

Manitoba Ombudsman

REPORT UNDER

THE OMBUDSMAN ACT

CASE FILE NUMBER 2014-0176

MANITOBA CONSERVATION AND WATER STEWARDSHIP

REPORT ISSUED OCTOBER 23, 2014

CASE SUMMARY

On April 10, 2014, a complaint was filed with Manitoba Ombudsman alleging that Manitoba Conservation and Water Stewardship's requirements for the inter-provincial transport of game birds from Manitoba are inconsistent with *The Wildlife Act*, and are not clearly conveyed to the public. The complainant also believes that the requirements create significant obstacles for Manitoba hunters who wish to gift lawfully harvested game birds to visiting friends and family from out of province.

After reviewing the evidence, Manitoba Ombudsman has concluded that the department's requirements for the inter-provincial transport of game birds from Manitoba are consistent with *The Wildlife Act* and the department informs the public regarding the requirements in a reasonable manner. It is also our view that the requirements for the inter-provincial transport of game birds do not create significant or unreasonable obstacles for non-licence holders engaged in the inter-provincial transport of game birds from Manitoba.

OMBUDSMAN JURISDICTION AND ROLE

Manitoba Ombudsman is an independent office of the Legislative Assembly of Manitoba, reporting to the assembly through the Office of the Speaker. The responsibilities and authority of the ombudsman are set out in *The Ombudsman Act*, *The Freedom of Information and Protection of Privacy Act*, *The Personal Health Information Act*, and *The Public Interest Disclosure (Whistleblower Protection) Act*.

Under *The Ombudsman Act*, Manitoba Ombudsman investigates administrative actions and decisions made by government departments and agencies, and municipalities, and their officers and employees. Investigations may be undertaken on the basis of a written complaint from a member of the public, or upon the ombudsman's own initiative.

The actions and decisions complained about are matters of administration arising from actions undertaken by Manitoba Conservation and Water Stewardship pursuant to *The Wildlife Act*.

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation or a municipal by-law. On other occasions, it is written policy or established procedures implemented to give effect to legislative purpose. In cases concerning an impact on individual rights or benefits, we also examine the fairness of the action or decision. A complaint can raise questions of procedural fairness, substantive fairness or relational fairness. Procedural fairness relates to how decisions are reached; the steps followed before, during and after decisions are made. Substantive fairness relates to the fairness of the decision itself and relational fairness relates to how people are treated during the decision making process.

While our office has a mandate to investigate complaints, the investigative process we follow is non-adversarial. We carefully and independently consider the information provided by the complainant, the decision maker, and any witnesses we determine to be relevant to the case. Administrative Investigations can involve an analysis of statute or by-law provisions, document reviews, interviews and site visits.

The goal of administrative investigations is to determine the validity of complaints and to identify areas requiring improvement. If a complaint is supported by a finding of maladministration, the ombudsman may make recommendations pursuant to section 36 of *The Ombudsman Act*.

THE COMPLAINT

The complainant alleged that Manitoba Conservation and Water Stewardship's requirements for the inter-provincial transport of game birds from Manitoba are inconsistent with *The Wildlife Act* and are not clearly conveyed to the public. The complainant also asserted that the requirements create significant obstacles for Manitoba hunters who wish to gift lawfully harvested game birds to visiting friends and family from out of province.

KEY ISSUES

- 1. Are the department's requirements for the inter-provincial transport of game birds from Manitoba consistent with *The Wildlife Act*?**
- 2. Is the department adequately informing individuals of the requirements for inter-provincial transport of game birds from Manitoba?**

3. Do the requirements in Manitoba create significant obstacles for “non-licence holders” engaged in inter-provincial transport of game birds from Manitoba? Are the requirements for inter-provincial transport of game birds from Manitoba consistent with the requirements in neighbouring jurisdictions?

BACKGROUND INFORMATION

The complainant advised our office of the following background information that gave rise to this complaint. In October 2010, he lawfully harvested two game birds outside of Dauphin and gave them to his son who was visiting from out of province. The complainant provided his son the documentation that he believed was required for a non-licence holder to “transport” game birds within the meaning of *The Wildlife Act*. His son drove home to Calgary on October 16, 2010. In Alberta, the complainant’s son was stopped at a wildlife check stop and conservation officers learned he was in possession of two game birds in his vehicle.

The complainant indicates that officials in Alberta contacted Manitoba Conservation and Water Stewardship for information about the requirements for transporting lawfully harvested upland game birds outside Manitoba. The department informed the Alberta officials that as per *The Wildlife Act*, a person must obtain an export permit prior to exporting upland game birds that were lawfully harvested by another individual from the province of Manitoba.

The complainant’s son did not hold the necessary export permit and was therefore charged with exporting a game bird from Manitoba without an export permit. However, the Crown later stayed the proceedings for this charge.

