Citation: ☼ R. v. Millar
2023 BCPC 237

Date: ☼ 20231106
File No: 41995-1
Registry: Tofino

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REX

v.

RYAN OWEN MILLAR

REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE A. WOLF

Counsel for the Crown:	Brett Webber
Counsel for the Accused:	Dale Melville
Place of Hearing:	Tofino and Ucluelet, B.C.
Dates of Hearing:	May 1, 2 and June 5 and 6, 2023
Date of Judgment:	November 6, 2023

INTRODUCTION

[1] These are the reasons for sentence in this case. I will not repeat all the facts of this case. The reasons for the decision have been published and can be found at *R. v. Millar*, 2023 BCPC 135.

BRIEF SUMMARY OF FACTS

[2] Mr. Millar lives in Tofino, which is a town on the west coast of Vancouver Island. On October 14, 2021, there were two black bears near his house. One was a sow and the other was her cub. They were in a tree in his yard. He saw the bears, went into his house, and retrieved a bow and some arrows as well as his crossbow. He deployed at least one arrow from his bow at the cub, injuring it and causing it to fall out of a tree. He then used his crossbow to kill it. He then shot a number of arrows at the sow bear and injured it. As it tried to escape, he chased after it and killed it. The investigation of the killing revealed that the sow was found a short distance from his house. Immediately after killing the younger bear, he then hid the cub on his property.

[3] He thought nobody was watching when he killed these two bears. Unbeknownst to him, there were two people enjoying a hot tub next door at an AIRBNB. They were visiting from Vancouver. They were enjoying watching the bears up on the trees. They witnessed the killings, took some photographs of what was happening, and called the police.

[4] When the police arrived at the scene, the accused told them that he knew nothing about any bear being shot. In other words, he lied. The police attended again and then at that time, the accused admitted that there had been one bear shot. He said he was trying to chase it away from his house as it had acted aggressively towards him. Once more, this was a lie.

[5] One witness told the court that after the officer left the second time, a white pick-up truck drove up to the accused's house, the accused loaded it up with the dead cub and a bunch of bows and arrows.

[6] After lying to the initial police officer on scene, some Conservation Officers investigated the incident. Mr. Ryan Millar was not at all truthful with them either.

THE CHARGES

[7] Count 1 - Ryan Owen Millar, on or about the 14th day of October, 2021, at or near Tofino, in the Province of British Columbia, did kill wildlife, namely a black bear, at a time not within open season, contrary to Section 26(1)(c) of the *Wildlife Act*, R.S.B.C. 1996.

[8] Count 3 - Ryan Owen Millar, on or about the 14th day of October, 2021, inclusive, at or near Tofino, in the Province of British Columbia, did take or kill a black bear less than two years old; or a black bear in the company of it, contrary to Section 13.7 (1)(b) of the *Hunting Regulation*, BC Reg 190/84, pursuant to the *Wildlife Act*, R.S.B.C. 1996.

THE CROWN POSITION

[9] The Crown's submissions are extensive. They have provided written submissions. Included in the submissions are references to case law, a report prepared by Shelley Marshall, Senior Wildlife Biologist, information from Parks Canada, and statements from two Indigenous elders. The submissions are so helpful I have attached them to these reasons. I suspect they would be useful in other sentencing proceedings in the future.

[10] The Crown submits that a fine in the range of $15,000 to $20,000 per Count would be a fit and proper sentence. They submit the any financial penalty can include a fine and an additional amount per Count as payment to the Habitat Conservation Trust Foundation.

[11] The Crown also submits that in addition to a financial penalty, the court has the authority to sentence the accused to a period of incarceration. They argue that if the jail sentence is less than 90 days it cannot be served intermittently in Tofino, as local police resources do not allow for such a sentence to be served.

THE DEFENCE POSITION

[12] Defence submits that the principle of parity strongly supports the imposition of a fine. They argue that there are no cases in BC where a court imposed a jail sentence for the killing of a black bear.

[13] They also argue that the accused has skills and can complete community service work. Certainly numerous letters of support from family and friends confirm that Mr. Millar has a lot of skills that could be used to benefit his community. I note that one of his references also suggests that he provide volunteer work with bear conservation "as to give back to the community and learn how to co-exist with bears." I note, as a result of a shoplifting offence, he has already done community service work on this topic.

[14] In the alternative, defence submits that if a period of incarceration is found to be appropriate, then the jail sentence could be served in the community on a conditional jail sentence order.

THE LAW

[15] The *Wildlife Act* of BC [RSBC 1996] Chapter 488 is the guiding statute in this case. The official BC Government website indicates that "The *Wildlife Act* is the foundation for conserving and managing wildlife in British Columbia. Wildlife is an integral part of First Nations' heritage and culture and provides enjoyment and economic benefits for British Columbians."

