R. v. Heynen et al, 2001 YKSC 534

Date: August 29, 2001
S.C. No. 00-AP006

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

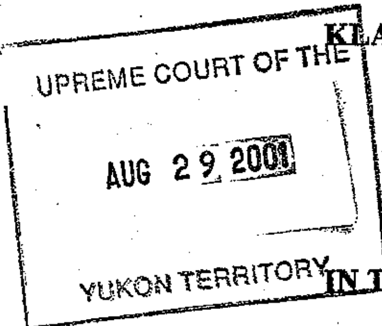
HER MAJESTY THE QUEEN

RESPONDENT

AND:

KLAAS HEYNEN AND KUSAWA OUTFITTERS LIMITED

APPELLANTS



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S.C. No. 00-AP007

BETWEEN:

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KLAAS HEYNEN, KUSAWA OUTFITTERS LTD.
AND EDWARD DAVIDSON

RESPONDENTS

REASONS FOR JUDGMENT OF MR. JUSTICE R. J. HAINES

[1] There are two summary conviction appeals before the court. The first is brought by Klaas Heynen and Kusawa Outfitters Limited. The second is brought by the Crown. Both arise from a trial that was heard by Stuart C.J.T.C. Klaas Heynen is the owner of Kusawa Outfitters Limited. They were charged jointly with 20 counts relating to alleged violations of the *Wildlife Act* R.S.Y. 1986, c. 178 and at the conclusion of the trial were convicted on counts 6, 7, 8, 9, 10 and 15. They are appealing the convictions on all but count 10. The Crown's appeal relates to acquittals that were entered with respect to counts 13, 14, 16, 17 and 18. The Crown is also appealing the acquittal of Edward Davidson, an employee of Kusawa Outfitters Limited, on two charges related to violations of the *Wildlife Act.*

[2] Klaas Heynen was the outfitter for the Kusawa Lake area in 1998 and held the exclusive right to outfit non-resident hunters in that concession area during the 1998/99 hunting season. Mr. Heynen and Kusawa Outfitters provided outfitting services to 29 non-resident hunters who each hunted for 7 to 10 days over the period from August 1 to September 30, 1998.

[3] The pertinent provisions of the *Wildlife Act* common to both appeals are the following:

> 11.(1) No person shall at any time hunt a species or type of wildlife in an area of the Yukon unless the hunting by him of that species or type of wildlife at that time in that area is permitted under this *Act.*
>
> 41.(1) No person who is not a resident of the Yukon shall hunt big game unless
>
> (a) he is outfitted by an outfitter and accompanied by a guide,
>
> 42. For each non-resident outfitted by an outfitter, the outfitter shall provide a separate guide to accompany the non-resident while he is hunting big game animals.
>
> 43.(1) No person shall

(b) accompany any non-resident in the field to assist the non-resident in hunting any big game animal.

45.(2) A person acting as a guide for another person has a reasonable responsibility

(a) for the safety and well-being of the other person, and

(b) for the care and preservation of the carcass of any wildlife killed by the other person.

[4] The definition and application of the terms "accompany" and "hunting" are central to the resolution of these appeals. It is evident from the careful and comprehensive reasons of the trial judge that he was concerned about certain provisions of the *Wildlife Act*. Some he found too vague and others too precise and unrealistically restrictive.

[5] "Accompany" is not defined in the *Wildlife Act* and at the trial, defence counsel asked the trial judge to provide a definition for "accompany" at the close of the Crown's case. The trial judge acceded to this request, heard submissions, reviewed similar legislation from other jurisdictions and made the following ruling:

> When a licensed hunter is involved in targeting a sheep to shoot, the licenced guide, in accompanying the hunter, shall be close enough to the hunter to:
>
> (a) see the hunter without the aid of any device other than ordinary corrective lenses; and
>
> (b) speak to the hunter and be heard by the hunter without any device to amplify either of their voices; and
>
> (c) be able to control what sheep the hunter targets to shoot and when the hunter shoots.

