CV 05210

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the
Judicature Act

BETWEEN:

RAM HEAD OUTFITTERS LTD.

Applicant

- and -

COMMISSIONER OF THE NORTHWEST TERRITORIES, STEPHEN KAKFWI (in his capacity as Minister of Renewable Resources) and ROBERT RAYMOND ARTHUR McLEOD (in his capacity as Superintendent of Wildlife)

Respondents

Application for relief in the nature of *mandamus* and *certiorari* granted. Application for an order in the nature of prohibition adjourned *sine die*. Costs may be spoken to.

Heard at Yellowknife on May 24th 1994

Judgment filed: May 25th 1994

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M.M. de WEERDT

Counsel for the Applicant: Austin F. Marshall, Esq.

Counsel for the Respondents: John U. Bayly, Q.C.
John Donihee, Esq.

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Respondents

REASONS FOR JUDGMENT

Ram Head Outfitters Ltd. has applied for the following relief:

1. an order in the nature of *mandamus* requiring the respondent Mr. R.R.A. McLeod ("Mr. McLeod"), in his capacity as Superintendent of Wildlife under the **Wildlife Act**, R.S.N.W.T. 1988, c. W-4, to renew the applicant's outfitter's licence forthwith pursuant to s.24 of the **Wildlife Business Regulations** (Reg. R-024-92);

2. an order in the nature of *certiorari* quashing Mr. McLeod's decision dated April 11, 1994, refusing to renew that licence; and

3. an order in the nature of prohibition to forbid Mr. McLeod from conducting a hearing to determine if that licence should be renewed.

Counsel agree that the Court will require to consider and declare the meaning and effect of relevant provisions of the **Wildlife Act** and of the **Wildlife Business**

Regulations, no matter what the decision of the Court may be on this application. Counsel indicated at the hearing their awareness of the decision in **Union of Northern Workers v. N.W.T. (Min. of Safety & Pub. Services)**, [1991] N.W.T.R. 103, 49 Admin. L.R. 280 (S.C.), in which a *mandamus* application was adjourned pending compliance with the law as there judicially declared by the Court.

I. Factual Background

3 As the record shows, an official of the Department of Renewable Resources of the Government of the Northwest Territories wrote to various outfitters, licensed as such under the **Wildlife Act** and **Wildlife Business Regulations**, in November 1993, to invite them to make a "New Year Licence Application" on an application form provided for that purpose by the Department. The applicant was one of the outfitters so invited. In consequence, the applicant completed the form and submitted it to the Department together with a fee of $50.00 and supporting documentation. On January 5th 1994 the Department acknowledged the applicant's "new year application for a Class "A" Outfitter Licence" and its receipt of the licence fee.

4 On April 11th 1994 Mr. McLeod wrote the following letter to the applicant:

11 April 1994

Mr. Stan Simpson, President
Ram Head Outfitters Ltd.
Box 89
WARBURG, AB TOC 2TO

Dear Mr. Simpson:

Outfitting Licence - 1994 Season

As you are aware, the Department of Renewable Resources has conducted an investigation into certain matters relating to your activities and those of Ram Head Outfitters Ltd. which occurred during the 1993 outfitting season in the Mackenzie Mountains. Legal counsel to the Department have reviewed the results of the investigations and I have been advised that there is evidence that you and Ram Head have contravened the N.W.T. Wildlife Regulations.

I have not reviewed the evidence in any detail or spoken personally to any of the witnesses from which it originates, but my advisors and investigators have satisfied me that a prima facie case has been made out that both you and the company, Ram Head Outfitters Ltd., violated the Wildlife Regulations on a number of occasions during the summer and fall of 1993.

Because you and Ram Head Outfitters Ltd. have contravened the Wildlife Regulations during the term of your 1993 outfitter's licence, I am not prepared to issue a 1994 outfitting licence to Ram Head. In the next few days, legal counsel to the Department will contact your lawyer, Mr. Butlin, to arrange to provide him as your legal representative with full disclosure of the evidence gathered by my department in relation to these contraventions.

As soon as it may conveniently be arranged and at a time convenient to you and the witnesses who may be heard, I am prepared to hold a hearing in order to provide you with full opportunity to answer the allegations which have been made against you and Ram Head Outfitters Ltd. I am confident such a hearing can be arranged and conducted prior to the commencement of Ram Head's 1994 outfitting season.

I have appointed John U. Bayly, Q.C. to act as counsel to the department in this matter. A copy of this letter is being provided to him and will serve as his instructions to contact Mr. Butlin to discuss the arrangements necessary to hold the hearing before me.

