IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Association for the Protection of Fur-Bearing Animals v. British Columbia (Minister of Environment and Climate Change Strategy),* 2017 BCSC 2296

Date: 20171213
Docket: S-177156
Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

The Association for the Protection of Fur-Bearing Animals and Tiana Jackson

Petitioners

And

The Minister of Environment and Climate Change Strategy for the Province of British Columbia (Conservation Officer Service) and Micah Kneller

Respondents

Before: The Honourable Mr. Justice G.C. Weatherill

Reasons for Judgment

Counsel for the Petitioners:	A. Beddoes A. Render
Counsel for the Respondents:	A.K. Harlingten
Place and Dates of Hearing:	Vancouver, B.C. November 22–23, 2017
Place and Date of Judgment:	Vancouver, B.C. December 13, 2017

INTRODUCTION

[1] This proceeding raises the issue of whether a conservation officer in British Columbia has the authority to kill a wild animal that is neither in distress nor posing a threat to persons, property, wildlife or wildlife habitat.

[2] The case necessarily engages principles of statutory interpretation regarding the provisions of the *Wildlife Act*, R.S.B.C. 1996, c. 488 ["*Wildlife Act*"] in the context of its legislative purpose and administrative regime.

BACKGROUND

[3] On May 6, 2016, the petitioner, Tiana Jackson, discovered a black bear cub on a road near her home in Dawson Creek, British Columbia. The bear cub was small — about the size of a domestic cat.

[4] When it became apparent to Ms. Jackson that the bear cub was orphaned, she and others captured and transported it to Ms. Jackson's home where it was put in a dog kennel for safekeeping. The bear was awake and active while in the kennel.

[5] Ms. Jackson reported the finding to the RCMP who in turn contacted the Conservation Officer Service ("COS").

[6] The respondent conservation officer, Micah Kneller, attended Ms. Jackson's home and took possession of the bear. He subsequently euthanized it despite having been informed that a licenced wildlife centre in Smithers, B.C. had agreed to accept the bear into its rehabilitation program.

[7] On June 6, 2016, the petitioner association filed a complaint with the COS regarding the incident, asserting that Officer Kneller, in euthanizing the bear, had acted outside the scope of his legislative authority to kill wild animals under the *Wildlife Act,* specifically s. 79(1), which provides:

> Destruction of animals

> 79 (1) An officer may kill an animal, other than a domestic animal, that is at large and is likely to harm persons, property, wildlife or wildlife habitat.

[8] On January 13, 2017, Deputy Chief Conservation Officer Aaron Canuel issued his decision regarding the complaint. He found that "the evidence does not support the complaint that Officer Kneller abused his legislated powers and acted outside the scope of his authority". The decision went on to state:

> I don't believe there is a strong argument that Section 79(1) would have applied to authorize Officer Kneller to kill the bear cub, since there was no apparent threat at [sic] point in time to persons, property, or other wildlife or wildlife habitat.
>
> What does apply is Section 86 which exempts officers from restrictions against killing wildlife under the Act when officers are engaged in the performance of their duties.

[9] The petitioner association requested a review of Officer Canuel's decision and, on March 14, 2017, it received the review decision by Chief Conversation Officer Douglas Forsdick, which stated in relevant part:

> My review analyses whether, based on the material before me, Deputy Chief Canuel made an incorrect decision when we found Officer Kneller's conduct did not constitute misconduct. Deputy Canuel reviewed the investigative materials and in his analysis applied the civil standard, "balance of probabilities test." His analysis and decision was based on a constellation of factors that included policy, subject matter expert opinion, supervisor's comments and a legal opinion. In reviewing the Abuse of Authority section, the element "without sufficient cause" must be present to substantiate the allegation. In my view, Deputy Chief Canuel's decision satisfied that officer Kneller had sufficient cause when he euthanized the black bear.

