



Suite 701, 718-333 Brooksbank Ave.  
North Vancouver, BC V7J 3V8  
Telephone: 604-435-1850  
info@thefurbearers.com  
**thefurbearers.com**

April 22, 2022

Hon. George Heyman  
Minister of Environment and Climate Change Strategy  
Room 112 Parliament Buildings  
Victoria, BC  
V8V 1X4

Conservation Officer Service  
1<sup>st</sup> Floor, 2975 Jutland Road  
PO Box 9376, Stn Prov Govt  
Victoria, British Columbia  
V8W 9M5

**Re: Service and Policy Complaint – Reasonableness of discretionary lethal force on juvenile bears**

Established in 1953, The Fur-Bearers (The Association for the Protection of Fur-Bearing Animals) is a non-partisan, registered charity dedicated to protecting fur-bearing animals through conservation, advocacy, research and education. We write to submit a service and policy complaint pursuant to the *Conservation Officer Complaints Policy*.<sup>1</sup> This complaint focuses on three thematic areas:

- A. Legal framework and obligations regarding discretionary decisions by officers
- B. Reasonableness of discretionary lethal force
- C. Treatment of juvenile bears by BC Conservation Officer Service (BCCOS) officers as a matter of routine practice

This complaint also raises concerns that there is no clear demarcation between criminal and public safety duties, and general wildlife management. Additionally, there appears to exist a systemic misunderstanding of the difference between advice and directives at the field level. It is problematic and contrary to policy for the BCCOS to permit administrative non-constabulary staff outside their prescribed chain of command to provide directives to officers in the field.

We will first provide a brief background, followed by a discussion of the above referenced points in sample cases. We then provide suggested recommendations and conclusions.

---

<sup>1</sup> BCCOS. (2015). *Complaints* [amended 2017]. Retrieved from:  
[https://www2.gov.bc.ca/assets/gov/environment/plants-animals-and-ecosystems/conservation-officer-service/cos\\_complaints\\_policy.pdf](https://www2.gov.bc.ca/assets/gov/environment/plants-animals-and-ecosystems/conservation-officer-service/cos_complaints_policy.pdf)

## Background

On March 30, 2022, The Fur-Bearers was sent copies of information obtained through the *Freedom of Information and Protection of Privacy Act* (FOIPPA).<sup>2</sup> The request description is as follows:

*A copy of all Human Wildlife Conflict Reports regarding juvenile bear and cub of the year destroyed by BC Conservation Officers in 2021 including all cubs killed while alongside their mother or sibling and orphaned cubs. (Date Range for Record Search: From 1/1/2021 To 12/11/2021)*

These records were specific to the handling and treatment of bear cubs by BCCOS officers throughout 2021. Records were provided in spreadsheet format (with report narrative) and comprised 471 pages. The summary provided within the response identifies 77 cub kills.

We have pulled three case study samples from the records for brevity and for the purpose of framing and narrowing this complaint. However, this service and policy complaint should not be seen as isolated to these three examples. A thematic pattern of willingness to kill cubs is evident throughout the records and we encourage the BCCOS to take a holistic approach in addressing our concerns, from the perspective of a systemic review that goes beyond the examples provided here. We trust providing the entire package of records will assist in this review.

## Legal framework regarding BCCOS discretion

In *The Association for the Protection of Fur-Bearing Animals v British Columbia (Minister of Environment and Climate Change Strategy)*, the complainants alleged a bear cub was killed by an officer contrary to Section 79 of the *Wildlife Act*. At Judicial Review, the Crown argued that BCCOS officers have broad discretion to kill or not to kill and that Section 79 of the *Wildlife Act* is not necessarily applicable during broader decisions to kill wildlife. This position of the Crown was upheld on appeal.

During judicial review, and after confirming broad authority to kill wildlife on Conservation Officers, Justice Wetherill held:

[59] In my view, the management of wildlife resources by conservation officers, as contemplated by the *Wildlife Act*, includes the authority to kill wildlife in circumstances broader than those set out in s. 79. However, that authority is not an unlimited or unfettered discretion. Officers will not be exempted from the offence provisions of the *Wildlife Act* unless they are engaged in the performance of their duties as officers and their actions are exercised in accordance with the legitimate policy direction of the government.<sup>3</sup> (Emphasis added)

On appeal, Justice Groberman, writing for a unanimous court, held:

[31] Acceptance of that proposition, however, would require us to ignore the structure of the legislation. The statute does not contain any general prohibition on killing animals. Rather it sets out specific offences. Because the offence provisions do not apply to officers engaged in the performance of their duties, officers are not prohibited from killing animals if such killing occurs

---

<sup>2</sup> MOE 2021-15621 [attached to this complaint for reference].