[6] In *R.* v. *D. A. Z.*, [1992] 2 S.C.R. 1025 at 1042 Lamer C.J. states the following with respect to the matter of statutory interpretation:

> In interpreting the relevant provisions of an Act, the express words used by Parliament must be interpreted not only in their ordinary sense but also in the context of the scheme and purpose of the legislation: *R.* v. *S. (S)*, [1990] 2 S.C.R. 254 at p. 275; *R.* v. *Paré*, [1987] 2 S.C.R.618 at p. 626; Coté, *The Interpretation of Legislation in Canada* (2nd ed. 1994), at pp.

> 323-24; and Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87. I am of the view that … the best approach to the interpretation of words in a statute is to place upon them the meaning that best fits the object of the statute provided that the words themselves can reasonably bear that construction.

[7] The definition of "accompany" found in the *Shorter Oxford English Dictionary* is "to escort, attend or go with".

[8] S. 42 of the *Wildlife Act* requires the outfitter to provide a separate guide to accompany each non-resident while hunting big game animals. The purpose for this requirement can be found in the objects of the statute and the duties of the guide.

[9] The objects of the *Wildlife Act* are hunter safety and wildlife conservation. The pertinent duties of a guide are set out in ss. 45(2) of the *Act* which imposes a "reasonable responsibility" on a guide for the safety and wellbeing of the non-resident hunter and for the care and preservation of the carcass of any wildlife killed by that hunter.

[10] The *Wildlife Act*, therefore, requires that the guide be close enough to the non-resident hunter to carry out his or her prescribed duties and thereby satisfy the objects of the *Act*. The trial judge captured the essence of the legislative intent of the subject statutory provisions with this statement at para. 95 of his reasons:

> …the licenced guide, in accompanying the non-resident, shall maintain sufficient proximity to communicate to the non-resident, control his or her hunting activities and ensure his or her safety.

With respect, this was, in my opinion, as far as the trial judge needed to go in articulating the meaning of "accompany". It might well be beneficial to the outfitting industry and to those charged with enforcing the provisions of the *Wildlife Act* to have the word "accompany" defined with some precision in the statute, but if that is to be done it should be undertaken by the Legislature and not the court.

[11] By contrast "hunting" is defined in exquisite detail in ss. 1.(1) of the Act:

> "hunting" means the doing of any of the following acts by an armed person, whether or not any wildlife is then or subsequently killed, taken or

> wounded: chasing, driving, flushing, attracting, pursuing, worrying, following after, searching for, trapping, attempting to trap, taking, attempting to take, capturing, attempting to capture, shooting at, killing, lying in wait for or stalking any wildlife;

[12] In his analysis of this definition the trial judge lists all of the activities set out in the definition and then states the following in paras. 65 and 66 of his reasons for judgment:

> ...It matters not if more than one animal is involved; what is crucial is that a big game animal or animals has or have been located, and a decision has been made to hunt one or more of these animals. Of all the named activities, "searching for" causes the most trouble for this narrower view of hunting. However, given the context of a decision to harvest a specific animal, "searching for" does not mean trying to find any big game but rather means searching for a specific animal that is being actively hunted when it has disappeared from sight.
>
> Thus, any of the activities that constitute hunting begin only after an animal has been located and a decision made to hunt that animal. If something is done to attract big game, hunting activities begin from the moment anything is done to attract big game.

[13] The trial judge then proceeds to demonstrate that an expansive or literal interpretation of "hunting" as defined in the statute could potentially lead to prosecutions that are unnecessary to protect or advance the objects of the *Wildlife Act* and could impede the legitimate development of the outfitting industry. These observations may be valid and might form the basis for a convincing argument in support of legislative reform. That, however, is not the task at hand. The Legislature has defined "hunting" and in doing so has identified the activities associated with hunting that the statute is intended to regulate. There is no apparent ambiguity or uncertainty in the words used and so long as the application of the definition does not result in some absurd consequence the court is required to apply it: Coté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at pp. 453 and 454.