[10] The petitioners seek the following remedies:

a) an order granting the petitioner association public interest standing in this proceeding;

b) an order in the nature of *certiorari* quashing the May 6, 2016 determination of Officer Kneller to kill the bear cub;

c) further or in the alternative, an order in the nature of prohibition directing and requiring the CSO not to kill wildlife except in the circumstances set out in s. 79 of the *Wildlife Act*;

d) further or in the alternative, a declaration that the killing of the bear cub was unlawful and *ultra vires*, and

e) costs.

PUBLIC INTEREST STANDING

[11] The respondents do not take issue with the public interest standing of the petitioner association as they concede that the criteria set out in *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 are met.

[12] Accordingly, there will be an order that the petitioner association has standing to bring this petition.

ACKNOWLEDGEMENTS DURING THE HEARING

[13] During the course of the hearing, counsel for the petitioners conceded that an order in the nature of *certiorari* can only be made in respect of a decision that is subject to judicial review and that the decision of Officer Kneller to euthanize the bear cub is not such a decision. Regardless, it is clear that there would be no utility in an order quashing the decision now, some 19 months after the euthanasia of the bear cub was carried out. Indeed, the petitioners do not take issue with Officer Kneller's use of his discretion to kill the bear cub. Rather, they assert that he did not have any authority to do what he did. The court should not embark on a determination of a question where the answer would be moot, futile and serve no useful purpose: *Borowski v. Canada (Attorney General),* [1989] 1 S.C.R. 342 at paras. 15–16*; Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board,* [1994] 1 S.C.R. 202 at paras. 51–52*; ISH Energy Ltd. v. British Columbia (Minister of Finance),* 2017 BCCA 62 at para. 24.

[14] Petitioners' counsel also conceded that, if the court finds there is no authority under the *Wildlife Act* to kill animals other than in the circumstances set out in s. 79, the CSO would be obliged to, and it must be presumed that it would, obey that ruling such that an order in the nature of prohibition would be redundant and unnecessary. Conversely, if the court finds that such authority exists beyond s. 79, a dismissal of the application for an order in the nature of prohibition would follow as a matter of course. Accordingly, the petitioners did not pursue an order in the nature of prohibition.

[15] Rather, the hearing focused on what was plainly the core issue, namely the extent of a conservation officer's authority to kill animals or wildlife under the provisions of the *Wildlife Act*.

PRINCIPLES OF STATUTORY INTERPRETATION

[16] The parties are in agreement that s. 79 of the *Wildlife Act*, like all statutory provisions, must be interpreted in accordance with the modern approach. The words must be examined in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Wildlife Act*, the object of the *Wildlife Act*, and the intention of the legislature: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21; *Wilson v. Atomic Energy Canada Ltd.*, 2016 SCC 29 at para. 102.

[17] The petitioners' argument focuses on the grammatical and ordinary meaning of the words that are used. The respondents' argument focuses on the context of words that were used in light of the overall scheme of the *Wildlife Act*.

RELEVANT PROVISIONS OF THE *WILDLIFE ACT*

[18] The *Wildlife Act* sets out the following relevant definitions:

> "animal" means a mammal, reptile, amphibian or bird;
>
> "controlled animal species" means a species designated by regulation under section 6.4 as a controlled alien species. …
>
> "domestic animal" means an animal that is prescribed as a domestic animal;

> "game" means big game, small game, game birds and *fur bearing animals*, and other species prescribed as game; "mammal" means a vertebrate of the class Mammalia other than humans.
>
> "open season" means a specified period of time during which a species of wildlife may be hunted or taken;
>
> "wildlife" means raptors, threatened species, endangered species, *game* and other species of vertebrates prescribed by regulation. ….
>
> [Emphasis added.]