<sup>3</sup> *The Association for the Protection of Fur-Bearing Animals v British Columbia (Minister of Environment and Climate Change Strategy)*, 2017 BCSC 2296 (CanLII), <https://canlii.ca/t/hp9tg>

while they are engaged in their duties. While conservation officers do not, of course, routinely kill animals, they appear to have broad discretion to do so in the execution of their duties.<sup>4</sup> (Emphasis added)

[37] The difficult question, it seems to me, is to define when an officer is “engaged in the performance of their duties”. The parties have not, on this appeal, made any comprehensive attempt to define the duties of a conservation officer, or even to discuss the source of those duties. It is obvious that duties may arise from specific statutory and regulatory enactments. It seems probable, as well, that the duties of conservation officers may arise from the terms of their engagement by the Province. The scope of a conservation officer’s duties is not an issue that has been canvassed before us, however, and it would be unwise to make any definitive pronouncement on the issue without a more complete record and more detailed argument.

In *Fur-Bearers*, it is noteworthy that the BC Court of Appeal (BCCA) was left with the perception that killing wildlife was not a routine action taken by officers. This was arrived at by a lack of clear definition of an officer’s duties, although broad discretion was upheld:

[38] [...] I would refrain from making any declaration as to the legality of Officer Kneller’s actions. That said, I can say that, on the face of it, Officer Kneller was at all times engaged in the performance of his duties as a conservation officer, and so would not appear to be in contravention of any statutory prohibition.

The duties of a conservation officer were later discussed in more detail at both levels of court. In *Casavant v. BC Labour Relations Board*<sup>5</sup>, an officer was given a kill order and exercised discretion not to kill two bear cubs (the reverse situation of the above case). The officer was dismissed. At the disciplinary interview and on Judicial Review, the Crown maintained an opposite position to that in *Fur-Bearers* and argued the officer did not have discretion and failed to follow orders. This was overturned on appeal, with the BCCA siding with the officer, affirming that failing to follow orders as a constable while advancing the defence of “independent judgment” (i.e., discretion) is a matter to be decided under the *Police Act*.

In this respect, the BCCA remained consistent in principle both in *Fur-Bearers* and *Casavant*, holding that officers have broad discretion when killing or not wildlife as their duties as conservation officers (especially with respect to an order arising from this duty).

Despite the direct and consistent findings of the above cited court cases, BCCOS officers continue to routinely exercise lethal force decisions in the field in situations where: 1) there is no public safety risk present, 2) non-lethal responses are warranted, 3) alternative options may be available but not considered, and 4) where no formal order has been given by a superior officer.

---

<sup>4</sup> *Association for the Protection of Fur Bearing Animals v. British Columbia (Minister of Environment and Climate Change Strategy)*, 2018 BCCA 240 (CanLII), <https://canlii.ca/t/hsnfg>

<sup>5</sup> *Casavant v. British Columbia (Labour Relations Board)*, 2020 BCCA 159 (CanLII), <https://canlii.ca/t/j81d4>

There are defined policy guidelines and procedures for responding to reports related to bears<sup>67</sup>. However, the following conflict reports indicate that there is a lack of adherence to these policy guidelines and procedures. In addition to these apparent deviations from policy are incidents of constables taking lethal force directives from FLNRORD staff outside their chain of command. Further commentary follows specific case discussion.

## Discussion

### Case 21-29369 (Christina Lake)

November 6, 2021

Page 142 of records package

#### *Facts:*

In this case the initial call from the complainant was simply that a black bear cub was “very skinny” and had been spotted “2 times” with “no signs of a sow”. The caller requested a call back from the responsible officer.

The officer called the complainant and was advised that a cub was in “poor condition” and had been at the complainant’s place for “2 days”. The cub was identified as “very skinny” and “missing fur”. The officer then brought a trap to the area and is noted as having a “lengthy conversation” with the resident about euthanizing the cub. The trap is placed, the officer leaves and then speaks with a FLNRORD veterinarian about euthanizing the cub, prior to capture or assessment.

The cub is then captured. The officer makes a field confirmation that it is in “poor shape” and “emaciated”. The cub is killed.

#### *Discussion:*

In multiple conversations and ministerial meetings with BCCOS executive over a period of many years, our organization is routinely informed that the BCCOS are not wildlife managers but rather public safety providers.

