

CANADA / JUDGMENT

## R. v. Massey

2025 BCSC 2491

COURT

Supreme Court of British Columbia

DECIDED

15 December 2025

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2025 BCSC 2491 R. v. Massey

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Massey,

2025 BCSC 2491

Date: 20251215

Docket: 12745

Registry: Fort Nelson

Rex

v.

James Dylan Massey

Before: The Honourable Justice Taylor

On appeal from: An order of the Provincial Court of British Columbia, dated August 30, 2024 (R. v. Massey, 2024 BCPC 162)

Reasons for Judgment

Counsel for the Crown:

G. McDonald

The Accused, self-represented:

J.D. Massey

Place and Date of Hearing:

Dawson Creek, B.C.

October 30, 2025

Place and Date of Judgment:

Fort Nelson, B.C.

December 15, 2025

## Background

[1] The appellant, James Dylan Massey, appeals from his conviction in Provincial Court for hunting a thinhorn ram mountain sheep at a time not within the open season contrary to s. 26(1)(c) of the Wildlife Act, R.S.B.C. 1996, c. 488 (the "Act"). Mr. Massey was convicted following a trial by Judge Lee of the Provincial Court (the "Provincial Court Judge").

[2] Mr. Massey acknowledged during the trial that on August 1, 2022 he did hunt and kill a thinhorn ram mountain sheep (the "Massey Ram") in Region 7 - Omineca Peace, for which he held the required hunting licence.

[3] Section 15 of Schedule 7 of the Wildlife Act Hunting Regulation, B.C. Reg. 190/84 amended by 154/2025 (the "Regulation") states that there is to be no hunting of mountain sheep in Region 7 - Omineca Peace unless it is a full curl thinhorn ram mountain sheep. Section 1(1) of the Regulation has the following definition:

"full curl thinhorn ram mountain sheep" means any thinhorn ram mountain sheep that has attained the age of 8 years as evidenced by true horn annuli as determined by the regional manager or designate, or whose horn tip, when viewed squarely from the side at right angles to the sagittal plane of the skull, extends dorsally beyond the nose bridge plane;

[4] Section 16 of the Regulation provides for a compulsory inspection of certain wildlife hunted or killed in specific areas of British Columbia. These compulsory inspections must occur within 30 days after the animal is hunted or killed.

[5] In this case, the Massey Ram was subject to a compulsory inspection. Mr. Massey brought the ram to authorized inspector David Maurice Jenkins for inspection. During that inspection, the horn sheaths became detached from the skull. The Provincial Court Judge stated: "[h]ow this occurred is unclear": R. v. Massey, 2024 BCPC 162 (the "Reasons") at para. 15.

[6] Mr. Jenkins was of the view that the Massey Ram was not eight years of age. He reported this to the British Columbia Conservation Office, and as a result, Conservation Officers became involved and eventually seized the skull and horns of the Massey Ram. Professional biologist Audrey Linville was then called upon to age the Massey Ram.

[7] At trial, the Crown relied on a certificate issued under s. 107(2) and (4) of the Act (the "Certificate"). The Certificate stated that British Columbia employs Audrey Linville as a wildlife biologist. The Certificate also stated that she is qualified to examine thinhorn ram

mountain sheep and was designated to act on behalf of the Regional Manager to determine full curl thinhorn ram mountain sheep. Ms. Linville's report dated September 1, 2022 was attached to the Certificate. The Crown also called Mr. Jenkins and two conservation officers as witnesses in addition to Ms. Linville and a professional biologist. Mr. Massey testified and called his own expert witness.

- [8] In deciding to convict Mr. Massey, the Provincial Court Judge reasoned that the Crown had proved beyond a reasonable doubt that the Massey Ram was less than eight years of age and found that Mr. Massey had not shown on a balance of probabilities that he acted with due diligence or took reasonable steps to avoid doing the wrongful act.
- [9] Mr. Massey appeals his conviction, claiming that the trial judge erred in his interpretation and application of the Act and Regulation.