[19] For the purposes of this proceeding, the relevant substantive provisions of the *Wildlife Act* are as follows:

> Property in wildlife
>
> 2 (1) Ownership in all wildlife in British Columbia is vested in the government.
>
> (2) A person does not acquire a right of property in any wildlife except in accordance with a permit or licence issued under this Act or the *Animal Health Act* or as provided in subsection (3) of this section.
>
> (3) A person who lawfully kills wildlife and complies with all applicable provisions of this Act and the regulations acquires the right of property in that wildlife.
>
> (4) If a person by accident or for the protection of life or property kills wildlife, that wildlife, despite subsection (3), remains the property of the government.
>
> …
>
> Controlled alien species
>
> 6.4 If the minister considers that a non-native species described in paragraph (a) or (b) of the definition of "species" poses a risk to the health or safety of any person or poses a risk to property, wildlife or wildlife habitat, the minister may make regulations designating the species as a controlled alien species.
>
> Hunting, trapping and firearm prohibitions
>
> 26 (1) A person commits an offence if the person hunts, takes, traps, wounds or kills wildlife
>
> …
>
> (c) at a time not within the open season
>
> …
>
> Escape, etc., of captive animal

76 (1) On the escape from captivity or the release or abandonment of an animal that is not a domestic animal, the government acquires the ownership of that animal.

Release or escape of animals

77 (1) A person who releases or abandons an animal or from whose captivity an animal escapes

(a) is, despite section 11 (4) of the *Livestock Act*, liable to the government for loss or damage to wildlife or wildlife habitat caused by the animal, and for all costs incurred by the government in pursuing, recovering, holding or destroying it, and

(b) is not entitled to any compensation from the government if the animal is destroyed under section 79.

(2) If a person releases or abandons an animal, other than a domestic animal, the person commits an offence.

(3) If an animal, other than a domestic animal, escapes from the possession of a person, the person commits an offence if he or she fails to make every reasonable effort to recover the animal.

(4) This section does not apply if the person is authorized by the regional manager to release the animal.

Destruction of animals

79 (1) An officer may kill an animal, other than a domestic animal, that is at large and is likely to harm persons, property, wildlife or wildlife habitat.

(2) An officer may kill a dog that is

(a) at large in a wildlife management area, or

(b) at large and harassing wildlife.

(3) An officer may kill a cat at large where wildlife is usually found.

Officers exempted

86 The offence provisions of this Act and the regulations and section 9 of the *Firearm Act* do not apply to an officer engaged in the performance of his or her duties.

Entering premises

89 (1) For the purpose of ensuring that this Act and the regulations are being complied with, an officer may enter and inspect any premises or enclosure in which live wildlife or live fish is kept …

Seizure

94 (2) A conservation officer may seize wildlife or fish, or parts of either wildlife or fish, in a person's possession if the conservation officer believes on reasonable grounds that the right of property in that wildlife is with the government or remains in the government.

If live wildlife seized

> 97.2 Despite anything else in this Act, if live wildlife is seized under this Act, a conservation officer may dispose of the wildlife, or have the wildlife disposed of, by returning it to the natural environment if the conservation officer believes on reasonable grounds that the live wildlife is capable of surviving after release.

If perishable wildlife seized

> 97.3 Despite anything else in this Act, if wildlife is seized under this Act and a conservation officer believes on reasonable grounds that the wildlife may rot, spoil or otherwise perish, the conservation officer may dispose of the wildlife, or have the wildlife disposed of, as the minister directs.

Seizure or destruction of controlled alien species

> 97.7 (2) A conservation officer or constable may seize or destroy a species individual of a controlled alien species if, in the opinion of the conservation officer or constable, the species individual presents an imminent danger to the health or safety of a person or to property, wildlife or wildlife habitat.

[20] Various Regulations passed under the *Wildlife Act* are also relevant. The *Designation and Exemption Regulation*, B.C. Reg. 168/90, provides that:

a) for the purposes of ss. 76, 77 and 79 of the *Wildlife Act*, "domestic animal" means cattle, sheep or horses (s. 12).

b) black bears are "fur bearing animals" (s. 16(c)).

[21] The *Hunting Regulation*, B.C. Reg. 190/84 provides that:

a) there is no "open season" for a black bear less than two years old or any black bear accompanying it (s. 13.1).

