

Citation: *R. v. Smith*, 2012 YKTC 98

Date: 20111025  
Docket: 11-08537  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: Her Worship Justice of the Peace Morrison-Harvey

REGINA

v.

FRED SMITH

Appearances:  
Lee Kirkpatrick  
Fred Smith

Counsel for the Crown  
Appearing on his own behalf

**REASONS FOR SENTENCING**

[1] MORRISON-HARVEY J.P.T.C. (Oral): Mr. Smith, with regard to the application that you filed before the Court for the return of wildlife that has been seized, specifically the meat from the sheep kill that is in question today, I think I have said it about four times now; there really is nothing in dispute here in terms of whether the curl was under full curl.

[2] There is no dispute or any other indication that you were absolutely cooperative with all the officials involved in this matter. I do not doubt for a moment that you are a careful, ethical, conscientious hunter. Having said all that, Ms. Kirkpatrick, I think, has stated it very clearly: when there is the finding that the sheep is under full curl, the Court

has no discretion to order that it be returned to you. I do make that finding, that the sheep is under full curl.

[3] In terms of discretion, the only discretion that comes into play is whether or not the officer will issue a ticket or not, they used that discretion, and did not.

[4] In terms of this particular section, where your meat has been seized, the line has to be clear, Mr. Smith. If everyone could start using discretion about where that curl really is, there would be individuals in here saying, "Well, why did Mr. Smith get his meat back just because he is that kind of an individual and it was only this difference, and mine is only another 1/16 inch difference." So as empathetic as I might be and would love to see you enjoy the sheep meat, I cannot order it returned to you.

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MORRISON-HARVEY J.P.T.C.