[14] With strict liability offences the onus rests with the Crown to prove the commission of the unlawful act that constitutes the offence. The standard of proof is beyond a reasonable doubt. If the unlawful act is proven and the defence of due diligence raised, the court must then determine whether that defence has been established on a balance of probabilities. There is no onus on the Crown to disprove due diligence to any standard.

[15] Turning then to the several convictions appealed by Klaas Heynen and Kusawa Outfitters Limited. Counts 6 and 7 relate to Raymond Veilleux. Under Count 6 the appellants were charged with failing to provide a separate guide to Mr. Veilleux contrary to s. 42 of the *Wildlife Act* and under count 7 with aiding Mr. Veilleux in hunting wildlife contrary to ss. 11(1).

[16] Karin Heynen was employed as a guide by Kusawa Outfitters Limited. The pertinent facts as found by the trial judge with respect to counts 6 and 7 are set out in paras. 128, 129 and 130 of his reasons for judgment:

> Both Karin Heynen and Klaas Heynen were responsible for guiding Raymond Veilleux and Harvey Calden on a sheep hunt out of Willow Camp. Their first stalk on a group of sheep with one legal ram involved Mr. Heynen, Mr. Calden and Mr. Veilleux. Karin Heynen and the wrangler stayed behind with the horses. Before the stalk, the two hunters flipped a coin and decided that Veilleux would take the first ram. In stalking the single legal ram, both hunters clearly understood that Veilleux would shoot. The evidence indicated that Heynen planned the stalk for Veilleux to shoot at the only legal ram. The evidence of the stalk supports the agreement that Veilleux alone would shoot at the only legal ram. He missed. No-one else shot. Calden was not instructed to shoot and was not positioned to shoot.
>
> The next day, on a stalk of sheep that included more than one legal ram, Karin Heynen and the wrangler again stayed with the horses when the stalk began. At several points during the stalk, the hunters could not see Karin Heynen. The stalk took a few hours. Klaas Heynen knew that on this hunt it was Mr. Calden's turn to shoot.
>
> When the hunters and Mr. Heynen were in a position to shoot at the legal rams, Karin Heynen, 50 yards or more away according to Veilleux and Calden, much closer according to Mr. Heynen, was not close enough to communicate with or to control her hunter. At that point Mr. Heynen was in control of both hunters. Veilleux testified that Mr. Heynen was extremely careful and took great pains to ensure that both hunters knew exactly which ram each was going to shoot and that both hunters were shooting at different legal rams. He positioned himself to be close enough to communicate with and control both hunters. He instructed both hunters to shoot simultaneously. Both missed.

[17] The appellants accept these facts. The Crown does not. The Crown submits that the trial judge was mistaken in his recounting of the evidence in that it was the testimony of Mr. Heynen and not Mr. Veilleux and Mr. Calden that Karin Heynen was 50 yards away during the second

stalk. In fact, the transcript of the evidence indicates that Mr. Calden testified that Karin Heynen was probably a half mile away and Mr. Veilleux testified that it was a couple of hours before they rejoined her and the wrangler after they had shot at the rams.

[18] The appellants submit that on any reasonable definition of the word "accompany" the two hunters, Veilleux and Calden were, on the facts as found by the trial judge, each accompanied by a guide and therefore, there was no violation of the *Wildlife Act.* Although I have concluded that it was unnecessary for the trial judge to define "accompany" with the specificity he did, I am satisfied that the evidence supports the conclusion that Karin Heynen failed to accompany Mr. Veilleux as required. She was not close enough to Mr.Veilleux to permit her to communicate with him in order to control his hunting activities and to ensure his safety.

[19] Counsel for the appellant submitted in the alternative that the trial judge had erred in registering convictions on the offences of failing to provide Mr. Veilleux with a separate guide and aiding him in hunting contrary to the provisions of the *Wildlife Act.* Mr. Horembala maintains that both offences arise from the same conduct and submits that the principle of *res judicata* as explained in *R.* v. *Kienapple*, [1975] 1 S.C.R. 729 precludes multiple convictions in the circumstances.