[16] The specific penalty sections of the *Wildlife Act* are set out in the written argument of the Crown at paragraph 8:

> **PENALTY SECTIONS 8**
>
> The penalty sections applicable to both of these two offences are set out in Section 84(1)(b) of the *Wildlife Act*:
>
> … (1)(b) subsections (3) and (4) apply in relation to an offence
>
> i. under section … 26(1)(c) [Count 1]
>
> ii. prescribed under Section 108(3)(l)(ii) [Count 3]

> (3) Subject to subsection (4), a person who commits an offence referred to in subsection (1)(b) is liable,
>
> > (a) on a first conviction, to a fine of not more than $100,000 or to a term of imprisonment not exceeding one year, or both, and
> >
> > (b) on each subsequent conviction for the same offence or another offence referred to in subsection (1)(b), to a fine of not more than $200,000 and not less than $2000 or to a term of imprisonment not exceeding 2 years, or both.
>
> (4) Despite subsection 3(a), if the person referred to in that subsection has previously been convicted of an offence referred to in subsection (1)(a), the person is liable to the punishment set out in subsection (3)(b).
>
> [Related Count information added for context]

[17] Essentially, the maximum punishment for each of the offences can be a $100,000 fine and up to one-year jail.

PURPOSES, OBJECTIVES, AND PRINCIPLES OF SENTENCING

[18] The purposes and principles of sentencing that are set out in s. 718 to s. 718.2 of the *Criminal Code* are also applicable to the offences before this court. Those sections codify the purposes and principles and plainly state the intention and the rationale for imposing particular sentences. Section 718 of the *Criminal Code* outlines the fundamental purpose of sentencing in the following fashion:

> The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> > (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
> >
> > (b) to deter the offender and other persons from committing offences;
> >
> > (c) to separate offenders from society, where necessary;

> (d) to assist in rehabilitating offenders;
>
> (e) to provide reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

Section 718.1 directs that a sentence must be proportionate to the gravity of the offence and the degree of the offender's responsibility.

Section 718.2 under the heading of "Other sentencing principles," states, in part, that:

> A court that imposes a sentence shall also take into consideration the following principles:
>
> (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender . . .
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders . . .

GENERAL COMMENT ON PRINCIPLES

[19] A sentence must specifically deter this offender from committing any further offences.

[20] Others should also be deterred from engaging in similar offending behaviour.

[21] The sentence should also reinforce societal values.

CASE LAW

[22] *R. v. Eyben,* 2013 BCPC 300 is a decision of The Honourable Judge Challenger. Judge Challenger at the time was a BC Provincial Court Judge based out of North Vancouver. The case was from Pemberton, British Columbia. North Vancouver Judges are largely responsible for the Pemberton court matters.

[23] In *Eyben*, the accused killed a grizzly bear and failed to promptly report the 'accidental' killing. I say 'accidental', as he was hunting for deer and had a valid tag for a black bear. The accused said when he saw the bear, it was difficult to determine if it was a large black bear or a grizzly and he did not take the time to confirm what kind of a bear it was, and shot it anyway. There was a delay in reporting the killing. When he did report the killing, he was not forthright with the Conservation Officer. He reported that the grizzly was expressing aggression and ran toward him. This was not true. Of course, the facts in our case are a bit different. Mr. Millar knew a lot about these two bears, it was no accident that he killed black bears. He probably would not have reported the killing except the RCMP showed up on his doorstep right after the incident, and of course, he was not forthright with the Conservation Officers, nor the RCMP member.

[24] The accused in *Eyben* was 33 years old, well educated, and had an income of approximately $50,000 per year. There are some similarities to Mr. Millar, who is 34, well educated, and has an income from a business.

[25] The Judge in *Eyben* found that the illegal act arose from inexperience and fear that he would get in trouble for his own negligence. He had no prior history of *Wildlife Act* or other offending behaviour. He expressed remorse, told the court he felt great shame and regret and pled guilty.

[26] In these cases, both Mr. Millar and Mr. Eyben lied to the Conservation Officers. I note that there is a big difference in the level of experience with hunting. Mr. Millar appears to be a very experienced hunter versus Mr. Eyben who was found to be an

inexperienced hunter. As well, Mr. Eyben benefitted from an expression of remorse as indicated through his guilty plea. Mr. Millar does not benefit from this particular factor.

[27] With respect to the accused in the *Eyben* case, at paragraph 20 to about paragraph 30, Judge Challenger writes this about what should guide a sentencing Judge in cases such as these. I am thankful to my Honourable Judge colleagues who spend so much time creating precedents, which I always find extremely helpful.

> [20] The primary principles of sentence which must be addressed in sentencing for regulatory offences aimed at the preservation and protection of wildlife are denunciation and general deterrence. In matters involving the taking of wildlife, it is of the utmost importance that those who engage in hunting self-regulate and self-report as enforcement of the Act and Regulations is extremely difficult due to the challenges of detection in wilderness areas.
>
> [21] The Crown cited the decision of *R. v. Lamouche, et al*, unreported, Alberta Provincial Court, Edmonton Registry, December 14th, 1998, for the following principles.
>
> > The task of imposing a fit sentence is the most difficult challenge a judge faces. In our system, with few exceptions, he or she cannot hide behind mandatory sentences imposed by statute. Instead, the judge is required to choose among the options provided by the lawmaker, all the while attempting to do justice to each of the competing interests involved. It is an obligation more easily expressed than fulfilled. While both the circumstances of the offender and of the offence itself must be weighed in choosing an appropriate sanction, judges do not always make it clear that the objectives of the legislation being enforced are an essential part of the framework within which that choice must be made. In that regard courts have long recognized that the provincial *Wildlife Act* and federal statutes like the *National Parks Act* ... have, as one of their objectives, the management and ultimately the preservation of the wildlife resource. Mr. Justice McClung, for the Alberta Court of Appeal, articulated the importance of that task in *R. v. Mota* (1991) 1991 ABCA 188 (CanLII), 117 A.R. 42 at p. 43 when he said,
> >
> > To survive in any abundance Canada's wildlife must be accorded the priority of a treasured national heritage - which it is. It must be protected and, within the resources of the law, defended.

