

## LexisNexis® Agricultural Law *NetLetter*

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Issues added on the 7th and 21st of every month.

### **\*\* HIGHLIGHTS \*\***

- \* The Saskatchewan Court of Appeal has unanimously rejected the appeal of a Treaty Indian who operates a game farm on reserve lands concerning his conviction for exporting antlers and other wildlife parts to the United States contrary to the provisions of the Saskatchewan Wildlife Act and federal legislation. The Court rejected a number of arguments, including the argument that permits and licences issued by the Poundmaker First Nation supplanted the permits and licences required in provincial legislation, and the argument that the game farm was not liable, because the animals were exported by its customers - the Court observed that the game farm operator aided and abetted its customers by using permits and licences it knew to be false. (*R v. Nordstrom*, [CALN/2014-039](#), [\[2014\] S.J. No. 671](#), Saskatchewan Court of Appeal)

### **\*\* NEW CASE LAW \*\***

*R v. Nordstrom*; [CALN/2014-039](#), Full text: [\[2014\] S.J. No. 671](#); [2014 SKCA 124](#), Saskatchewan Court of Appeal, R.G. Richards C.J.S., N.W. Caldwell and P.A. Whitmore JJ.A., November 27, 2014.

Game Farm Regulation -- Indian Reserves -- Export Permits and Licences.

Carlin Nordstrom ("Nordstrom") appealed to the Saskatchewan Court of Appeal on a number of offences under the Wildlife Act, 1998, [SS 1998, c. W-13.12](#) (the "Wildlife Act") and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act, [SC 1992, c. 52](#) (the "International Trade Act").

Nordstrom is a Treaty Indian. He operates a game farm on a large fenced-off part of the Poundmaker First Nation near North Battleford, Saskatchewan. Nordstrom stocked the farm with elk and white-tailed deer. His clients, usually Americans, pay to hunt those animals.

The Wildlife Act prohibits the import and export of wildlife without a license subject to exemptions in the Regulations passed pursuant to the Act. Section 31(1) provides:

- 31(1) Subject to the regulations, no person shall, without having first obtained an export or import licence issued pursuant to this Act or the regulations:
- (a) export or cause to be exported from Saskatchewan any wildlife; or
  - (b) import, release or introduce into Saskatchewan any wildlife.

The International Trade Act prohibits the importation of animals into Canada in contravention of the law of foreign states and the export of animals without permits issued by the province. In September and October of 2006, a number of Nordstrom's clients crossed the border into the United States with antlers and meat products from animals shot on the game farm. Instead of the kills being documented and labelled as game farm kills, the hunters were issued Waterhen First Nation hunting licences and seals for the animal parts which were provided by Nordstrom.

The Provincial Court Judge acquitted Nordstrom of some charges and convicted him and sentenced him on 12 counts: [\[2011\] S.J. No. 695](#), [2011 SKPC 166](#) and imposed a fine of \$29,502.00.

Nordstrom appealed both the convictions and sentence to the Court of Queen's Bench. The appeal Judge set aside a conviction for obstruction and a conviction for furnishing false and misleading information but upheld the remaining convictions.

Decision: Richards, C.J.S. (Caldwell and Whitmore, J.J.A. concurring) dismissed Nordstrom's appeal at p. 93.

Richards, C.J.S. considered a number of issues:

1. Whether elk and white-tailed deer parts were "wildlife" within the meaning of the Wildlife Act?

The Wildlife Act defines "wildlife" as a vertebrate animal of any species that is wild by nature in Saskatchewan and includes any part. (s. 2).

Nordstrom argued that the word "part" did not refer to things like meat and antlers. Richards, C.J.S. reviewed the statute in some detail before rejecting this argument [at para. 28 to 32].

2. Does s. 13(2) of the Captive Wildlife Regulations provide an exemption?

Nordstrom argued that he was exempt from the Wildlife Act by virtue of s. 13(2) of the Captive Wildlife Regulations which exempt persons who hold a valid licence pursuant to the Domestic Game Farm Animal Regulations.

Nordstrom argued that he was operating a game farm pursuant to a Band Bylaw and thus as a result of a representation or agreement made by Saskatchewan Environment with his Band, he was neither required to licence his operation nor obliged to obtain a licence before exporting the parts of wildlife killed on his farm.

Section 9 of the Wildlife Act does permit the Saskatchewan Government to enter into agreements with Indian Bands for the game management and related purposes [para. 35].

While Richards, C.J.S. had reservations as to whether an agreement within the meaning of s. 9 could create a licencing exemption, he agreed with the Lower Court decisions that no agreement to this effect had ever been reached in any event, following a thorough review of the facts and law [at para. 36 to 51].

### 3. Whether Poundmaker Bylaws and resolutions displace the Wildlife Act?

Richards, C.J.S. concluded that even if Band Council resolutions and bylaws could override provincial hunting bylaws of general application, the bylaws passed by Band Council did not do so [at para. 52 to 57].

### 4. Whether the labelling obligations in s. 18(2) of the Game Farm Regulations apply to Nordstrom.

Section 18(2) of the Game Farm Regulations require game farm operators to ensure that antlers, hides, and carcasses from animals on their farms are labelled with particulars including the date of slaughter, the identification number of the animal, and the game farm license number.

Richards, C.J.S. agreed with the provincial court Judge that Nordstrom was not exempt from these labelling requirements even if his game farm was exempt from the export licencing requirements.

### 5. Did Nordstrom "export or cause to be exported" wildlife?

Richards, C.J.S. concluded that by issuing tags and seals which he knew would be invalid, Nordstrom knowingly aided the illegal export of wildlife [at para. 66].

### 6. Did Nordstrom have a defence of due diligence?

This defence was rejected. Richards, C.J.S. noted that Poundmaker First Nation licences and seals were false documents, and that Nordstrom knew they were false [at para. 82].

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## **\*\* CREDITS \*\***

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