Yours sincerely,

Robert McLeod
Superintendent of Wildlife

c. John U. Bayly, Q.C.

BAYLY/

The respondents have filed two affidavits, respectively sworn by Ross Hagen and by Mark David Hoppe on May 18th 1994. Mr. Hagen and Mr. Hoppe are

officers of the Department of Renewable Resources of the Government of the Northwest Territories. Exhibited to these affidavits are various reports and a document titled "PRELIMINARY CROWN BRIEF". The affidavits and their exhibits were filed with the Court's leave and without objection by the applicant.

6 The originating notice initiating this application was filed on May 12th 1994. It was evidently served prior to May 18th 1994, when the parties appeared in Chambers and counsel for the applicant made submissions before me following which the matter was adjourned to May 24th 1994 to allow the respondents to consider their position, file the record of proceedings on the licence renewal application and gather up their legal authorities. Written submissions on behalf of both sides were filed on May 24th 1994, at which time counsel for the respondents made additional oral submissions and counsel for the applicant made a brief reply.

7 It is common ground that the applicant, a corporation incorporated in the Northwest Territories in 1982, held a Class "A" Outfitter's Licence under the **Wildlife Act** and **Wildlife Business Regulations** for 1993. To date no prosecution has been brought against the applicant in respect of any contravention of the Act or the Regulations; and no conviction arising out of any such contravention has, as yet, been entered against the applicant.

II. Discussion

8 Paragraph 98(j) of the **Wildlife Act** empowers the Commissioner of the Northwest Territories to make regulations for carrying the purposes and provisions of the

Act into effect respecting the licensing, control and regulation of the operations of outfitters, among others. There is no dispute as to the legislative validity of the **Wildlife Business Regulations** in the present instance. Those Regulations being (as provided by paragraph 98(j)) enacted for the above mentioned purposes, they are of course to be read as subject to the provisions of the Act itself.

9 Subsection 24 of the Regulations states:

> 24. (1) A holder of an outfitter licence is entitled to automatic annual renewal of the licence for a period of up to 10 years if, during the year preceding each annual renewal, the holder of the licence has not contravened the Act or regulations.
>
> (2) The 10 year period referred to in subsection (1) shall commence at the beginning of each year following the last year in which the holder of the outfitter licence did not contravene the Act or regulations made under the Act.

10 Sections 81 to 90, inclusive, of the Act make provision for various specific offences, providing penalties for each such offence. Section 91 of the Act provides:

> 91. Every person who contravenes a provision of this Act or the regulations for which no specific punishment is provided is guilty of an offence and liable on summary conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding one year or to both.

11 If indeed there is evidence of any contravention by the applicant against either the **Wildlife Act** or the **Wildlife Business Regulations** in the materials filed on behalf of the respondents, it is common ground among the parties, as I understand, that it is not necessary to look further than s.91 of the Act for the condemnation of such contravention as an offence against the Act and for the appropriate punishment to which

the applicant may in consequence be made liable.

12 The applicant's position, if I comprehend it properly, is that the applicant is to be presumed in law to be innocent of any such offence pursuant to s.11(d) of the **Canadian Charter of Rights and Freedoms** and the pertinent provisions of the **Criminal Code** which apply pursuant to s.2 of the **Summary Conviction Procedures Act**, R.S.N.W.T. 1988, c. S-15. On that basis, the applicant submits that it is to be treated, in law, as one who has not contravened the Act or the Regulations in the sense intended by s.24(1) of the Regulations. When the applicant sought to exercise its right of "automatic renewal" under s.24(1) in the circumstances, it says that the presumption of innocence had not been set aside in the manner provided by law under s.91 of the **Wildlife Act** understood in light of the other applicable statutes above mentioned. It is therefore submitted on behalf of the applicant that its legal right of entitlement to the licence renewal on an "automatic" basis has wrongfully been denied by the respondent Mr. McLeod, a public officer (as required by s.75(2) of the **Wildlife Act**) whose duty it is to grant the renewal.

13 On behalf of the respondents, as I understand their submissions, a conviction pursuant to s.91 of the **Wildlife Act** is not a necessary precondition to a lawful refusal to renew an outfitter's licence pursuant to s.24(1) of the Regulations. Instead, if I correctly grasp the argument, it is enough if Mr. McLeod (or whoever holds the office of Superintendent of Wildlife under the Act) has reasonable and probable grounds to believe and does believe that the applicant has committed a contravention of the Act or the Regulations. In such a case, the argument goes, it is up to the applicant to persuade the Superintendent that the applicant is, nonetheless, entitled to the "automatic renewal"

mentioned in s.24(1) of the Regulations. It was for that purpose that Mr. McLeod invited the applicant to present its case before him in the exercise of its "full opportunity to answer the allegations" made against it, albeit Mr. McLeod had already satisfied himself that a *prima facie* case had been made out against the applicant, his letter even going so far as to express the unequivocal conclusion that "you ... have contravened the Wildlife Regulations during the term of your 1993 outfitter's licence".