## Analysis

- [10] On appeal, the Provincial Court Judge's application of the law is subject to review on a standard of correctness: *R. v. Shepherd*, 2009 SCC 35 at para. 20. A trial judge's findings of facts can only be reviewed if a palpable and overriding error is shown on the evidence, and appeal courts are prohibited from substituting their own findings of fact: *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 1 and 3.
- [11] In my view, by considering only the question whether the Massey Ram was less than eight years of age, the Provincial Court Judge made a clear legal error. Section 1(1) of the Regulation, when read in its entire context and in a grammatical and ordinary sense harmoniously with the scheme of the Act makes it clear that there are two separate methods to identify a "full curl thinhorn ram mountain sheep" that can be legally harvested, and not one method as the Provincial Court Judge concluded: *Rizzo and Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27.
- [12] The first way to decide if the animal is a "full curl thinhorn ram mountain sheep" is by determining whether the sheep is eight years old or more as evidenced by true horn annuli (the "Age Test"). The second is whether the sheep's horn tip, when viewed squarely from the side at right angles to the sagittal plane of the skull, extends dorsally beyond the nose bridge plane (the "Horn Curl Test").
- [13] I have reached the conclusion that there are two separate legal tests for three reasons. First, these two tests in the Regulation are separated by the disjunctive word "or" and not the conjunctive word "and". Second, because counting the number of horn annuli (which are growth rings that extend along the length of the horn) is a categorically different exercise from observing the positioning of a horn tip in relation to the nose bridge plane and therefore necessitates a distinct and separate analysis. In other words, the analysis under one test is not necessarily probative of the analysis under the other, reinforcing their separateness. Third, I note that in *Crawford v. British Columbia (Attorney General)*, 2019 BCPC 76 at para. 9 the Provincial Court confirmed that the wording in the Regulation

relating to the view of the horn tip is a "secondary definition" that does not refer to the age of the ram.

- [14] The wording in s. 1(1) of the Regulation therefore does not reasonably allow for the definition of a "full curl thinhorn ram mountain sheep" to be limited solely to its age, nor does it permit the Crown to secure a conviction on that basis alone. In order to secure a conviction, the Crown had to prove beyond a reasonable doubt that both the Age Test and the Horn Curl Test were not met, namely that: (1) the Massey Ram was less than eight years of age as evidenced by true horn annuli; and (2) that the horn tip, when viewed squarely from the side at right angles to the sagittal plane of the skull, did not extend dorsally beyond the nose bridge plane. Significantly, even if the Age Test was not met, a conviction could not be secured under the Regulation unless the Crown also proved that the Horn Curl Test was not met.
- [15] The Provincial Court Judge appears to have misinterpreted the Regulation to define a "full curl thinhorn ram mountain sheep" as being based solely on age and, for that reason, failed to make a further factual finding as to whether the Horn Curl Test was also not met, independent of the age of the Massey Ram. This misunderstanding was apparent from the following passages in the Reasons:
- [12] Under the definition of "full curl thinhorn ram mountain sheep," age can be determined in one of two ways:
- (1) The number of true horn annuli. This is typically referred to as "aging."
  - (2) The horn tip, when viewed squarely from the side at right angles to the sagittal plane of the skull, extends dorsally beyond the nose bridge plane. I refer to this as "horn curl."
- [31] Based on true horn annuli, Ms. Linville believes the Ram was less than eight years old. On its own, the certificate is sufficient evidence to establish proof beyond a reasonable doubt that the Massey Ram was less than eight years of age. The question now turns to whether there is any evidence to contradict this opinion.
- [55] Mr. Jex spent considerable time discussing the placement of the detached horns onto the skull of the Massey Ram. Like Ms. Linville, Mr. Jex said he could not swear that the horns were being placed back into their natural position. As I stated earlier, I was not satisfied that horn curl could be used to age the Massey Ram.
- [61] Compared to Mr. Wallace, I am satisfied that Ms. Linville and Mr. Jex are better qualified to give an opinion about the age of the Massey Ram.
- [62] The s. 107(2) certificate, supported by the trial testimony of Ms. Linville and Mr. Jex, satisfies me that the Crown has proven beyond a reasonable doubt that the Massey Ram had not reached eight years of age.