SUMMARY OF THE COMPLAINANT’S POSITION

The complainant states that the department’s requirements for the inter-provincial transport of game birds from Manitoba are inconsistent with *The Wildlife Act* because the definition of “export” means taking an item outside the country for a commercial purpose. His position is that the act only requires an export permit if the wild animal is being removed from Canada for a commercial purpose. As such, the complainant indicates that when his son took the game birds to Alberta, his son was transporting the birds pursuant to section 47 of the act, and not exporting. The complainant believes that the department’s requirements for the inter-provincial transport of game birds from Manitoba are inconsistent with the legislation because there is no specific definition in the act for the word “export.”

Further, the complainant believes that the department’s 2010 edition of the *Manitoba Hunting Guide*, current at the time his son was charged with unlawfully transporting a game bird out of the province, did not clearly inform the public of the department’s requirements regarding inter-provincial transport of game birds from Manitoba.

The complainant also believes that the department's requirements create significant obstacles for Manitoba hunters who wish to gift lawfully harvested game birds to visiting friends and family from out of province.

SUMMARY OF THE DEPARTMENT'S POSITION

Manitoba Conservation and Water Stewardship's director of the Wildlife Branch and the legislative specialist of the Wildlife Branch maintain that the department's requirements for the inter-provincial transport of game birds from Manitoba are consistent with *The Wildlife Act*. The department indicates that over and above the transport requirements of section 47 of the act, section 48 requires that no person shall export, or attempt to export "from the province" any wild animal or part of a wild animal, without an export permit.

The department maintains that the requirements for inter-provincial transport of game birds from Manitoba are clear and accessible to individuals interested in hunting in the province.

The department also believes that the requirements for inter-provincial transport of game birds from Manitoba do not create significant obstacles for individuals and are similar to the requirements in Alberta and Saskatchewan. The process and time required to obtain an export permit in Manitoba is considered reasonable given the available staff resources.

SCOPE OF THE INVESTIGATION

Our investigation of this complaint included the following:

- A review of *The Wildlife Act* and the *Miscellaneous Licences and Permits Regulation*;
- A review of file materials provided by the complainant and Manitoba Conservation and Water Stewardship;
- A review of the current and previous editions of the *Manitoba Hunting Guide*;
- Interviews with the complainant;
- Interviews with the department's director of the Wildlife Branch and the legislative specialist of the Wildlife Branch; and
- A review of the requirements for inter-provincial transport of game birds from Alberta and Saskatchewan.

ANALYSIS OF ISSUES AND EVIDENCE

1. Are Manitoba Conservation and Water Stewardship's requirements for the inter-provincial transport of game birds from Manitoba consistent with *The Wildlife Act*?

Manitoba Ombudsman reviewed the legislation regarding the inter-provincial transport of game birds from Manitoba and the context in which the word "export" is used. Section 47 of *The*

Wildlife Act sets out the basic requirements for transporting game birds within Manitoba and outside the province. The provision reads as follows:

Transporting

47 *No person shall*

(a) ship by common carrier or mail, or deliver to another person for shipping by common carrier or mailing, any package, parcel, crate or receptacle that to his knowledge contains a wild animal or any part of a wild animal and does not have plainly marked on the outside thereof a complete description of the contents; or

(b) unless authorized by a transport permit or possession permit, accept or have possession of the carcass of a big game animal or any part of the carcass to which a valid, subsisting seal, shipping coupon or tag issued with or as part of a licence to hunt that species of big game animal is not attached; or

(c) not being a common carrier carrying a big game animal or game bird under a bona fide bill of lading, transport a big game animal or game bird that was killed or taken by another person, unless that other person accompanies the big game animal or game bird, or

(i) in the case of the big game animal, the declaration on a shipping coupon or tag required under clause (b) was completed and signed by the person who killed the animal, or

(ii) in the case of the game bird, the bird is accompanied by a statement signed by the person who killed the bird showing his name, address, the number of the licence authorizing the taking of that species of bird, and the date of the signing of the statement.

Clause 48(2)(d) of the act sets out additional requirements for an individual wishing to lawfully “export or attempt to export from the province” any wild animal or any part of a wild animal. The provision is as follows:

Importing or exporting prohibited

48(2) *Subject to subsections (3) and (4) and except as may be otherwise provided in this Act or in the regulations, no person shall*

(a) import into the province, or have in his possession, or release into the wild, any species or type of animal the possession of which has been declared under subsection (1) to be prohibited in the province; or

(b) import into the province any wild animal except as may be authorized by a permit; or

(c) have possession of any wild animal, imported into the province without the authority of a permit; or

(d) export or attempt to export from the province any wild animal, or any part of a wild animal, except pursuant to a permit.