> [See Also: *R. v. Kim* 2016 BCPC 113 at paragraph 65 and 68].

[22] Later, the court said as follows:

> As has been pointed out elsewhere, wildlife offences are easy to commit and hard to detect. It is virtually impossible to adequately police the large geographical areas open to the hunter. The illegal hunter often operates in sparsely populated areas at a distance from main highways. He or she usually has no qualms about hunting under cover of darkness. Perhaps more than in any other area of law enforcement, wildlife officers depend on tips from concerned citizens to extend their reach further than would otherwise be possible. Where the chance of discovery is small, temptation increases. That is why general deterrence, usually expressed by high fines even for first offenders, plays ... a significant role in sentencing for wildlife offences.

. . .

[26] *R. v. Bechard*, unreported, B.C. Provincial Court, Surrey Registry 106105-01-C, May 29th, 2000, is a case involving the trafficking in bear parts. In that matter, a 30-day jail sentence was imposed and a $3,500 fine on "each count." The case does not set out how many counts were sentenced for. However, I infer there were at least two and that the fine, therefore, in that matter amounted to $7,000 plus the jail penalty. If I recall correctly, the jail sentence was overturned on appeal.

[27] *R. v. Bergen*, unreported, Quesnel Registry 21208, October 9th, 2003, is a decision of the Provincial Court after a trial. It involved a similar offence, being the killing of a grizzly sow and two cubs and a similar offender. The killing was promptly self-reported. A fine of $8,000 was imposed. In that matter, the grizzly was not a species at risk in the area where taken. I note that the case is approximately 20 years old.

[28] *R. v. Cadorette and Haines*, is a decision of this court, unreported, Prince George Registry C01025-C, July 20th, 1998. It also involved the killing of a grizzly sow and cubs and a failure to self-report. A fine of $13,500 was imposed on offenders of otherwise good character. Once more I note the age of the case.

[29] Finally, *R. v. Bell et al* is a decision of this court, unreported, Abbotsford Registry 11646, April 29th, 2002. Again, it was a case involving the killing of a grizzly sow and two cubs and offenders of good character. A fine of $6,000 was imposed on each offender.

[30] I find that the *Bergen* case has provided the greatest assistance to me in determining an appropriate fine in this matter, however the maximum fine has been increased since the time *Bergen* was decided from $25,000 to $50,000.

> [31] Taking into account all the circumstances of this offence and this offender and balancing the aggravating and mitigating factors, I find that a monetary penalty of $10,000 is appropriate.

[28] I recognize that many of these cases are dated and that in most cases, with the exception of the 30 day jail sentence in *Bechard*, which may have been overturned on appeal, fines were the penalty. I will comment on the deterrent effect of fines later in these reasons.

[29] *R. v. Stevikova* 2021 BCPC 235 is a decision of the Honourable Judge L. Smith. In that case, the accused entered guilty pleas to two charges under the *Wildlife Act* for placing attractants and feeding black bears in the Municipality of Whistler. A sow and two cubs had to be put down because of the accused's actions. I note that the Honourable Judge Smith is also a resident Judge of North Vancouver, but has strong ties and regularly presides in cases from Whistler, as the North Vancouver courthouse is responsible for cases from that Municipality, as it is with the Pemberton case mentioned above.

[30] There was a joint submission for a $7,500 financial penalty.

[31] Judge Smith provided extensive reasons for sentence and imposed a $60,000 financial penalty. Judge Smith's reasons can be found at *R. v. Stevikova* 2021 BCPC 235.

[32] I understand the offence of feeding bears, and being responsible indirectly for their death versus intentionally killing two bears with arrows are very different. However, I find Judge Smith's approach to how to sentence in *Wildlife Act* matters very helpful.

[33] The circumstances of the offender are found in paragraphs 24 to 34. The accused was 37. She had been feeding bears near a number of homes. After being charged, on her own volition, she had made substantial donations to animal charities, worldwide. She was well educated and became a vegan, having altered her diet to comport with her views of the value of animals. As a result of the offending behaviour,

media articles had caused her a great amount of stress. She was remorseful, particularly for the death of the bears. A few days before the sentencing, the accused made a $5,000 to a BearSmart program in her community. She was cooperative with the Conservation Officers.

[34] I note that Mr. Millar does not benefit from a guilty plea. There was a costly trial. He lied to the police and lied to the Conservation Officers. He is also directly responsible for the death of two bears. He was not cooperative with the authorities.