[20] The Crown submits that there were two distinct acts and courses of conduct. The first was the failure to provide Mr. Veilleux with a separate guide while he was hunting and the second was the active assistance provided by Mr. Heynen to Mr. Veilleux to hunt when Mr. Veilleux was not legally permitted to do so. This distinction is made by the trial judge in para. 140 of his reasons for judgment:

> Klaas Heynen on the second stalk, stepped outside the possible flexibility within the scope of the legal requirement to "accompany". One guide cannot take two hunters on a stalk when both will be instructed to shoot. It matters not that Klaas Heynen was careful to instruct both hunters, nor that the hunters were instructed sequentially to shoot one after the other. The situation was clear – one guide, two hunters on a stalk, both intending to shoot. Both underlying policy objectives, hunter safety and big game conservation, are violated when two hunters are instructed to shoot by one guide on the same stalk. It does not matter whether the hunters violated the guide's instructions or whether the second hunter did not shoot. By taking on the responsibility for two hunters who intend to

shoot on a stalk, Heynen aided a non-resident to commit an offence before the non-residents were even in a position to shoot and as an outfitter failed to provide a separate guide.

[21] I agree with the trial judge's analysis and his conclusions. There are two separate delicts and accordingly the rule in *Kienapple* does not apply.

[22] The appeal with respect to Counts 6 and 7 is therefore dismissed.

[23] The appellants were convicted on counts 8, 9 and 15 for failing to provide separate guides for Richard Hughes, Ted Hermiller and Elmer Cougler respectively. Howard MacIntosh was the guide assigned to Mr. Hughes and Allison Jackson was the guide assigned, on separate hunts, to Mr. Hermiller and Mr. Cougler. Both Mr. MacIntosh and Mr. Jackson are veteran guides with extensive experience. They also both have chronic ailments that restrict their mobility. It is demonstrated on the evidence that hunting generally, and sheep hunting in particular, are physically demanding.

[24] On the facts as found by the trial judge, Mr. MacIntosh and Mr. Jackson accompanied their hunters into the field but as a result of their physical disabilities did not remain with the hunters when stalking the wildlife required the negotiation of challenging terrain. Mr. MacIntosh and Mr. Jackson did not testify at the trial.

[25] The appellants submit that the trial judge erred when he accepted, as the only reasonable inference to be drawn from the evidence, that Mr. MacIntosh and Mr. Jackson failed to accompany their hunters on the stalk because of their disabilities rather than concluding there were other reasonable inferences that could be drawn from the circumstances, including the inference that each guide had simply made a decision on his own not to carry out his responsibilities under the *Act*. In my view, this submission is not sustainable. The uncontradicted testimony of the hunters describes the difficulties encountered by Mr. MacIntosh and Mr. Jackson and establishes that the reason they did not accompany the hunters on the stalk was because they were physically incapable of doing so.

[26] In finding that Mr. Heynen was aware of the physical limitations of Mr. MacIntosh and Mr. Jackson, the trial judge came to the following conclusion at para. 224 of his reasons for judgment:

> Heynen knew, his knowledge imposed an obligation to determine if either Jackson's or MacIntosh's difficulties prevented them from working as guides. An outfitter who knows of a handicap must take reasonable measures to determine if, notwithstanding the handicap, the person can perform as a guide.

[27] I agree. The duty of the outfitter is to provide a separate guide for each hunter who is capable of fulfilling his duties under the *Wildlife Act*. To hold otherwise would render the obligation meaningless. Supplying a guide whom the outfitter knows is not capable of fulfilling his or her duties is tantamount to providing no guide at all.

[28] The appeal on Counts 8, 9 and 15 is therefore dismissed.

[29] I turn next to consider the appeal by the Crown of the acquittals of Klaas Heynen and Kusawa Outfitters Limited on Counts 13, 14, 16, 17, and 18 and the acquittals of Edward Davidson on charges of assisting and aiding a non-resident in hunting wildlife.