14 Aware of the obvious weakness of their position, if only in consequence of Mr. McLeod's letter, the respondents have taken steps to have someone else appointed as a Deputy Superintendent of Wildlife, pursuant to s.23(3)(a) of the **Interpretation Act**, for purposes of the hearing mentioned in that letter. But in view of the conclusion to which I shall come with regard to such a hearing, it is not necessary to examine that provision in any detail or, for that matter, the consequent implications for the requirements of natural justice in respect of any such hearing, of s.22(4) of that Act.

15 It is enough to note that the submissions made by the respondents rest on their assumption that the "automatic renewal" spoken of in s.24(1) of the Regulations is not after all "automatic" in any accepted sense of the word. What the respondents assume is that an application for a renewal is, as the Departmental correspondence reflects, a "New Year Licence Application" and not an application to renew the licence held in the preceding year. This assumption is one which they say is required by s.30 of the Regulations, which reads as follows:

> 30. A Class A outfitter licence expires December 31 next following the date of issue.

16 This provision is, nevertheless, at variance with the 10 year period expressly referred to in s.24 of the Regulations, as with the other plain language of s.24(1) regarding the nature of the renewal to which it refers. Moreover, if only one Class"A" outfitter's licence is to be issued for a given year and designated area under the Regulations, as appears to be the case, it will be apparent that an applicant might be unduly delayed in getting to the stage of a hearing (as has already occurred in the case at hand) so that the area under licence either becomes virtually worthless for outfitting by the applicant or the uncertainty of the applicant's position (pending a decision to renew) must be at the very least extremely prejudicial to the applicant's seasonal operations under the licence renewal if the renewal should, after all, finally be granted. It was evidently to remove all such uncertainty and delay that s.24(1) was enacted to make fully explicit the applicant's right of "**automatic** renewal" (emphasis added here).

17 The meaning to be attributed to the word "automatic" in reference to licence renewals under s.24(1) of the Regulations can be quickly found in any dictionary in common use, such as the **Gage Canadian Dictionary** (second printing 1984), where one may find at page 75:

> **au.to.mat.ic** ... - adj. [1] made without thought or attention, as from force of habit, etc.; spontaneous or mechanical:... [2] mainly or entirely involuntary; reflex:... [3] of a mechanism, machine, etc., made or set to move or act by itself, self-regulating or self-acting:... [4] of a firearm, having a mechanism for repeatedly firing, throwing out the used shell, and reloading until the pressure on the trigger is released or the ammunition is used up. [5] as a necessary consequence, without exception, or restriction:...

18 There is nothing in that definition consistent with the launching of what

would be, in effect, a completely fresh licence application rather than a purely pro-forma renewal application. And there is clearly nothing "automatic" about going to a hearing to establish one's entitlement to a renewal, more particularly where the individual who would ordinarily hold that hearing has already decided, *ex parte*, that there is at the very least a *prima facie* case against the granting of the renewal.

19 It is more reasonable and consistent with the Act, it seems to me, to read s.30 of the Regulations as being always subject to the "automatic renewal" requirement of s.24. Read together, in the sense which I have indicated, there is no absurdity or inconsistency in those provisions, either in relation to each other or in relation to the **Wildlife Act**. This is shown by s.9 of the Act which states:

> 9. (1) Where the Superintendent believes that a person has contravened any of the terms or conditions of his or her licence or permit, or this Act or the regulations, the Superintendent may suspend any licence or permit held by that person for the period that the Superintendent thinks fit.
>
> (2) The Superintendent shall not, in respect of an offence, suspend under subsection (1) a licence or permit referred to in subsection 12(1) that the justice making the conviction has refrained from suspending.
>
> (3) A person whose licence or permit has been suspended under subsection (1) may appeal to a justice who may direct the Superintendent
>
> (a) to remove the suspension if the Superintendent fails to establish that there was a contravention; or
>
> (b) to reduce the period of the suspension.
>
> (4) A decision of a justice under subsection (3) may be appealed by the Superintendent or the person whose licence or permit was suspended under subsection (1) to a judge of the Supreme Court who may confirm, vary or quash the decision of the justice.