[35] In the *Stevikova* case, with respect to the circumstances of the community, Judge Smith emphasized that a judge is "presumed to be familiar with the community in which he or she works and thus be in a position to take judicial notice of concerns particular to a given community." The communities approach to maintaining a safe place for people and bears to coexist was noted.

[36] I agree with Judge Smith's comment that the resident or local judge often has a good knowledge of the community in which they reside and hear cases. On that note, I am the judge for the Tofino region. I note that Tofino is a small community on the West Coast of Vancouver Island that prides itself on its abundant wildlife. Whale watching tours, black bear watching tours, fishing tours are some of the main features of this area. The district of Tofino can be found on the traditional territory of the Tla-o-qui-aht First Nation. This area is part of a cherished UNESCO Clayoquot Sound Biosphere Region.

[37] What about culpability? I agree with Judge Smith's conclusion found at paragraph 58 of her reasons that "culpability should be a dominant factor in sentencing for environment offences … and the first step to be taken by the sentencing judge in such a case is to assess the offender's culpability." Judge Smith also notes that specific and general deterrence need to be the guiding principles of sentencing. I agree. I am mindful, however, that culpability is simply one factor to consider. It must be balanced with all the other factors of any particular offender, given the particular offence that they are being sentenced for.

[38] Mr. Millar says he gave tours to tourists to view black bears. From this comment, I infer that Mr. Millar would take people out to watch bears in their natural habitat. He told the Conservation Officers, 'he knows the regulations.' He is an experienced outdoor enthusiast. He is an experienced hunter. He has told this Court that he has had hundreds of interactions with bears. Yet, even with this knowledge, he intentionally deployed his weapon *in a place* he was not allowed by law and in doing so, he intentionally and illegally killed two bears. His commentary on his experience seems absolutely contrary to his actions.

[39] The presentencing report confirms a number of points that are relevant, when assessing moral culpability or moral blameworthiness. The report confirms Mr. Millar was raised in South Africa and "that his father was a Conservation Officer, so he spent a lot of his childhood in rural areas in various parks." He told the author of the report that "their household always had a wide array of interesting rescue animals." His mother confirmed that Mr. Millar has "always been passionate and concerned about the environment." She confirms Mr. Millar's father was a Conservation Officer and that Mr. Millar would accompany his father in the field from a young age. As time went on, Mr. Millar and his family moved to Canada and his father became a Fisheries Officer.

[40] The presentencing report does not detail any criminal history, in the sense of a criminal record or history of *Wildlife Act* offences. Normally any correctional history or court matters are one factor that can be considered when sentencing an individual. For example, if there is a related criminal history, that might be an aggravating factor on sentence. The more recent in time and the more related, might affect the weight that one factor is given. Equally, the lack of a criminal history could be considered a mitigating factor.

[41] Mr. Millar was diverted to an alternative measures process, as a result of a very old, unrelated shoplifting incident. He accepted responsibility for a minor theft of a small item. He did some community service work. Normally considering any form of 'alternate measures' is not useful, as technically when a person accepts responsibility, they are not pleading guilty to an offence and getting a criminal record. In fact, they

usually just accept responsibility for the mistake, and after doing a little community service work, that is the end of the matter.

[42] In this case, Mr. Millar told the alternative measures program coordinator, who is usually working through a probation office, that he was not satisfied with the community service work options. Page 6 of the presentencing report indicates that "Mr. Millar indicates he used his knowledge of wildlife as well as conservation to plan and deliver a program to various campgrounds in Tofino, BC, in order to help them improve Bear Safety." I do not consider the previous interaction with the justice system to be aggravating or mitigating. I do find it useful in the overall understanding of his culpability. To put it another way, he really should have known better.

[43] He also said, "I've been a wildlife guide my entire life sharing nature with people. I'm a professional and introducing people to wildlife in positive interactions has been my passion, my family's passion. My dad dedicated 25 years to conservation. I grew up in parks and around a lot of wildlife" and he pointed out that he has had thousands of wildlife interactions throughout his life. No doubt, Mr. Millar's expertise with bears is obvious.

[44] I note that a number of times, in his statements to the Conservation Officer's, Mr. Millar, referring to his opinion of Conservation Officer's, used the words "I respect you." This might not be a surprising trait for someone who grew up like Mr. Millar did. Yet, he intentionally and consistently lied to the RCMP and Conservation Officers. His behaviour, words and actions have been disrespectful to himself, his community and to the Conservation authorities. His behaviour, words and actions are disrespectful to the above noted main purposes of the *Wildlife Act*, which includes the preservation and conservation of wildlife habitat and the enhanced production of wildlife.

[45] I conclude that his moral blameworthiness is extremely high.

[46] *R. v. Stevikova*, 2022 BCSC 2094 is a decision of Justice Gropper. This decision was the result of The Honourable afore mentioned Judge L. Smith's sentencing decision that was appealed. At the appellate level, defence counsel provided a chart

summarizing ten cases that dealt with similar facts of feeding bears. The fines ranged from $3,000 to $150,000. The majority of the penalties were between $3,000 to $20,000.