[30] The charges that constitute Counts 13 and 14 arise out of a hunt involving non-resident hunters, Robert Perkins and Larry Prendergast. Both hunters arrived in camp on September 21, 1998. Their assigned guides were Karin Heynen and Klaas Heynen. The issue is whether Mr. Prendergast and Mr. Perkins were hunting with Mr. Heynen when Karin Heynen was not present. The facts as found by the trial judge are set out in paras. 261 and 262 of his reasons for judgment:

> Were there one or two trips without Karin Heynen? Prendergast remembers only one trip with her. Perkins remembers two trips. Both believe that the trip or trips took place during the first four or five days of their stay in camp. Mr. Heynen's evidence supports the defence submission that Karin Heynen was unable to get into camp because of weather until Wednesday morning. Because of the weather, the party did not ride out of camp until late morning. Accordingly, Karin Heynen was able to join them on Wednesday.

> Perkins testified that Mr. Heynen was too busy with other matters to arrange a ride out of camp on Monday. He testified that the first ride out of camp took place on Tuesday. The evidence does not prove that more than one trip without Karin Heynen took place. Consequently, in accepting Prendergast's view that only one trip took place without Karin Heynen, that trip took place on Tuesday, the second day of the trip and the day before Karin Heynen arrived in camp.

[31] From my review of the transcript of the testimony of Mr. Prendergast, Mr. Perkins and Mr. Heynen, the findings of the trial judge do not appear to be supported by the evidence. Firstly, both Mr. Prendergast and Mr. Perkins testified there were two trips without Karin Heynen. The first was what Mr. Prendergast characterized as an "exploratory ride" and Mr. Perkins called a "kind of a scouting party." Both agreed they were not hunting on this occasion. However, they also both testified that there was a second occasion when Karin Heynen was not present and they were hunting with Klaas Heynen. The following excerpt from Mr. Prendergast's testimony is found at pp. 238 to 239 of the transcript:

> Q. Okay. Now, you flew out to your hunting camp on the 21st, correct? That would be the Monday?
>
> A. Yes.
>
> Q. Okay. What hunting did you do on your first day in camp?
>
> A. Didn't do any hunting. We went out in the afternoon on a – what I would call an exploratory ride, just to get a sense of the territory and the terrain and – and so on. It was – it wasn't more than two or three hours and the purpose was not to hunt but to get a general sense of the territory.
>
> Q. All right. And when did you actually begin your hunt?
>
> A. The next day.
>
> Q. Do you recall how many days you hunted?
>
> A. I hunted every day up until the 27th.
>
> Q. And on the days when you hunted, who was with you?

> A. Typically, it was Bob Perkins, myself, Klaas and Karin. There was one day when Bob Perkins didn't go out with us and Elmer Cougler did, and there was one day when Karin was not with us. She was with us every other day except one.

In this excerpt it seems clear that Mr. Prendergast is distinguishing between the days they hunted and the day they arrived and took the exploratory ride. I take his evidence to mean that Karin Heynen was not with them when they took the exploratory ride and was, as well, not with them on one of the days they were hunting.

[32] Mr. Perkins also made the distinction between the day they went for the ride on horseback and the days they were hunting. His evidence as to who was with them while they were hunting is found at p. 169 of the transcript:

> Q. Okay. And on those six or seven days when you were hunting, who was with you each day?
>
> A. It was always Mr. Heynen and Karin, with the exception of one day when she had to return to Whitehorse to the hospital for some business which I'm not familiar with.
>
> Q. Okay. And do you recall what day that was?
>
> A. I do not.
>
> Q. Okay. And on the day when Karin was not there, who hunted?
>
> A. Mr. Prendergast, Mr. Heynen and myself.