[88] I am satisfied that the Crown has shown beyond a reasonable doubt that the Massey Ram was less than eight years of age. Mr. Massey has not shown on the balance of probabilities that he acted with due diligence or took reasonable steps to avoid doing the wrongful act.

[Emphasis added.]

[16] In my view, these passages clearly establish that the Provincial Court Judge considered only the age of the sheep and not the Horn Curl Test. With reference to the Horn Curl Test, the Provincial Court Judge asserted that he was "not satisfied that horn curl could be used to age the Massey Ram", which appeared to erroneously conflate the two separate tests. This appeared to reflect a confusion in the Reasons (also found in paragraph 27 of the Reasons where he stated that the Horn Curl Test was "one of two methods available to determine the age of the Massey Ram") that the Horn Curl Test is merely an alternative evidentiary basis for determining the age of the Massey Ram and not a separate, free-standing test. This is a confusion because it fails to acknowledge a possible scenario where a sheep could be less than eight years old yet still legally able to be harvested due to meeting the Horn Curl Test.

[17] The Crown and the appellant agreed in their submissions that the Provincial Court Judge made a legal error in the Reasons by convicting Mr. Massey based solely upon the age of the sheep. The Crown submitted that the conviction should be vacated and the matter remitted to Provincial Court for a retrial. The appellant also submitted that that the conviction should be vacated but argued that this Court should substitute an acquittal on the basis that the Provincial Court Judge had made sufficient factual findings in the Reasons to justify the conclusion that the Crown had failed to prove that the Horn Curl Test was not met in this case.

[18] The principal argument made by the appellant in favour of an acquittal was based on paras. 26 and 27 of the Reasons, in which the appellant asserts that the Provincial Court Judge made a factual finding that the Crown had failed to prove that the Horn Curl Test was not met (i.e. had not proved that the Massey Ram "was short of full curl"). In those paragraphs of the reasons, the Provincial Court Judge stated as follows:

[26] Ms. Linville acknowledged that because the horn sheaths were detached, "it was impossible to tell with accuracy how they were naturally placed when the Massey Ram was alive." Ms. Linville placed the horn sheaths in such a way that she felt it mimicked the natural placement of the horns. Based on that placement, Ms. Linville believed the Massey Ram was short of full curl on both sides. Despite that conclusion, Ms. Linville repeated that "it is impossible to confidently place the horn sheaths like they would have been on a live ram in the field."

[27] Given that Ms. Linville lacked confidence in her conclusion, I find that based on horn curl the certificate is not proof beyond a reasonable doubt that the Massey Ram was less than eight years of age. As I stated earlier, this is one of two methods available to determine the age of the Massey Ram, the other being the presence of at least eight true horn annuli.

[Emphasis added.]