[47] Justice Gropper analyzed the reasons of Judge Smith from a “joint submission” perspective, not necessarily from a fine versus jail perspective. The court imposed the original joint submission. In my view, and with the greatest respect to the appellate court, all of Judge Smith’s reasons for increasing the financial penalty make sense to me. While I appreciate “fines” seem to be a fairly common approach to killing wildlife or breaching wildlife regulations, paying money in and of itself may not always be a deterrent. In my view, I understand that each case must be considered within the overall context of other precedents. Nevertheless, each case is unique. The circumstances of the offence and offender in one case, rarely ever matches the circumstances of other cases.

[48] The problem that I have with simply looking at some fictitious scale of monetary penalties is that a person with money might actually look at the financial consequences of breaking the law and weigh whether the risk in doing the illegal act was financially manageable. One might say, ‘Well, it’s probably only a few thousand dollar fine if I get caught.” Since it is often the case that hunting requires such a high degree of self-regulation, perhaps a person might decide the risk of getting caught is low, and the risk of an unaffordable financial penalty is low and they may decide to willingly break the law. This observation is by no means a unique or original one. The Honourable Judge Woods in *R. v. Kim* 2016 BCPC 113 at paragraph 62 refers to the unreported *Bechard* case. He adopts this comment “There is a real danger that any fine imposed by the court may seem to be merely a license for such activity and does not sufficiently address the need to make sure that people will not, under any circumstances, abuse our natural resources.”

[49] Upon being convicted, at the end of the trial, but prior to commencing the sentencing process, and upon mentioning the idea of jail being a possibility, Mr. Millar told the court “That is such a shock for me. I was under the impression that these are

not criminal matters being that I didn't use a firearm …." He also said "it seems like I have never seen anyone get jail for stuff like this." He left me with the impression that he thought 'there would just be a fine'. He was reminded that a hundred thousand dollar fine and up to one year jail are the potential penalties.

[50] *R. v. Chalupiak* 2018 BCPC 82 is a helpful decision when considering financial penalties as an option of sentence and a judge can apply the funds as either a fine or a specific donation to a wildlife fund. In that case, The Honourable Judge Arthur-Leung sentenced the accused for illegally killing a female grizzly bear with a bow and arrow. The accused was "completely cooperative" with the Conservation Officers, had no record and pled guilty. The $8,000 financial penalty was ordered to be mostly paid to the habitat Conservation Trust Foundation, rather than a fine, which would be paid to the government. This is a common approach to 'fines' and shows that with a degree of judicial creativity, deterrence can be accomplished in a manner that directly benefits the wildlife of British Columbia.

[51] I accept that the penalty given to offenders in cases should accord with the degree of culpability or moral blameworthiness. I accept that fines in the past may have been enough to deter specific individuals. I question whether the history of charging a fee – or giving a fine – to offenders has had much of a general deterrent effect. I conclude that if the courts are to support the principle that we must preserve and conserve Canada's wildlife habitat, sometimes a fine is not enough.

[52] The message must be clear, if you kill a bear, and lie to the police and Conservation Officers, you will go to jail. Of course, there might be exceptional circumstances that would help mitigate from this position. For example, a significantly lowered moral blameworthiness might tip the punitive scale in the direction of non-custodial penalties. As well, post-offence rehabilitative steps, and active steps towards showing your remorse might also assist in creating a non-custodial sentence. As well, a small fine for one offender might still have a significant deterrent effect. A combination of other non-custodial and non-financial penalties might also be warranted. For

example, taking away a person's ability to hunt, might have collateral consequences on hunting for food sustenance purposes, or effect a limitation on their employment.

[53] *R. v. Ensor,* 2017 YKTC 2 is a decision of The Honourable Judge Cozens from the Yukon Territorial Court. In this case, Judge Cozens imposed a six month jail sentence. Here is a summary of some of Judge Cozens decision. The accused had plead guilty to a number of Yukon *Wildlife Act* offences for hunting, wasting meet, hunting during times he was not supposed, as well as some other offences. The accused was described as "an experienced hunter who was well aware of the legal requirements in regard to his actions and, therefore [aware] of the fact that he was breaking the law. He took conscious steps to avoid detection." The purpose of the hunting was simply to "fill his freezer with meat." The decision cites a number of decisions that provide a range of sentences from fines, hunting prohibitions to jail. The accused was sentenced to a six month jail sentence, to be served in the community. The Crown contends that such a sentence is not available in this case. Defence disagrees. I will not be resolving this disagreement in these reasons. Back to the *Ensor* case, the judge noted that "Hunting in the Yukon is a privilege. Mr. Ensor has forfeited his right to enjoy this privilege. He is prohibited from hunting in the Yukon for a period of 20 years."

Report Prepared by Shelley Marshall, Senior Wildlife Biologist – West Coast Region BC Ministry of Forests, dated August 2023

[54] I note the report provides the court with a better understanding of the black bear population in the Tofino region. The writer confirms a number of points. Key regulations designed to maintain a healthy bear population include prohibitions on hunting black bears under the age of two or any other bear in its company, annual limits of two bears per hunter, and further prohibitions on baiting and hunting out of season. Significant efforts and resources have been carefully designed as "black bears on Vancouver Island are important to First Nations, guided and resident hunters, and tourism as part of opportunistic and targeted bear viewing." The writer confirms that many tourism businesses are owned by Indigenous communities and the Commercial Bear Viewing Association of B.C. "estimates that the viewing industry generates over

$20 million dollars annually in BC with direct revenue and employment opportunities." The writer concludes with the notion that the unlawful killing of the bears in this case in Tofino 2021 "does not align with the significant efforts occurring in the area to promote human-bear coexistence."