[33] There is a conflict in the evidence of Mr. Prendergast and Mr. Perkins as to when they went for the initial ride with Mr. Heynen. Mr. Prendergast maintains it was Monday, September 21 whereas Mr. Perkins first indicated in his examination in-chief that it occurred on Monday but then in cross-examination said he believed it was the day following their arrival which would have been Tuesday, September 22. Notwithstanding this difference in their testimony, both Mr. Prendergast and Mr. Perkins testified there was one day when they were hunting and in the company of Klaas Heynen alone. This is denied by Klaas Heynen. He, in fact, testified that there were three occasions when he accompanied Mr. Prendergast and Mr. Perkins out of camp without Karin Heynen but referred to all of these as orientation rides. He testified that the first of these rides occurred late during the day they arrived in camp and the second took place the

following day. Mr. Heynen explained that it was raining on September 22 so they all stayed in camp until it cleared up and he then went out for the second orientation ride with Mr. Prendergast and Mr. Perkins. The rain and fog persisted into Wednesday and although Karin Heynen was expected early that morning, it was assumed by Mr. Heynen she would not be able to fly in because of the weather. As it turned out she did make it to the camp at about 9 or 10:00 a.m. Again, the bad weather persisted until late into the day. Mr. Heynen testified that when it improved he, Mr. Prendergast, and Mr. Perkins took a third orientation ride. Even though Karin Heynen was by this time in camp, Mr. Heynen testified he saw no reason to have her accompany them since they were not hunting. The hunting, according to Mr. Heynen, commenced the following day and Karin Heynen went with them.

[34] In his reasons for judgment, the trial judge found that the evidence did not prove that there was more than one trip without Karin Heynen. With great respect, it appears to me that the evidence establishes that Klaas Heynen accompanied Mr. Prendergast and Mr. Perkins in the absence of Karin Heynen on at least two occasions. The issue as identified earlier is whether they were hunting when Karin Heynen was not present. There is a very clear conflict between the evidence of Mr. Prendergast and Mr. Perkins on the one hand and Mr. Heynen on the other. In my view, this conflict in the evidence must be dealt with in order to properly resolve these charges. Unfortunately, the trial judge appears to have misapprehended the evidence on this issue and therefore did not identify and address these conflicting aspects of the evidence.

[35] The appeal is therefore allowed with respect to Counts 13 and 14. The acquittals on these counts are set aside but since the error relates to the finding of facts a new trial is ordered on both counts.

[36] The following charges arise from the outfitting trip of David Hassell:

(a) Against Klaas Heynen and Kusawa Outfitters Limited

(i) Count 16 - Fail to provide a separate guide contrary to s. 42;

(ii) Count 17 – Aid Edward Davidson in accompanying a non-resident, David Hassell in hunting big game, contrary to s. 43(1)(b); and

(iii) Count 18 – Aid David Hassell to hunt wildlife while not permitted to do so contrary to s. 11(1).

(b) Against Edward Davidson

(i) Accompany a non-resident to assist the non-resident, David Hassell in hunting, contrary to s. 43(1)(b).

(ii) Aid David Hassell in hunting while not permitted to do so, contrary to s. 11(1);

[37] There is no material dispute with respect to the facts as found by the trial judge on these charges. It was the conclusion of the trial judge that the Crown failed to establish that Mr. Hassell was "hunting" with Edward Davidson that is challenged.

[38] Mr. Hassell had heard that hunting mountain sheep was physically demanding. He was concerned about his level of physical conditioning and unsure that he was fit enough to undertake such a hunt. This was discussed with Mr. Heynen who was able to alleviate Mr. Hassell's concerns about the rigours of the hunt.

[39] Mr. Hassell testified that upon his arrival in camp, Mr. Heynen told him Mr. Davidson would be his guide. Mr. Heynen denies this. Mr. Davidson was a wrangler. He was not a licensed guide. Mr. Heynen testified that he assigned Mr. Davidson the task of acclimatizing Mr. Hassell to the altitude and getting him in shape to hunt sheep. Al Uiterwaal, one of the Kusawa Outfitters' guides testified that Mr. Heynen had discussed this plan with him. Mr. Hassell denied any knowledge of such an arrangement and Mr. Davidson did not give evidence at trial. Although there is a lower per diem rate for clients who are non-hunters, Mr. Hassell paid Kusawa Outfitters the full hunter's rate for each day he was in camp and testified that he would have objected to paying the higher rate if he was just being acclimatized for a hunt.