20 The legislature has, in s.9 of the Act, clearly made express provision for the very situation now faced by the applicant and by the respondents in this case, as reflected in the materials filed. Nothing in the Regulations can lawfully restrict, alter, modify or replace s.9. The Regulations are, in any event, entirely silent on the procedure to be followed with respect to a hearing such as was proposed by Mr. McLeod in his letter of April 11, 1994, or any equivalent hearing before anyone else acting as his deputy pursuant to s.23(3)(a) of the **Interpretation Act**. Indeed, s.9 of the Act removes all need for any such *ad hoc* hearing if, as the Act specifically provides, the Superintendent proceeds under that section. Section 9 even provides an avenue of appeal which may be followed. No such avenue is apparent in the procedure which Mr. McLeod proposed in his letter.

21 The respondents, in treating the licence renewal as if it were a fresh application, rely not only on s.23(3) of the **Wildlife Business Regulations** but also on s.3(4) of the **Wildlife Act**.

22 Subsection 23(3) of the Regulations reads:

> 23. (3) An applicant for an outfitter licence shall submit the following information together with the application for the licence:
> (a) an inventory of equipment to be used in the outfitting business;
> (b) details of the applicant's experience as an outfitter;
> (c) details of the applicant's business management experience;
> (d) proof of the applicant's compliance with the *Workers' Compensation Act*;
> (e) where the applicant is a company, evidence that the applicant is in good standing within one month of the date of the application;
> (f) other information the Superintendent may require.

23 Subsection 3(4) of the Act declares:

> 3. (4) In an application for a licence or permit, the onus is on the applicant to prove that he or she is eligible to hold the licence or permit.

24 If s.24(1) of the Regulations qualifies s.30, as I hold it must, it becomes clear that a licence renewal application is not simply a licence application like any other within the meaning of either s.23(3) of the Regulations or s.3(4) of the Act. The 10 year period contemplated by s.24 of the Regulations, subject always to s.9 of the Act allowing for suspension in appropriate cases (and any appeal following), is not consistent with the respondents' submission that a fresh annual licence application is required each year. That contention ignores the plain words of s.24 of the Regulations and of s.9 of the Act.

It was strenuously argued on behalf of the respondents that a contravention of the Act or of the Regulations is not necessarily an offence within the meaning of s.91 of the Act. The contention was that the Superintendent could, in his discretion, refuse to grant the renewal of an outfitter's Class "A" licence under s.24(1) of the Regulations where, in the Superintendent's opinion or belief, there had been such a contravention by the outfitter, without need for the prior entry of a conviction in respect of the contravention. But, if that were the law, s.24(1) of the Regulations would undoubtedly have said so, using language such as the legislature itself employed to that effect in s.9(1) of the Act. By refraining from use of such language in s.24(1), the Commissioner very clearly chose to withhold from the Superintendent the functions which the latter purported himself to be empowered to exercise, in his letter dated April 11, 1994.

26 It is apparent that s.9 of the Act provides for the intervention of a justice of the peace (and, on further appeal, of this Court) at the option of the licensee, in order to determine if, as a matter of law and fact, there has been any contravention of the Act or the Regulations. The Superintendent need only entertain a belief on that score under s.9; but he is not empowered to go on to adjudicate the matter himself, either under s.24(1) of the Regulations on the *ad hoc* basis proposed on behalf of the respondents or otherwise. His proposed procedure is nowhere mentioned in s.24(1) or elsewhere in the Regulations or the Act. Nor is that procedure necessary if the licence is renewed and then made subject to a suspension under s.9 of the Act.

27 On behalf of the respondents it was argued that s.9 is no longer available in respect of the applicant's 1993 licence, having regard to s.30 of the Regulations. Once again, this ignores the effect of s.24(1), which qualifies s.30 in a case where the requirements for "automatic" renewal are met. Those requirements would not be met if the applicant stands convicted of a contravention of the Act or Regulations. In such a case, the renewal could be denied simply on that basis. But where, as here, the applicant has not been convicted, the renewal must be automatically granted on payment of the appropriate fee and on compliance with the other formalities in such a case. Once the renewal is granted, the 1993 licence is renewed for the year 1994; and, as a 1994 renewed licence, it can then be suspended pursuant to s.9 of the Act in 1994.

28 Counsel for the respondents referred to the former **Wildlife Business Regulations** (R-057-82) enacted on May 18th 1982 under the **Wildlife Act**, which were replaced by the present Regulations in 1992. As the former Regulations show, s.24 of the present Regulations is a new provision. Under the former Regulations, an outfitter's

licence was to be applied for annually except in certain instances, as where the outfitter was a natural person resident in the Northwest Territories, in which case his or her licence was to be renewable for a continuous period of not less than ten years, without any restriction or condition. Today's s.24 removes any need for those residential and other qualifications; and it limits the period of renewability to ten years. It also introduces the condition that renewal is subject to the applicant being free of contraventions of the Act or Regulations.