Letter from Yuri Zharikov, PhD, Monitoring Ecologist, Pacific Rim National Park Reserve, dated August 14, 2023

[55] Dr. Zharikov estimates that in 2021 there were approximately 98 black bears in the Pacific Rim National Park Reserve in 2021. He writes that "Considering that vitality and stability of large mammal populations depends on the number of reproducing females, such populations are more sensitive to the loss of females."

Cultural Significance of Black Bears Information from Elder Dr. Barney Williams, Tla-o-qui-aht First Nation

[56] In a statement given to the BC Conservation Service Officer St. Dan Eichstadter on August 9, 2023 Elder Dr. Williams said:

> Black Bear, cims, hold a culturally significant role in not only westcoast First Nation culture, but First Nation culture across Canada. These animals represent the qualities of Courage and Strength in spirit and represent the sacredness of these attributes. Their importance is reserved for leaders, where the bear dance is performed only at special occasions such as coronations of a chief, and the dance belongs to that leader. Communities do not hunt these animals because of the symbolic connection to courage and strength, and the animals hold a special connection spiritually to all members of the Nation. A family unit of animals, cims especially, is also considered sacred and teach lessons to First Nations. A mother defends her cubs from threats, teaching people to model this behaviour and protect children so that no harm comes to them. Family is important and needs to be protected so that children can be left alone to grow into strong adults, where bears can grow into mature animals, and symbols of strength and courage.
>
> If someone were to kill a cims not out of necessity, they would be held accountable. This could look like being called in front of the chiefs to answer for their actions. Pre-contact in First Nation law, punishments for actions such as needlessly killing wildlife could result in possible banishment or being taken out into the wilderness with an elder to receive teachings and become grounded with nature again. Teachings in culture are to only take what you need and thank the animals for giving so that

> you and your community can sustain life. It is important to show respect for all living things, as everything is one. If a bear were to come into community and take food that is left accessible to them, it is not right to blame the animal. They are just trying to also survive in nature, and it is not their fault for accessing an easy food source.

Cultural Significance of Black Bears Report from Elder Kaamath (Levi Martin), Tla-o-qui-aht First Nation

[57] In a statement given to the BC Conservation Service Officer Sgt. Dan Eichstadter on August 14, 2023 Elder Kaamath said:

> Black bears, are honoured and considered very important animals in the environment. Black bears are revered as the river keepers, keeping the rivers and creeks safe, where they keep the salmon run and its required habitat safe, where salmon are a critical food source for community. Black bears are honoured and respected for this role they assume in the environment. They not only keep the salmon run safe but help share its abundance into the rest of the environment. This is done through their taking of a portion of the salmon and sharing the rest of it with the forest to provide nourishment for the habitat. When entering the area of a bear and salmon stream, traditionally a person would say a prayer to the environment and the bear. This prayer, as a sign of respect to the animals and environment, would be to thank the bear for the job that they do, and let them know that the person was going into their territory to accomplish a certain task, and that they were going to do no harm to the bears territory.
>
> If people needed to harvest a bear, it would be done with respect and honour towards the animal. A ceremony would be done show this respect for the life of the animal. This harvest would only be done for the purpose of a feast, or to collect medicine from the whole animal for the community. The meat of the bear is considered very powerful medicine, due to the spiritual interaction and influence of the bear in the environment. This harvest and use are exceptionally rare, as bears are heavily regarded and respected. If a bear were to be harvested it is understood that it would only be a male bear. A female bear gives life to bear cubs and is the source of the species growth and health. A female bear protects the cubs, and ensures they grow to healthy adults, who would then become the protectors of the rivers and salmon.

MITIGATING FACTORS

Record

[58] There is no record of *Wildlife Act* offending or *Criminal Code* offences.

Family Supports

[59] The presentencing report shows that “Mr. Millar feels very supported by his family.” Sadly, his father has passed away but Mr. Millar still has a supportive mother, spouse and siblings.

[60] He is also an active father of two young daughters. At the time of the writing of the report, Mr. Millar said he had not yet talked about the killing of these two bears with his daughters, but expects they “would be devastated if they learned about his behaviour during the offence.” I note that they are young, and as time goes on, I expect Mr. Millar will be able to help them learn from his mistakes.

Volunteer Work

[61] He helps a friend with some work being done with respect to fish farming.

Employment

[62] He runs a vacation rental on their property.

Mr. Millar’s Age

[63] He is relatively young.

AGGRAVATING FACTORS

Number of Bears Killed - Two

[64] Two bears were killed. One bear was a sow.

Age of Bears

[65] This type of bear is an important part of the wildlife habitat. It is possible that she would have had any number of cubs in her lifetime. One bear was a cub or young bear. The law is designed to protect youthful bears. This design is intentional and as a youthful bear population is necessary in order to ensure a healthy population of adult bears.