The BCCOS’s role and responsibility is defined in FLNRORD’s Procedure: 4-7-04-01.1: Preventing and Responding to Conflicts with large Carnivores

*1.2 The Ministry of Environment and Climate Change Strategy, Conservation Officer Service (COS) takes actions to minimize the risk that conflicts with large carnivores pose to public safety and property through conflict prevention outreach, training, enforcement, and both non-lethal and lethal responses.<sup>8</sup>*

This is further articulated by a statement on the BCCOS’ website:

---

<sup>6</sup> [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-policy-legislation/fish-and-wildlife-policy/4-7-04011\\_preventing\\_and\\_responding\\_to\\_conflicts\\_with\\_large\\_carnivores.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-policy-legislation/fish-and-wildlife-policy/4-7-04011_preventing_and_responding_to_conflicts_with_large_carnivores.pdf)

<sup>7</sup> [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-policy-legislation/fish-and-wildlife-policy/response\\_guidelines\\_black\\_bear\\_single.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-policy-legislation/fish-and-wildlife-policy/response_guidelines_black_bear_single.pdf)

<sup>8</sup> [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-policy-legislation/fish-and-wildlife-policy/4-7-04011\\_preventing\\_and\\_responding\\_to\\_conflicts\\_with\\_large\\_carnivores.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-policy-legislation/fish-and-wildlife-policy/4-7-04011_preventing_and_responding_to_conflicts_with_large_carnivores.pdf)

*As a public safety provider, the COS is focussed on responding to human wildlife conflicts and environmental violations that pose a threat to public safety. As a result, the COS does not attend low-risk wildlife conflict incidents or instances where conflict situations can be prevented by making changes to your property or daily behaviours.<sup>9</sup>*

This case is troublesome as there is no threat to public safety in the evidence before the responding officer. In the absence of a public safety risk, it is unclear why a public safety provider attended a call that could be considered a nuisance call for the service.

Further, the officer in this case (similar to the situation in *Fur-Bearers*), contacted a provincial veterinarian and provided information about the condition of the bear provided by the third party. The provincial veterinarian advised the officer to kill the cub based on this information. As far as the notes in the report show, this was a verbal discussion. There is no indication that a physical assessment by a qualified individual took place, nor were any photos or videos provided to the veterinarian to inform her assessment. The cub was killed based on a third hand, verbal description and without any physical assessment by a qualified individual. A wildlife rehabilitator or a bear biologist could have been consulted to conduct a physical assessment.

Case 21-29709 (Terrace)

January 20, 2021

Page 160 of records package

*Facts:*

A complainant called the BCCOS stating a bear cub was laying down beside a yellow (presumably forestry) gate next to the highway and was eating something (believed by the complainant to be a chocolate bar, but never confirmed).

The responding officer attended, and the bear cub approached the officer's parked truck. The officer exited the truck, yelled at the bear and hit it with a rock. The officer shot and killed the cub. The officer noted the cub as "in very poor condition" and was noted to weigh less than 10lbs (i.e. very small). The officer did not identify any attractants.

*Discussion:*

Like the previous case, there was no public safety risk, and the cub was killed based on a field level assessment by an unqualified individual. This incident also questions the need for an officer to attend the scene in the absence of a risk to the public.

---

<sup>9</sup> <https://www2.gov.bc.ca/gov/content/environment/plants-animals-ecosystems/wildlife/human-wildlife-conflict/report-human-wildlife-conflict>

Case 21-22679 (West Coast Region)

September 21, 2021

Page 7 of records package

*Facts:*

A complainant called the BCCOS stating that multiple bears continued to make attempts to break into a house in a remote area. The situation involved a family unit and possibly another unrelated bear.

The report states:

“Prior to arriving to the property CO sought direction from Fish and Wildlife on what they would like to see happen if the three siblings were caught. The Cos were seeking direction because the COM [complainant] could not be sure which of the 3 siblings (believed to be siblings) were entering and breaking into his residence. Direction was provided these bears were all category 1 bears and high public safety risk. If capture, bears are to be euthanized due to entering human structures, habituation to humans, and food conditioning [...].”

The report also contained highly subjective information and varied accounts of the number of bears involved. It was later determined that dog food had been used as an attractant and the report reads as a very dynamic situation with multiple criminal and public safety elements present.