- [19] The appellant emphasized the statement by the Provincial Court Judge in the above paragraphs that "based on horn curl the certificate is not proof beyond a reasonable doubt that the Massey Ram was less than eight years of age". The appellant asserts that this was a factual finding by the Provincial Court Judge that the Crown had failed to meet its burden of proving that the Horn Curl Test was not met beyond a reasonable doubt and should justify an acquittal.
- [20] While this argument has some appeal, and I am sympathetic to the personal circumstances that Mr. Massey has conveyed with respect to the impact on him of this lengthy proceeding, I am nonetheless not persuaded when reading the Reasons as a whole that the Provincial Court Judge did in fact make a clear factual finding that the Crown had failed to meet its burden to prove that the Horn Curl Test was not met. I have reached this conclusion for four reasons.
- [21] First, the sentence in the Reasons relied upon by the appellant expressly conflated the issue of age with the issue of horn curl, resulting in confusion about what the Provincial Court Judge was actually deciding. In my view this portion of the Judgment was ambiguous at best with respect to whether the Provincial Court Judge ever actually applied the Horn Curl Test as a separate analysis.
- [22] Second, the Provincial Court Judge clearly stated that he had decided only that the "certificate" was not proof beyond a reasonable doubt on whether the Horn Curl Test was met. However, the Certificate was not the only evidence presented at trial by the Crown; there was also live evidence from a variety of witnesses, including several experts other than Ms. Linville. Significantly, in my view, the Provincial Court Judge never set out in his reasons his conclusion as to whether all the evidence presented by the Crown and the appellant considered as a whole (and not merely the Certificate as one part of that evidence) was sufficient to prove whether the Horn Curl Test was met.
- [23] Third, in terms of the structure of the Reasons, there was no section where the Provincial Court Judge separately set out and addressed the issue of the Horn Curl Test as a discrete topic. Instead, the title of the section in which the relevant paragraphs are found is "The s. 107(2) Certificate" and most of the discussion in that section related to the age of the Massey Ram, and not the issue of the Horn Curl Test. The section that followed in the Reasons was entitled "The Age of the Massey Ram" followed by "Decision on Age". There was no section in the reasons entitled "Horn Curl" or similar such wording. Moreover, in the section at the end of the Reasons entitled "Summary", which appears intended to capture the ratio of the decision, there was a reference solely to the age but no reference whatsoever to the Horn Curl Test:

## Summary

- [88] I am satisfied that the Crown has shown beyond a reasonable doubt that the Massey Ram was less than eight years of age. Mr. Massey has not shown on the balance of probabilities that he acted with due diligence or took reasonable steps to avoid doing the wrongful act.
- [89] Accordingly, I convict Mr. Massey of hunting wildlife, namely a thinhorn ram mountain sheep, at a time not within the open season, contrary to s. 26(1)(c) of the Wildlife Act.
- [24] Fourth, the Provincial Court Judge stated at para. 19 of the Reasons that, following the decision in *R. v. Connell*, 2017 BCPC 123, "[i]n setting out my decision, I will summarize only the evidence which I find to be relevant." Because of this, and due to the Provincial Court Judge's decision to focus only on age, it appears he may have left out from the Reasons some evidence that was not relevant to age but could have been relevant to an alternative conclusion based upon the Horn Curl Test. This makes it particularly challenging to deduce with the benefit of hindsight what he would have found relating specifically to the Horn Curl Test had he not made an error on the applicable legal test.
- [25] I conclude that the Provincial Court Judge never made a clear factual finding that the Crown had failed to prove that the Horn Curl Test was not met beyond a reasonable doubt. Further, sitting as an appellate court it would not be appropriate for me to make my own factual findings with respect to whether the evidence at trial was sufficient to meet the Horn Curl Test, or to reweigh the credibility and reliability of the testimony of the different expert witnesses, particularly in light of the Provincial Court Judge's decision to limit his factual findings in accordance with *Connell*.
- [26] The appellant also argues that I should acquit him because the wrong measuring equipment was used by the Crown expert to evaluate the Massey Ram and that the Crown was responsible for detaching the horns from the Massey Ram. However, these are factual matters that were addressed and considered by the Provincial Court Judge in the Reasons. It is not the role of appellate courts to substitute their own findings of fact on these issues, or to reweigh the evidence, absent a palpable and overriding error. I have found no such error with respect to these factual issues.
- [27] For all the above reasons, I conclude that the appeal should be granted in part. I have decided to vacate the conviction and remit the matter to Provincial Court for a retrial but decline to find that the appellant should be entitled to an acquittal on appeal.

"M. Taylor J."

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