Reason for Killing the Bears

[66] The killing of the bears was unprovoked. They were not being aggressive. Mr. Millar had ample ability and opportunity to avoid any conflict with them. He told the presentencing report author that "He was attempting to give the bears a negative experience so that they would not return but states he was unsuccessful and felt threatened and fearful …" He asserts he was protecting his family. He says that "he was not aware of the significance of his actions at the time, as he was under the impression, he had the right to defend himself, his family, his livestock and property."

[67] Mr. Millar made a statement to the court. His apology to his community came across as sincere. However, he then goes on to say "I was acting out of fear for myself and my family." In a reference letter from his brother, his brother writes that he is "sure his intent was only to protect his family and himself, children and animals." Another friend writes that they believe he "was protecting his family and home from urban bears."

[68] Maybe it is easier for Mr. Millar, his friends and family to believe he was acting out of protective instincts. But this is simply not true. One needs only to understand that there were independent, objective witnesses. There are pictures. To hide behind the idea that he was trying to protect someone or something is dishonest.

[69] This is not a case where the court had to weigh the evidence and determine whether defensive action was required by Mr. Millar. There was no evidence to suggest any action, let alone lethal action, was required. He is an experienced hunter, and familiar with the idea that sometimes we need to take lethal action against wildlife for protective purposes. This is not one of those cases.

Lack of Remorse

[70] Unfortunately, I think Mr. Millar is still trying to justify his actions to his community or family or even himself. To be clear, my reasons conclude beyond any reasonable doubt that Mr. Millar, his home, his family and pets and livestock were not at any risk with these two bears. Once more, a review of my written reasons will illustrate that

there was no attempt to scare the bears away. He simply executed them. He asked the Conservation Officers for the fur because 'it would make a good story to tell.' He asked for the meat 'because it was a shame to see it go to waste.' As one Conservation Officer expressed, he did not seem to understand how serious this all was.

Method of Killing

[71] The bears did not die instantly. They were injured and were in considerable pain before they died. A number of arrows had to be deployed to 'finish them off'.

[72] If Mr. Millar intentionally left deer meat out as an attractant, this would be aggravating. However, in this case, I am unable to determine whether deer meat was left out intentionally or unintentionally, as I would have to believe Mr. Millar on this topic. I am not able to make a finding of fact. Not only would it have been an aggravating feature, it is also an offence to place an attractant where there are likely to be people in a manner that could attract dangerous wildlife.

Place of Killing

[73] While actually part of the charge, I note that these bears were killed in an urban setting, near homes.

Not Being Truthful with the RCMP

[74] Mr. Millar's behaviour when confronted by the police is aggravating. He misled the original investigating RCMP member.

Not Being Truthful with Conservation Officers

[75] Mr. Millar's behaviour when contacted by the Conservation Officers was not cooperative behaviour. To the contrary, he consistently lied about his actions. There is a positive obligation for hunters to cooperate with Conservation Officers. Not only did Mr. Millar not cooperate by telling them the truth. He actively misled them and gave them false statements. Not only is this disrespectful, but it is contrary to section 82 of

the *Wildlife Act* that requires a person to not knowingly make a false statement to an officer engaged in the discharge of his or her duties. He was not charged with this, but in my view, lying to the Conservation Officers once is aggravating. Continuously providing false and misleading statements on a number of interactions is even more aggravating.

Active Steps to Avoid Detection

[76] He took active steps to avoid detection. He hid the cub until he could surreptitiously remove it from the scene. He also moved a number of other weapons or items away from the scene. In doing so, it appears that he elicited the assistance of other people in the community, who essentially aided in the commission of this offence. They also technically transported the cub contrary to section 37 of the *Wildlife Act.* Although I acknowledge these other breaches of the *Wildlife* provisions have not been charged.

Victims

[77] We have two tourists who have been traumatized by what they have seen and heard. While the violence was not directed towards them, they are still victims, having witnessed this crime.

[78] In committing this crime, you have damaged the reputation and harmony of your community.

CONCLUSION

[79] I do not find that imposing only a fine is appropriate in this case. Mr. Millar's moral blameworthiness is extremely high. Of all the people that we see before the court committing these type of crimes, Mr. Millar had the life experience, professional expertise, and knowledge to know that the crime he was committing was in blatant disregard for the law. I do not think a fine properly admonishes this particular accused's utter disregard for the law.

[80] Defence submits that all the offences in the cases have resulted in fines. In the sentencing process, ‘the offence’ is only one part of the sentencing equation. A court does not sentence ‘offences’, the court sentences ‘offenders’, and as already indicated, rarely are any two offences or offenders the same. Some offenders have a higher moral blameworthiness.

[81] I have considered whether a combination of a fine and other penalties might be warranted. I understand that Mr. Millar is trying to run a business and has family obligations. I understand that a fine would be a bit of a hardship on Mr. Millar.

[82] I know Mr. Millar has said that a custodial sentence would have immensely negative impacts on him. This is a sentiment that all individuals must feel when it comes to a jail sentence.

[83] Please stand, Mr. Millar, for the offence of killing a black bear at a time not within open season on October 14, 2021, I sentence you to a 30 day jail sentence.