*Discussion:*

The result of this case points to what appropriate police work and appropriate early intervention with criminal justice tools could achieve. There is little doubt that attractant offences had occurred:

“...walked the beach and found plates of human food mixed with dog food . . . CO Riddell did observe 1 of the large black bears eating what appeared to be dog food off of the ground . . . [redacted] put the dog food out for the bears to eat to keep them on [redacted] property . . . they had heard [redacted] was feeding the bears...”). The investigation of these offences should have been the first and primary objective of the responding officers.

The constable seeking administrative direction from FLNROROD is problematic; doing so shifts the primary focus and responsibility of the officer from criminal investigation and public safety to wildlife management, which is not the mandate of the BCCOS as a law enforcement service.

If a public safety risk is present (human or otherwise) the officer is entitled to use all reasonable force necessary – up to and including lethal force. Where there is no public safety risk or emergency, the duties of a constable end.

There is some question in this file regarding accuracy of early information provided and identifying which of the cubs were or were not a safety risk. At least one sow and one cub were killed while in a tree, thereby exhibiting some level of fear and avoidance behaviour.

While it is appreciated that this was a dynamic file, from our perspective the information presented is contradictory at the outset, raising some doubt as to whether alternative options could have been employed for medical and behavioural assessments after the bears were trapped/contained– especially for the cub.

There is also an absence of progressive judgement during this incident. As an emergency situation advances and the risk factors/offending characters are removed from the equation, it is expected that the level of force applied will be adjusted and reduced where appropriate – consistent with critical incident management principles that exercise independent and discretionary judgement.

This case was chosen as an example because it highlights the diversity of a BCCOS public safety response. It contains both criminal and public safety matters, early contradictory information, mid-range response actions from officers, and a lack of discretion adjustment at the end of the emergency situation – relying instead on both early information and mid-range outcomes. There are multiple reviewable items from a service delivery standpoint, most critically, the lack of progressive discretion as the situation evolved.

It is noted, however, that unlike the previous two cases, this case did contain an element of public safety risk and criminal behaviour.

### **Concluding remarks and relief sought**

The samples above, in our view, highlight a continued misunderstanding of BCCOS authorities and mandate scope. The BCCOS is a provincial law enforcement agency, not a wildlife management service.

If an officer feels they need a veterinarian to justify their actions, it is our suggestion that pulling the trigger should receive some second thought. Veterinarians and FLNRORD staff do not have the statutory authority to provide direction to constables acting as Conservation Officers. While an officer may seek advice from a qualified professional, it is the individual officer that is responsible for exercising their discretion in the field. A constable is not a veterinarian, biologist, or wildlife rehabilitator; they are public safety providers.

When lethal action is taken, there should be no question as to the existence of an immediate public safety risk or emergency requiring lethal force response. If the officer has time to make a phone call and ask questions, then there are likely other mitigation options available, or in the alternative, the emergency is likely over and the constable's primary duties are ended (analogous to a first responder at a traffic accident or fire, the police may rightly attend first but at some point, their involvement ends and other services take over as subject matter experts).

The routine killing of bears, especially juvenile bears who present no risk to public safety, erodes the foundation of the application of reasonable and justifiable force on any species by an armed servant of the Crown.

Where lethal force is applied in dynamic situations, on review, clear and progressively adjusted decision making should be readily identifiable in the post-incident files. As the emerging or immediate threat is reduced, the force applied should be adjusted.

To resolve this complaint, we ask the BCCOS to clearly outline the authority structure for its constables as a public safety provider and create measurable change to limit pre-emptive killing actions that rely on third-party, external directives or advice. We ask that officers be informed of their decision-making levels and that it be made known within the BCCOS and FLNRORD that FLNRORD may not direct constables in the field to kill (although advice may always be received). If information is to be acted upon as if it were an order, such orders must come from superior officers. This is to ensure a clear chain

of command that is reviewable and to protect the officer and agency in disciplinary or other proceedings.

Relying upon third-party, subjective perceptions of weight and health of wild animals does not meet the test of scientific rigor for the justification of lethal force. A biologist, veterinarian, or rehabilitation specialist who has an honest desire to assist animals in need and holds the qualifications and tools necessary to make such an assessment, is better suited to make life and death decisions where no public safety risk or emergency presents itself.

Finally, we ask that greater weight be given to those with rehabilitation experience. Just as an officer can call FLNRORD for advice, they can call a rehabilitation centre or bear biologist for a second opinion (or assistance) prior to exercising lethal force. The killing of bears should not be normalized as a routine practice, but rather treated as the absolute last option when all other interventions and options have been considered and exhausted.