[22] It is clear from the foregoing provisions that black bears are both "wildlife" and "animals" as those words are defined in the *Wildlife Act*. It is also clear from a reading of the foregoing Regulations together with s. 26(1)(c) of the *Wildlife Act* that it is an offence under the *Act* to kill a black bear that is less than two years old.

[23] It is equally clear from s. 86 that the offence provisions of the *Wildlife Act* do not apply to a conservation officer engaged in the performance of his or her duties.

PETITIONERS' SUBMISSIONS

[24] The petitioners assert that a conservation officer's immunity from the offence provisions do not imbue him or her with any authority to kill animals or wildlife other than as is expressly authorized by the *Wildlife Act*. They say that such authority is limited to the situations set out in s. 79 (destruction of animals) and s. 97.7(2) (seizure and destruction of controlled alien species).

[25] The petitioners submit that it is only when genuine ambiguity arises between two or more plausible reading of the words used in a statute, with each reading equally in accordance with the intentions of the statute, that the courts will resort to external interpretive aids including other principles of interpretation: *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42 at paras. 29–30.

[26] The petitioners submit that the words used in s. 79(1) are far from being ambiguous or incompatible with other provisions of the *Wildlife Act*. Rather, on a plain reading of them, it is clear that the Legislature intended the section to apply to all animals, including wildlife. The section does precisely what it appears to do on its face: circumscribe the circumstances in which conservation officers may kill animals, including wildlife, that are at large. To limit the application of the section to privately-owned animals requires the addition of words that are not there, which cannot be done unless the result would be an absurdity or lead to an outcome that is repugnant to the legislative intent: *SOCAN v. Canadian Association of Internet Providers*, 2002 FCA 166 at paras. 110–113, rev'd on other grounds 2004 SCC 45.

[27] The petitioners submit that, if as the respondents assert, the Legislature had intended to restrict the scope of the authority to kill in s. 79(1) to privately-owned animals (not wildlife) and provide broader authority to kill wildlife elsewhere in the *Wildlife Act*, it could easily have done so. Instead, it chose in s. 79(1) to use broad language granting officers the authority to kill any "animal" (any mammal, reptile, amphibian or bird) other than a domestic animal that is at large and is likely to harm. No other authority to kill was granted anywhere in the *Wildlife Act*, except the provisions relating to controlled alien species which were added in 2008 (s. 97.7).

[28] The petitioners point out that, because s. 79(1) specifically excludes "domestic animals" (cattle, sheep and horses) from its scope and ss. 79(2) (dogs), 79(3) (cats), and 97.7 (controlled alien species) collectively deal with all other animals that are typically privately-owned, it is difficult to conceive of an animal that s. 79(1) was intended to apply to if not wildlife. Simply put, the exclusion of "domestic animals" from s. 79(1) and the presence of separate provisions dealing with dogs, cats and controlled alien species makes clear that s. 79(1) must apply to wildlife, consistent with its plain meaning and the definitions in the *Wildlife Act*.

[29] The petitioners argue that, because it is an offence under s. 26(1) of the *Wildlife Act* for any person (including a conservation officer) to kill wildlife in the listed circumstances, the purpose of s. 79(1) was to give conservation officers the express authority to kill wildlife that is at large and likely to harm, thereby excluding the officers from the offence provisions in that limited circumstance.

[30] The petitioners contrast the phrase "at large" used in s. 79(1) with the language of the *Prevention of Cruelty to Animals Act,* R.S.B.C. 1996, c. 372 ("*PCAA*") which, *inter alia*, creates a strict legal regime regarding the killing of animals, including wildlife, that are in "captivity". They argue that an animal (wildlife) is either in captivity, in which case the *PCAA* applies, or at large, in which case the *Wildlife Act* applies.

[31] The petitioners submit that, in keeping with the central scheme and purpose of the *Wildlife Act*, the Province's ownership of wildlife, as is the case with public lands, is "in trust" for the people of the Province, and that the *Wildlife Act* should not be construed in such a manner that gives unlimited authorization to conservation officers to interfere with that public interest, especially when that authorization is expressly limited by the words used in the s. 79(1).

