children by a prior marriage.

12 I understand you are employed with the Kanada Native Cultural Society in Brantford, Ontario, where you have worked for about ten years. You began that work as a volunteer and you now are employed and actively involved in promoting and arranging exchange programs involving children from your community and other Native communities across Canada and the

United States to promote cultural values. I understand that you are active in promoting and preserving your cultural heritage; you have been involved in Native dance and Native dance programs and teaching since you were a young child. I am informed that your family and your parents have a deep commitment to these cultural values, and that you and your parents are respected within your community for this commitment. Your parents have passed that commitment on to you, and you, I understand, are determined to continue to enhance those values with your own children. I understand that you are working to raise your children in these traditions and it is for this reason that you acquired the eagle parts involved in this investigation in order to make ceremonial regalia for your children.

13 Letters of support have been filed on this hearing and referred to by your counsel. They speak to your commitment to your cultural values and to youth that you have worked with in your community. They demonstrate you to have been an active volunteer in your community and that this is your first encounter with the criminal justice system.

14 I take account, in assessing an appropriate penalty, the absence of any criminal history, your background, the fact that you have pled guilty to these charges, and that you intended to do so from an early stage.

15 I also take account of your remarks made at the close of submissions and supported by the submissions of your counsel. Those remarks spoke to your personal embarrassment, your shame over your conduct, your concern for your conduct and how it is viewed in your community. It is clear to me that you have suffered personally through that shame and embarrassment and that you express genuine remorse which is strongly felt for your conduct.

16 The cases that have been provided emphasize both specific and general deterrence as the overwhelming matters of concern that a Court should attend to in addressing an appropriate sentence in cases of this sort. The need in sentencing is to reflect the importance of the goals of the legislation in place, in order to protect and preserve the environment and the natural ecosystems and the implications which changes to these systems have on the lives in our communities, and the effect of the conduct of people who traffic and poach on those ecosystems. The cases point out the impact which is felt in the cumulative burden of the individual actions of numerous violators, and therefore a penalty of significance is required even where one might look at these individual circumstances and conclude that your actions are a small drop in a very large bucket. A judge imposing a sentence in similar circumstances used the expression that the impact on the environment, and the ecosystem in this kind of conduct, is like "death by a thousand small cuts".

17 Illegal **trafficking** in these natural animal parts is one of the means by which the exploitation of our natural environment occurs and its future is placed at risk, and has the effects which we see reported in the media and which we now feel and witness ourselves each day. Willing buyers are as essential to this process as unscrupulous poachers and sellers.

18 Mr. General, I have concluded that personal deterrence in your circumstances has been accomplished, but the community requires that in this as in other cases of its kind, general deterrence be emphasized in order, to the degree that it can be achieved, that the market for illegally-obtained animal parts, in this case, eagle parts, is eliminated. Others have observed the difficulty which is almost overwhelming in detecting this poaching and **trafficking** activity. To the extent that it can be done when the opportunity arises, a sentence to deter others must be imposed, balanced appropriately against the legislated sentencing principles which apply, including, in this case, your remorse, your early plea, and your determination to reflect your community's reverence for the natural world and its abhorrence for this kind of conduct to younger generations in your community. The fines proposed jointly in my view properly reflect these principles.

19 Mr. General, if you would stand up, please? I am going to impose a global penalty which will total \$25,000 in fines. In respect to Count 1, I impose a penalty of \$15,000, against which \$14,500 will be applied to the Habitat Conservation Fund. In respect to Count 8, to which you have pled guilty, I impose a fine of \$10,000, against which \$9,500 will be applied to the Habitat Conservation Fund; thus, \$24,000 will be designated for application to the Habitat Conservation Fund globally in respect to these two fines.

20 There will be forfeiture of those eagle parts which are held by authorities either in the United States or by U.S. border authorities to the Crown for proper handling.

21 Time to pay, Ms. Brown, in respect to this?

22

MS. BROWN: Mr. General indicates that if the registry is still open he'll pay today.

23

THE COURT: Well, just to ensure that — and that is, of course, something that you can carry out if you're able to do it. I will, just to ensure that nothing goes afoul, allow some time on the record. I will direct that the fine and the — does the victim fine surcharge apply, Mr. MacAulay, to this?

24

MR. MacAULAY: Yes, it does, Your Honour, however, what other Courts have been doing is the Habitat Conservation trust fund money is sort of putting money back to the victims, so many — I'm not making any submission that — many Courts are not imposing a victim fine surcharge.

25

THE COURT: If I have the authority to decline to impose it, then I'll do that. The fine will be due and payable on or before the 30th day of April 2007.

26 Mr. General, you're going to have to complete some documents and attend at the registry, and if you choose, you can deal with the fine today.

27

MR. MacAULAY: Your Honour, just by way of housekeeping, the Crown directs a stay of proceedings with respect to Counts 2 through 7 with respect to Mr. General only.