

Citation: *R. v. LaPrairie*, 2003 YKTC 24

Date: 20030404
Docket: T.C. No. 02-00123
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

Regina

v.

Cliffe LaPrairie

Appearances:

Zebedee Brown

Edward Horembala

Appearing for Crown
Appearing for Defence

DECISION

[1] The general outline of the sad story surrounding the disappearance of the bison, commonly called the buffalo, is well known. What is less well known is that there are two distinct sub-species of bison. The plains bison inhabited the grasslands of the central North American plains. Far to the north were the wood bison. Cut off from the plains bison during the Beringia period around 5000 years ago, the wood bison was once quite common in the Yukon and western Northwest Territories. Climate and habitat changes over the centuries reduced their numbers, but it is estimated that in the year 1800 there were still some 160,000 animals. By the late 1890s, after the arrival of the white man, the fur trade and firearms, this number had been reduced to only 250.

[2] In the 1920s, Wood Buffalo Park was established to protect the remaining wood bison and their numbers began to increase. Unfortunately, a decision was made to relocate over 6000 plains bison from southern Alberta into the park. The result was hybridization between the wood bison and the newcomers. The plains bison also introduced tuberculosis, anthrax and brucellosis into the combined

herd and it appeared as if the wood bison was doomed to extinction. However, in 1959, a small herd of pure wood bison were discovered in a remote area of Wood Buffalo Park. Forty-two were captured. Of these, eighteen were released north of Great Slave Lake and twenty-two were relocated to Elk Island National Park in Alberta. These forty-two animals form the basis of the effort to save this endangered species.

[3] In 1980, the Yukon decided to participate in the Wood Bison Recovery Program. Between 1988 and 1992, 142 wood bison were brought to the Yukon and re-established in the Nistling River region of southern Yukon. These animals are all descended from the twenty-two wood bison taken to Elk Island Park. The Yukon recovery program, which has now cost in excess of \$1,000,000, has been a tremendous success as the herd has now grown to about 500 disease-free animals. Nevertheless, the herd remains vulnerable because of its small size, lack of genetic diversity and the threat of disease.

[4] The Yukon herd soon posed a problem of another sort. Some of the animals migrated south and took up residence along the Alaska Highway between Whitehorse and Haines Junction where the bison found the roadside grasses much to their liking. This resulted in a number of clashes between bison and motorists as well as complaints of property damage from landowners along the highway corridor. The decision was taken to round up the animals and place them in an enclosure.

[5] It is at this point that the accused, Cliff LaPrairie, enters the picture. In 1987, Mr. LaPrairie, who is now 72 years of age, had purchased a large tract of land along the Alaska Highway west of Whitehorse, as a retirement property. He contacted the Yukon Government and offered to take the "problem" bison off of the government's hands with a view to establishing a game ranch on his property. An agreement was reached and, in 1993, the bison were relocated to what is now known as the LaPrairie Bison Ranch.

[6] Mr. LaPrairie assumed all the costs of caring for the animals. It was Mr. LaPrairie's hope that he could increase the captive herd and derive an income from the sale of surplus animals. The thirty-six captured animals were not an ideal breeding herd because of the ratio of bulls to cows and the danger of inbreeding. As a result, Mr. LaPrairie began considering obtaining fresh breeding stock. He learned of a bison auction to be held at Elk Island National Park. Mr. LaPrairie attended the sale and purchased four wood bison bulls. He was advised by the auctioneers and Elk Island wardens that the animals had been tested and were disease-free. Mr. LaPrairie loaded up the four animals and hauled them by truck and trailer to his ranch.

[7] Unfortunately, Mr. LaPrairie did not have the animals tested for disease and did not obtain the necessary permits to import the bison into the Yukon. As a result of his failure to have the animals tested or to obtain import permits, he was charged with two offences under the Yukon *Wildlife Act*, R.S.Y. 1986, c.178. In addition, he was charged with an offence contrary to s. 6(3) of the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, S.C. 1992, c.52 -- commonly referred to by its acronym WAPPRIITA. This section of the *Act* makes it an offence to transport an endangered animal from one province to another without a permit. The Crown proceeded by summary conviction. Following his guilty plea to the charge under WAPPRIITA, the charges under the *Wildlife Act* were stayed by the Crown.

[8] For a first-offence, an individual is liable upon summary conviction, to a fine not exceeding twenty-five thousand dollars, or to imprisonment for six months, or both.

[9] The *Act* has two purposes. The first is to halt the illicit traffic in endangered species or the parts of such animals. The second is to halt the spread of disease or the introduction of exotic and potentially damaging plants or animals.