[Emphasis added]

In other words, clause 48(2)(d) provides that unless otherwise stated in the act or the regulations made under the act, an individual must have an export permit to be able to lawfully “export or attempt to export from the province any wild animal, or any part of a wild animal” [emphasis added].

Subsection 48(4) of the act and section 17 of the *Miscellaneous Licences and Permits Regulation*, which both set out more information about the export permit requirements, also refer to exporting a wild animal “from the province” or “from Manitoba.” The provisions read as follows:

The Wildlife Act

Export permit

48(4) For the purposes of clause (2)(d), a licence authorizing the taking of a wild animal other than a fur bearing animal, or a seal or coupon issued as part of the licence, shall be presumed to be a permit authorizing the export from the province of the species or type of wild animal for which the licence is issued.

Miscellaneous Licences and Permits Regulation

When export permit not required

17 A hunting licence, or a seal or coupon issued as part of that licence, is valid as an export permit for a wild animal killed under the authority of that licence if
(a) the animal is exported no later than 30 days after it was killed; and
(b) the holder accompanies the animal when it is exported from Manitoba.

[Emphasis added]

The complainant asserted that the department’s requirements for the inter-provincial transport of game birds from Manitoba are inconsistent with *The Wildlife Act* because “export” means taking an item outside the country for commercial purposes. While Manitoba Ombudsman considered the dictionary definitions that the complainant provided, our office is of the view that dictionary

definitions can differ and are detached from the many contexts in which a particular word has been or could be used. This view is informed by Canadian law professor Ruth Sullivan's *Sullivan and Driedger on the Construction of Statutes*. She writes that since the purpose of the dictionary is to reveal the full range of meanings that a word may have or the different ways it may be used, dictionary entries focus on the ambiguity of language. She states that dictionary meanings cannot indicate the meaning of a word in a particular context. She indicates that to determine the intended meaning of a word, one must rely on the immediate context and possibly on other contextual factors as well.

As such, dictionary meanings alone cannot be relied upon to understand the meaning of a word in a particular piece of legislation. Manitoba Ombudsman therefore considered the context in which the word "export" is used in the *The Wildlife Act* and the *Miscellaneous Licences and Permits Regulation* in order to better understand the denoted meaning.

As noted above, clause 48(2)(d) of the act specifies that an export permit is required if an individual wishes to "export or attempt to export from the province" any wild animal or any part of a wild animal. Subsection 48(4) of the act and section 17 of the regulation are consistent with this language. Given the context in which the word "export" is used in the act and the regulation, Manitoba Ombudsman is satisfied that the department's requirements for the inter-provincial transport of game birds from Manitoba are consistent with *The Wildlife Act*.

The complainant further submits that if taking a game bird from Manitoba to another province is considered exporting under the act, he believes that in the circumstances that led to his son being charged, he was the exporter and not his son, thereby qualifying his hunting licence as the export permit under subsection 48(4) of the act. After reviewing the evidence, however, Manitoba Ombudsman is unable to support this view because of the wording of the legislation. Section 17 of the regulation provides that for a hunting licence to be valid as an export permit for a wild animal harvested under the authority of the licence, the licence holder must accompany the animal when it is exported from Manitoba. Furthermore, subsection 60(1) of the act provides that a hunting licence is not transferable. Therefore, because the hunting licence issued to the complainant was not transferrable to his son, the licence could not have been used as a valid export permit for the son to transport the game birds to Calgary.

2. Is the department adequately informing individuals of the requirements for inter-provincial transport of game birds from Manitoba?

Manitoba Conservation and Water Stewardship provides hunting information to the public primarily through its website and the *Manitoba Hunting Guide*. The hunting guide contains a summary of pertinent laws and regulations regarding hunting in Manitoba, including the import and export of wild animals to and from Manitoba. The guide is prepared by the department and is available free of charge at most vendors that sell hunting licences, as well as at the department's district offices and the department's website. The department states that it is common practice for individuals to attain the annual hunting guide when purchasing a hunting licence and that the guide is widely used by the public.

The complainant provided our office an excerpt of the 2010 hunting guide section on game bird hunting that he believes is deficient. This edition of the guide includes the following information about the export requirements for game birds:

Exporting Game Birds

All game bird hunting licences are valid to export game birds subject to the information described above in Possession and Transportation of Game Birds and the following conditions:

- *A possession limit of upland game birds belonging to the licence holder may be exported up to thirty days after the season closes (five days for migratory game birds), while the birds are in the personal possession of the licence holder.*
- *If a person other than the licence holder wishes to export the birds an export permit must first be obtained.*

Foreign resident hunters should note that in order to import birds into the United States, the birds must be in the possession of the licence holder.