[32] The petitioners point out that the respondents' policies, its discussion papers and the case law is devoid of anything suggestive of conservation officers having the authority to kill wildlife other than in the circumstances set out in ss. 79 and 97.7. In particular, the petitioners vigorously assert that it is not a central purpose of the

Wildlife Act to allow conservation officers to do what Officer Kneller did, which was to kill a young black bear cub who was unlikely to harm anyone or anything.

RESPONDENTS' SUBMISSIONS

[33] The respondents contend that conservation officers have broad powers to manage wildlife in furtherance of the goals of the *Wildlife Act* and that ss. 79 and 97.7(2) were not intended by the Legislature to be exhaustive of the authority of conservation officers to kill wildlife when such action is required in the performance of their duties.

[34] The respondents submit that both the common law and the provisions surrounding s. 79 in the *Wildlife Act* support the conclusion that s. 79 was intended to apply only to privately-owned animals, permitting conservation officers to interfere with those property rights where the animal is at large and likely to harm persons, property, wildlife or wildlife habitat.

[35] At common law, legal distinctions were drawn between wild animals, considered to be *ferae naturae*, and domestic animals, subject to absolute ownership as property: *Diversified Holdings Ltd. v. British Columbia*, [1982] B.C.J. No. 1578, aff'd [1982] B.C.J. No. 2184 (C.A.), at paras. 16–18. Prior to the enactment of the various wildlife or "game" management statutes across Canada, wild animals were subject to two legal concepts derived from Roman law: (1) *res nullius*, the rule of capture and (2) *ratione soli*, the right of a landowner to kill and take wild animals on his land: *Pierson v. Post*, (1805), 3 Cai. R. 175 (S.C.N.Y.); *Yanner v. Eaton* (1999), 166 A.L.R. 259 (A.C.); *George v. Newfoundland and Labrador*, 2014 NLTD(G) 106 (S.C.) at paras. 57–59, aff'd 2016 NLCA 24; *Cadman v. Saskatchewan (Minister of Parks and Renewable Resources)* (1988), 67 Sask R. 286 (S.Ct. Q.B.) at para. 23.

[36] Given the uncertainty in ownership of wild animals at common law, and given that by virtue of owning land in their respective jurisdictions the provinces had an interest in ownership of the wildlife on their lands, enactment of the *Wildlife Act* was necessary to establish a framework to govern the management of animals in the

province and regulate the hunting of those animals. The *Wildlife Act* modified the common law regarding wildlife such that its ownership became vested in the Province (s. 2(1)).

[37] The respondents point out that, throughout the *Wildlife Act*, the term "animal" is never used as a substitute for "wildlife". They submit that it is necessary, therefore, to recognize the Legislature's deliberate choice of the word "animal" in s. 79(1). They point out that the phrase "at large" means free, unrestrained and not under control: *Maxwell on the Interpretation of Statutes*, 12th ed. (London: Sweet & Maxwell, 1969) at p. 293. Since wildlife are generally free-ranging and not considered to be retrained or under control, the use of the phrase "at large" suggests that the purpose of s. 79 was to permit interference with animals other than wildlife, namely, those that are owned privately.

[38] The respondents submit that ss. 76 and 77 provide important context for the interpretation of s. 79. Sections 76 and 77, along with s. 79 are the only substantive sections in the *Wildlife Act* that use the word "animals".

[39] Section 76 provides that the government acquires ownership of any animal other than a domestic animal (horse, cattle, sheep) that escapes from captivity or is released or abandoned. Respondents' counsel submits that, because wildlife is free-ranging and not in captivity, the Legislature must have intended "animal" to mean something other than "wildlife". I note, however, that s. 89(1) of the *Wildlife Act* contemplates that wildlife may not always be free-ranging and not in captivity. That section reads, in relevant part:

> Entering premises
>
> 89 (1) For the purpose of ensuring that this Act and the regulations are being complied with, an officer may enter and inspect any premises or enclosure in which live wildlife or live fish is kept …

[40] Section 77 provides that anyone who releases or abandons an animal or fails to make every reasonable effort to recover an animal that has escaped from the possession of the person, other than a domestic animal, commits an offence.