[10] The first question to be answered is why Mr. LaPrairie would import the animals without a permit. His answer is that “it never entered his mind” and that he should have known better but didn’t. I accept that the mistake was simply that. Although it is possible that Mr. LaPrairie made a conscious decision to smuggle the bison in and so avoid disease testing, this seems highly unlikely for two reasons. First, Mr. LaPrairie made no secret of what he had done. In fact, his actions were discovered by the authorities because he told a conservation officer that he had just brought four bison from Elk Island Park to his Yukon ranch. Second, given Mr. LaPrairie’s considerable investment of time and money in the bison ranching project, it would have been sheer folly for him to import suspect animals at the risk of contaminating his own herd.

[11] There is, nevertheless, more to the case than the mere failure to obtain a permit. Mr. LaPrairie honestly believed that the animals he brought into the Yukon were disease-free. In the past, brucellosis, tuberculosis and anthrax were the three diseases posing a threat to the Yukon herd. There is no evidence that these diseases were present in the four animals purchased by Mr. LaPrairie. Indeed, Elk Island National Park had tested the animals for these diseases. However, it appears that there are new diseases, first found in domestic cattle, which could potentially threaten the Yukon bison herd. These diseases include Johne’s Disease and bovine viral diarrhoea or BVD. Johne’s is a fatal bacterial infection. BVD causes calves to be aborted and can seriously reduce the reproductive rate of an infected herd.

[12] Dr. Michelle Oakley is a veterinarian and Chair of the Yukon Wood Bison Technical Team. Dr. Oakley testified that, although Elk Island Park has tested its animals for Johne’s, the testing method used often fails to detect the disease. There is, however, no evidence that the animals imported by Mr. LaPrairie are infected with Johne’s Disease.

[13] The picture with respect to BVD is more troubling. Elk Island had vaccinated the four bison purchased by Mr. LaPrairie against BVD. Nevertheless, when these bison were tested at the LaPrairie Ranch, the results were positive for BVD. At this time, it is unclear whether this is a false positive result or the animals are actually infected. It is even possible that the animals became infected after they arrived at the LaPrairie Bison Ranch. Further testing of the LaPrairie herd will be required to determine the true state of affairs.

[14] The susceptibility of bison to these diseases has only recently become known and Mr. LaPrairie was not aware of the threat. The situation points out why it is important for potential importers of bison and other animals to seek advice before bringing them into the Yukon. Disease concerns will vary depending on time and the source area of the animals. The testing and import permit requirements give the technical team the opportunity to review any proposed importation in advance.

[15] The defence argues that Mr. LaPrairie was simply negligent. He did not intend to commit an offence. I accept that Mr. LaPrairie was unaware of the necessity to obtain import permits. However, it is difficult to understand why this would be so, since Mr. LaPrairie has been heavily involved in the bison ranching business for a number of years and would be expected to be cognizant of the applicable regulations.

[16] The defence concedes that lack of intent is not a defence to a regulatory offence, but submits it is relevant to the penalty to be imposed. I accept this proposition as well, but it cannot be overemphasized in prosecutions under WAPRIITA. It has often been the case that importers of plants or animals acted with the best of intentions but with disastrous environmental consequences. Although the specific concern in this case is the possibility of introducing disease to the wood bison already in the Territory, the danger of unregulated movement of plants and animals goes well beyond this. The world is replete with examples

of situations in which the release of exotic species in new areas has had an unintended and devastating impact on the environment or on indigenous species.

[17] I have reviewed a number of sentencing precedents under WAPRIITA, however, none of the cases involve facts similar to those in the case at bar. Most of the cases have involved illicit trafficking in endangered species or animal parts. *R. v. Gervais*, [2000] Y.J. No. 109 (Y.T.C.) is an example. Others, somewhat more analogous to the present case, have involved inter-provincial transport of big game animals or parts. However, these cases have generally involved the transport of animals that had been killed in contravention of wildlife legislation. *R. v. Sandbach*, [1998] Y.J. No. 34 (Y.T.C.) is an example of this latter type of case.

[18] My review of prosecutions under analogous legislation, as, for example, the *Animal Disease and Protection Act*, R.S.C. 1985, c. A-13, the *Health of Animals Act*, S.C. 1990, c. 21, s. 56 and the provincial wildlife statutes, likewise failed to produce precedents applicable to the present circumstances.

[19] In fixing the penalty in this case, I consider that Mr. LaPrairie has entered a guilty plea and that he has no prior record. I consider that he acted in good faith and in ignorance of the requirement to obtain permits. I consider, as well, that his actions may ultimately have financial implications for him quite apart from the fine I impose. This would be so if it is found that Mr. LaPrairie's herd has become infected with BVD or other diseases.

[20] On the other hand, I also must take account of the fact that, although the offence is, on its face, a regulatory matter, unregulated transport of plants and animals can lead to serious and, sometimes unforeseen consequences. I consider as well the general rule that, in cases involving commercial or business matters, fines for breaches of environmental laws should not be set at levels which risk having non-compliance viewed as simply a cost of doing business.

[21] Taking all matters into account, I order that the offender forfeit and pay a fine in the amount of \$1500.

FAULKNER T.C.J.