[40] At the conclusion of the hunt an Outfitter/Chief Guide/Hunter Report was completed as required. It was signed by Mr. Hassell as hunter, Mr. Uiterwaal as guide and Mr. Heynen as

Outfitter. It is stated on that form that Mr. Hassell had completed a hunt of 10 days that had commenced on September 20, 1998.

[41] Mr. Hassell testified that each day he went hunting, he was accompanied by Edward Davidson. On one of those days he and Mr. Davidson were joined by Mr. Uiterwaal and a second hunter. On the last day that Mr. Hassell hunted, the day he shot a ram, Mr. Hassell was the only hunter in the party but was accompanied by both Mr. Davidson and Mr. Uiterwaal. Mr. Hassell had his gun with him on each day that he went into the field and had a licence to hunt both sheep and moose. He did not discharge his gun while out with Mr. Davidson alone but testified that he would have shot a moose had the opportunity arisen. It was also Mr. Hassell's evidence that on the day he and Mr. Davidson hunted with Mr. Uiterwaal and the other hunter, they located and stalked a group of sheep but no shots were taken.

[42] With great respect, it is my opinion that the trial judge erred in law in finding that Mr. Hassell was not hunting while alone with Mr. Davidson. I have already expressed my reservations concerning the restricted definition of "hunting" adopted by the trial judge. It seems to me that the offences charged are clearly established on the application of the statutory definition of "hunting" to the circumstances of Mr. Hassell's outfitting trip. Compliance with the *Wildlife Act* and the conditioning of Mr. Hassell for a sheep hunt could both have been accomplished by ensuring that Mr. Hassell was not armed when he was accompanied by Mr. Davidson. But Mr. Hassell was armed, he was searching for wildlife and if given the chance would have shot such wildlife. Mr. Hassell was hunting.

[43] I am satisfied that the Crown has proven the charges as against Klaas Heynen and Kusawa Outfitters as set out in Counts 16, 17 and 18 and has also proved the charges in the two counts against Edward Davidson. It appears to me, however, that the charges against Mr. Davidson are based on exactly the same conduct and that a conviction on both counts would offend the prohibition against multiple convictions as set out in *Kienapple*. In the result, the appeal with respect to counts 16, 17 and 18 is allowed, the acquittals are set aside and convictions entered on each of those three counts as against Klaas Heynen and Kusawa Outfitters Limited.

[44] The appeal is also allowed with respect to the two counts against Edward Davidson. The acquittal on the first count is set aside and a conviction entered. The acquittal with respect to the second count against Edward Davidson is also set aside with that charge to be stayed for the reasons given.

[45] In summary:

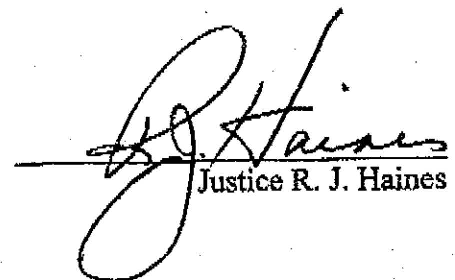
(i) The appeal by Klaas Heynen and Kusawa Outfitters Limited on Counts 6 and 7 is dismissed;

(ii) The appeal by Klaas Heynen and Kusawa Outfitters on Counts 8, 9 and 15 is dismissed;

(iii) The appeal by the Crown on Counts 13 and 14 is allowed, the acquittals set aside and a new trial ordered on both counts;

(iv) The appeal by the Crown on Counts 16, 17 and 18 is allowed, the acquittals set aside and convictions entered. These matters are remitted to the trial judge for sentencing;

(v) The appeal of the Crown on the two Counts relating to Edward Davidson is allowed, the acquittals are set aside and a conviction is entered on the charge relating to assisting David Hassell in hunting contrary to ss.43(1)(b) of the *Wildlife Act*. This matter is remitted to the trial judge for sentencing. The charge of aiding Mr. Hassell to hunt contrary to s.11(1) is stayed.



Justice R. J. Haines

Lee Kirkpatrick — Counsel for the Crown

Edward Horembala, Q.C. — Counsel for Klaas Heynen and Kusawa Outfitters Limited