[41] The respondents submit that language of ss. 76, 77 and 79 indicates that the "animal" referred to in each of ss. 76, 77 and 79 was not roaming freely but was rather held captive by a person.

[42] The respondents submit it does not accord with the principles of statutory interpretation to infer, by the process of elimination, that s. 79(1) includes wildlife within its scope simply because certain classes of animals (horses, cattle or sheep) are excluded and other species are dealt with elsewhere, namely in s. 97.7. They point out that s. 97.7 was not added to the *Act* until 2008 and that prior to 2008 s. 79 would have applied to controlled alien species, which is also consistent with s. 79(1) having been intended to apply to privately-owned animals rather than to wildlife.

[43] Accordingly, the respondents say that s. 79(1) does not apply in the circumstances of this case where wildlife (a bear cub) was killed.

[44] The respondents submit that, while there is no provision in the *Wildlife Act* which expressly authorizes the killing of wildlife by conservation officers in the circumstances of this case, the authority to do so arises by necessary implication from the Legislation itself and its central purpose of creating a scheme for the conservation, sustainability and orderly harvesting and management of the province's wildlife resources: *Lake v. Callison Outfitters Ltd.*, [1991] B.C.J. No. 467 (S.C.); *Aasland v. British Columbia (Ministry of Environment, Lands and Parks)*, [1999] B.C.J. No. 1104 (S.C.) at para. 5. Indeed, in its 2001 Discussion Paper entitled "Managing Wildlife to 2001", Victoria B.C. BC Environment, 1991, the Ministry of Environment identified the following strategic goal for its wildlife program at p. 11:

> To manage the province's wildlife resources for the benefit and enjoyment of British Columbians – by maintaining an optimal balance between ecological, cultural, economic and recreational needs.

ANALYSIS

[45] As noted, the salient issue for determination is whether the conservation officer in question had the authority under the *Wildlife Act* to kill the bear cub.

[46] It is undisputed that the main purposes of the *Wildlife Act* include the preservation and conservation of wildlife habitat, the enhanced production of wildlife as well as the regulation of the consumptive use of wildlife: British Columbia Ministry of Environment, *"A New Wildlife Act"*, Discussion Paper, 1981.

[47] The *Wildlife Act* recognizes the right of people to hunt and, thus, its provisions do not prohibit the hunting and killing of wildlife. Rather, the *Wildlife Act* regulates hunting by imposing rules and restrictions respecting who can hunt, the types of wildlife that can be hunted, when and by what methods. If a person who is in compliance with the applicable provisions of the *Wildlife Act* and its regulations lawfully kills wildlife, ownership of the wildlife transfers from the government to that person (s. 2(3)).

[48] There is nothing in the *Wildlife Act* that specifically addresses the authority given to conservation officers to kill wildlife (in contrast to an "animal"), although there are several sections, including ss. 79 and 97.7 that confer upon officers discretion to take action. The petitioners assert that those permissive provisions are exhaustive of the authority that officers have under the *Wildlife Act* to kill wildlife. The respondents say that the authority given to officers to kill wildlife is inferred from their duties under the *Wildlife Act* to manage wildlife resources.

[49] Specific powers can be inferred from grants of discretion. In *Saskatoon (City) Police Force v. Saskatoon (Police Commission)*, [2004] S.J. No. 9 (C.A.), the Court of Appeal held that it was implicit from the Chief of Police's powers under the *Police Act* that he was entitled to dismiss probationary employees for unsuitability:

> [35] … The power of the Chief of Police to dismiss a probationary constable for unsuitability must be inferred from s. 35, for the conferral of the responsibility for discipline by the Legislature necessarily implies the power to carry out that responsibility.
>
> [Emphasis added.]