The following warning was also provided on the inside front cover of the 2010 hunting guide:

This guide is a summary of the wildlife regulations. It is neither a legal document nor a complete collection of the wildlife regulations. It is meant to be a convenient reference only. While every effort has been made to ensure accuracy, some errors or omissions may have occurred. For additional information consult the nearest Manitoba Conservation Office or telephone 204-945-6784 in Winnipeg or 1-800-214-6497.

For general information on wildlife programs and legislation visit us at www.manitoba.ca/conservation/wildlife/index.html

The department revises the hunting guide annually to reflect changes in legislation and add clarification to benefit the public. Often the department will add clarification to the guide in response to questions from the public.

The department states that in early 2011 the complainant inquired if the export requirements applied to taking animals outside of the province of Manitoba or outside of the country; in response to the complainant's question, the department added the words "from Manitoba" to the aforementioned section of the hunting guide so that the title of the revised section became "Exporting Game Birds from Manitoba." The hunting guide now advised that all game bird hunting licences were valid to "export game birds from Manitoba" subject to the information and conditions provided in the guide.

The department added the clarification "from Manitoba" to the hunting guide in spring 2011 and it remains in the 2014 edition of the *Manitoba Hunting Guide*.

Manitoba Ombudsman is of the view that while the wording in the 2010 edition of the guide was adequate, the clarification made to the 2011 edition of the guide was a positive administrative improvement. Further, our office notes that the department states that members of the public can also ask natural resource officers questions about the inter-provincial transport of game birds, or contact staff at the department's Wildlife Branch by telephone, should the legislative requirements be unclear.

Based on the evidence our office has reviewed, Manitoba Ombudsman is satisfied that the current wording of the hunting guide adequately informs the public about the requirements for the inter-provincial transport of game birds from Manitoba.

Although Manitoba Ombudsman is satisfied with the information provided in the *Manitoba Hunting Guide*, our office has suggested that the department consider adding contact information for the wildlife permits clerk. The export permit application form, for example, invites the public to contact the wildlife permits clerk by phone for more information about export permits; this information would also be useful in the sections of the hunting guide that discuss export permit applications. The department has indicated that it would seriously consider this suggestion in future editions of the hunting guide.

3. Do the requirements in Manitoba create significant obstacles for “non-licence holders” engaged in inter-provincial transport of game birds from Manitoba? Are the requirements for inter-provincial transport of game birds from Manitoba consistent with the requirements in neighbouring jurisdictions?

Our office considered the complainant's concern that the department's requirements create significant obstacles for “non-licence holders” engaged in inter-provincial transport of game birds from Manitoba. First, we reviewed how long it takes the department to process an export permit for people who wish to gift lawfully harvested game birds to friends and family from outside the province.

The department advises that the export permit application form and the hunting guide set out 28 working days as a maximum timeframe for processing an export permit; however, producing an export permit does not typically take the full 28 days allowed. The department also notes that the application form, which is available online, indicates that export permit applications may be sent to either the department in Winnipeg or to any of the department's district offices where natural resource officers are stationed. The department states that if people attend their local district office where a natural resource officer is present, the officer may be able to grant an export permit immediately.

The department advises that it can take up to 28 days to process an application due to the staff resources available to process export permits and the large volume of other wildlife-related permits and licence applications it receives. The department states there is only one wildlife permits clerk to process all wildlife-related permits and licences (other than recreational hunting licences). While the complainant questions the decision to have only one person process all the permit and licence applications, we consider this to be a budgetary decision and it is not unreasonable in the circumstances.

Given the evidence we have reviewed regarding the export permit application process, Manitoba Ombudsman is satisfied that the requirements for the inter-provincial transport of game birds do not create significant obstacles for non-licence holders engaged in the inter-provincial transport of game birds from Manitoba.

We also examined whether the requirements for the inter-provincial transport of game birds from Manitoba are consistent with the requirements in neighbouring jurisdictions. In Alberta and Saskatchewan, legislation is similar to Manitoba in that a non-licence holder must obtain an export permit prior to taking a game bird outside the province. The department notes that Nunavut also issues export permits for most game animals that are harvested under their legislation, similar to the prairie provinces.

Manitoba Ombudsman is satisfied that the requirements for the inter-provincial transport of game birds from Manitoba are consistent with the requirements in Alberta and Saskatchewan.

CONCLUSION

Based on our investigation of this complaint, Manitoba Ombudsman concludes that there are no grounds upon which to make any recommendations on the complainant's behalf. The department's requirements for the inter-provincial transport of game birds from Manitoba are consistent with *The Wildlife Act* and the department has revised the *Manitoba Hunting Guide* to ensure that the requirements are communicated to the public in a clear and reasonable manner. It is also our view that the requirements for the inter-provincial transport of game birds do not create significant or unreasonable obstacles for non-licence holders engaged in the inter-provincial transport of game birds from Manitoba.