29 This examination of the antecedents of the present s.24 of the Regulations yields a better understanding of the out-moded Departmental view that outfitter's licences must be applied for afresh each year so that s.23(3) of the Regulations and s.3(4) of the Act then apply to applications for a renewal in the same manner as for the original licence. And it reflects official recognition, in 1992, of the operational realities facing all outfitters and not just those who met the requirements for renewal under the old Regulations. Moreover, it shows that renewal is now to be restricted to the licences of outfitters who have not been judicially found to have contravened the Act or Regulations. Others are "automatically" renewable, but always subject to s.9 of the Act.

30 Counsel have cited numerous authorities which I have not mentioned or discussed in these reasons, although I have examined and considered them. Time being of the essence, I shall refrain from doing so. I am indebted to counsel for their industry and, more particularly, for their written submissions. Counsel for the respondents have referred also to other legislation of the Northwest Territories dealing with licensing, such as the **Liquor Act**, R.S.N.W.T. 1988, c. L-9 and the **Legal Profession Act**, R.S.N.W.T. 1988, c. L-2. My examination of those statutes has left me unpersuaded, however, that

there is any assistance to be derived from them on the narrow issue before the Court in the matter at hand, which in my respectful view depends solely on the expressed intention of the legislature in the **Wildlife Act** and of the Commissioner, as the legislature's delegate, in the **Wildlife Business Regulations**.

III. Disposition

31 As mentioned in **Union of Northern Workers v. N.W.T. (Min. of Safety & Pub. Services)** (***supra***), *mandamus* is an order which may be issued by this Court to command a person, corporation or inferior tribunal to perform a public duty which pertains to that person, corporation or tribunal. To succeed in this application the applicant must show first that what it asks the Court to compel is the performance of a public duty, no issue having arisen as to the applicant's standing to make the present application.

32 On the material before the Court I am of the opinion that the renewal of an outfitter's licence pursuant to s.24(1) of the **Wildlife Business Regulations** is a public duty to be performed by the respondent Mr. McLeod (or under his direction) where the requirements for such renewal are met. Those requirements will not have been met where the applicant licensee has been convicted of the offence of contravening the **Wildlife Act** or the Regulations. Where, on the other hand, the applicant is free of any such conviction, the condition of s.24(1) of the Regulations that "the holder of the licence has not contravened the Act or regulations" is met, since any mere allegation or suspicion, not to mention *prima facie* case or belief, to the contrary, does not suffice to displace the legal presumption of innocence in such a case.

It is an unauthorised and improper exercise of power on the part of the respondent Mr. McLeod to refuse to renew an outfitter's licence where the renewal requirements, more particularly those above mentioned, have been fulfilled by the licensee who applies for the renewal. Mr. McLeod and those acting under his direction are not empowered to exercise a discretion to refuse a renewal application where those requirements are met.

34 An order shall issue forthwith to come into force no later than May 31st 1994, commanding Mr. McLeod in his capacity as Superintendent of Wildlife to forthwith consider and act upon the applicant's outfitter's licence renewal application in accordance with these reasons for judgment.

35 The order shall furthermore declare that in so far as Mr. McLeod's letter to the applicant dated April 11th 1994 constitutes a refusal to consider or act upon that application, or constitutes the purported exercise of a discretion to withhold the renewal subject to the outcome of a hearing into allegations against the applicant, or otherwise, the letter and any such refusal or purported exercise of discretion are without legal effect and are quashed accordingly.

36 The applicant's request for an order in the nature of prohibition is adjourned *sine die*, and may be brought back before the Court on two days notice, if necessary.

37 I have made no comment on the specific nature of the allegations made against the applicant beyond their characterisation as allegations of contraventions by the applicant against the Act or Regulations. Should there be a suspension of the applicant's renewed outfitter's licence pursuant to s.9 of the Act, based upon any such allegations,

this Court may in due course be required to adjudicate upon an appeal under that section.

38 Costs were not spoken to. Should it be necessary, counsel may obtain an appointment to speak to costs in Chambers.

M.M. de Weerdt
J.S.C.

Yellowknife, Northwest Territories
May 25th 1994

Counsel for the Applicant: Austin Marshall, Esq.

Counsel for the Respondents: John U. Bayly, Q.C.
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REASONS FOR JUDGMENT OF THE
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