[50] In *Canadian Parks and Wilderness Society v. Canada (Minister of Canadian Heritage)*, [2003] 4 FCR 672, the Federal Court of Appeal of, Edmonton, Alberta concluded that Parliament is generally taken to intend to confer the powers

necessary to give efficacy to the administration schemes that it creates, quoting at para. 41 from *Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2 at 7:

> In construing statutes … which provide for far-reaching and frequently complicated administrative schemes, the judicial approach should be to endeavour within the scope of the legislation to give effect to its provisions so that the administrative agencies created may function effectively, as the legislation intended. In my view, in dealing with the legislation of this nature, the courts should, wherever possible, avoid a narrow, technical construction, and endeavour to make effective the legislative intent as applied to the administrative scheme involved.

[51] Justice Evans concluded (at para. 65) that the power to approve the creation of a road in the Jasper National Park was implied by the conferral of broad responsibilities on the Minister.

[52] Management of wildlife resources is carried out by officers under the *Wildlife Act*, including conservation officers (s. 1(1)) as defined in the *Environmental Management Act*, R.S.B.C. 2003, c. 53 ["*EMA*"]. Section 106(5)(a) of the *EMA* provides that members of the Conservation Officer Service may exercise the powers and perform the duties of a conservation officer under the *Act*. Section 106(5)(c) confers immunities onto conservation officers in the exercise of their powers and duties under the *Act* as if they are peace officers.

[53] Section 108(2)(l.2) of the *Wildlife Act* provides that the Lieutenant Governor in Council may make regulations respecting the circumstances in which a person may take, kill or possess wildlife. In the absence of any such regulation, conversation officers are authorized by various provisions under the *Act* to exercise his/her duties.

[54] The *Wildlife Act* explicitly confers certain powers upon conservation officers in the exercise of his/her duties under the *Act* to dispose of wildlife that has been seized. Section 94(2) provides for a conservation officer's power to seize wildlife:

> (2) A conservation officer may seize wildlife or fish, or parts of either wildlife or fish, in a person's possession if the conservation officer believes on reasonable grounds that the right of property in that wildlife is with the government or remains in the government.

[55] Section 97.2 of the *Wildlife Act* prescribes what a conservation officer is authorized to do following seizure of live wildlife:

> 97.2 Despite anything else in this Act, if live wildlife is seized under this Act, a conservation officer may dispose of the wildlife, or have the wildlife disposed of, by returning it to the natural environment if the conservation officer believes on reasonable grounds that the live wildlife is capable of surviving after release.

[56] Section 97.3 provides:

> 97.3 Despite anything else in this Act, if wildlife is seized under this Act and a conservation officer believes on reasonable grounds that the wildlife may rot, spoil *or otherwise perish*, the conservation officer may dispose of the wildlife, or have the wildlife disposed of, as the minister directs.
>
> [Emphasis added.]

[57] I find it inconceivable that the Legislature intended to restrict the wildlife management powers of officers to kill wildlife to those that are at large and are likely to harm (and latterly to the circumstances set out in s. 97.7 regarding controlled alien species).

[58] I agree with counsel for the respondent that s. 86 of the *Wildlife Act*, which exempts officers from its offence provisions, was enacted to facilitate their ability to perform their duties consistent with the purpose of the *Wildlife Act*, namely to manage wildlife and their habitat. To be clear, in order to be afforded the exemption in s. 86, officers must exercise their duties in accordance with the purposes of the *Wildlife Act* and the legitimate policy guidelines established by government. This is in keeping with the provisions of the *Wildlife Act* itself which implicitly anticipate that officers may need to manage wildlife in diverse circumstances in the wilds of British Columbia far from ready access to rehabilitation centres or to the veterinary treatment that is contemplated by the provisions of the *PCAA* when captive animals are in distress.

[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.

CONCLUSION

[60] The petition is dismissed.

[61] The respondents agree that there should be no order as to costs.

"G.C. Weatherill J."