[84] The Crown submits that a conditional jail sentence is not an available sentence for these crimes. Even if it were, as you lawyer contends it is, I have considered whether a conditional jail sentence is a reasonable alternative taking into consideration the sentencing principles stated above. In this case, after considering the aggravating and mitigating factors, I conclude that a conditional jail sentence would not be consistent with the principles of denunciation and deterrence in this case. I conclude that a jail sentence of 30 days is proportionate to the gravity of the offence and the degree of this offender's responsibility.

[85] Mr. Millar, with respect to Count 3, for the crime of killing a black bear less than two years old, or a black bear in the company of it, I sentence you to a jail sentence of 30 days.

[86] With respect to Count 1, killing a bear at a time not within open season, I am also of the view that a 30 day jail sentence is appropriate. I have considered whether it would be appropriate to run these sentences consecutively, which would create a sentence of 60 days in total, or 30 days per bear. I find that the two offences are tied

very close in time, and are hard to separate. I appreciate that it is open to me to create a consecutive sentence but I will make the second sentence concurrent to the first. In my view, even with the aggravating features in this case, I do not want to lose sight of the positive mitigating factors. I also wonder if sixty days jail for a person who has never been in jail might be unduly harsh. I do not find that thirty days would be unduly harsh. Your community supports will still be here when your jail sentence has been served.

[87] I have considered the age of the accused, his character, the nature of the offence and the circumstances surrounding its commission. In my view based on these factors, particularly with respect to the nature of the offence and the character of the accused, I do not think that an intermittent sentence is appropriate. As well, in Tofino, I understand that appropriate custodial accommodation is not available and that the local RCMP are not able to ensure compliance with the sentence if it is to be served intermittently. This inability to accommodate an intermittent sentence is confirmed in paragraph 70 of the Crown's written submissions. In any event, I conclude that in this case, with this offender, having committed these offences, an intermittent sentence cannot satisfy the need for denunciation and deterrence.

[88] In British Columbia, hunting is a privilege. Only responsible, trustworthy, and law-abiding citizens should be allowed to enjoy this privilege. I prohibit Mr. Millar from hunting for twenty years.

[89] There will also be a weapons and firearms prohibition for twenty years.

[90] I also fine you $11,000 dollars, which will be $5,500 dollars on each count. Five hundred dollars on each count is payable to the Crown and five thousand dollars on each count is payable to the Habitat Conservation Trust Foundation. These amounts are payable by November 6, 2024.

[91] The Crown's forfeiture order is granted.

[92] That concludes these reasons for sentence.

_____

The Honourable Judge A. Wolf
Provincial Court of British Columbia

APPENDIX

Tofino Registry
File 41995-1

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REX

v.

RYAN OWEN MILLAR

CROWN SENTENCING SUBMISSIONS

INTRODUCTION

1. After several days of trial and *voir dire*, a decision was rendered by Provincial Court Judge Wolf that all evidence and statements were admissible and formed part of the main trial proper. Further expert evidence was called by the Crown in relation to the necropsy performed on the female bear that was found on Millar's property reinforcing cause of death and the existence of a cub. No evidence was called by the accused.

2. On June 6th, 2023, Judge Wolf, convicted Millar of all counts in terms of the hunting and killing of two black bears on his property in Tofino which were clearly within 100 meters of a dwelling house in an urban area. After considering the rule against multiple convictions in *R. v. Kienapple*, Millar was found guilty on Counts 1 and 3.

3. At that point, the matter was adjourned to allow for the preparation of a presentence report and adjourned to the court sitting in Tofino on September 11th, 2023. This date was subsequently adjourned to November 6th, 2023, at the request of recently retained defence counsel.

OFFENCES CHARGED AND CONVICTED

COUNT 1

…on or about the 14th day of October, 2021, at or near Tofino, in the Province of British Columbia, did kill wildlife, namely a black bear, at a time not within open season, contrary to Section 26(1)(c) of the Wildlife Act, R.S.B.C. 1996.

COUNT 3

…on or about the 14th day of October, 2021, at or near Tofino, in the Province of British Columbia, did kill take or kill a black bear less than two years old; or a bear in the company of it, contrary to Section 13.7(1)(b) of the Hunting Regulation, BC Reg 190/84, pursuant to the Wildlife Act, R.S.B.C. 1996.

LEGISLATION

Count 1

4. Section 26(1)(c) of the Wildlife Act states:

   A person commits an offence if the person hunts, takes, traps, wounds or kills wildlife…

   (c) at a time not within the open season…

5. Within the Province of British Columbia there are designated no hunting and no shooting areas. Pursuant to Section 19 of the Closed Area Regulations, a regulation under the BC Wildlife Act, there is no open hunting season for black bears in the circumstances of this case within 100 meters of a dwelling house or other urban buildings. That would include hunting, shooting at (with firearm or other weapon), attracting, searching for, chasing, pursuing, following after or on the trail of, stalking, or lying in wait for wildlife or attempting to do any of those things.

Count 3

6. As per Count 3 of the within Information, an offence under Hunting Regulation 13.7(1)(b) states:

   A person commits an offence where the person takes or kills any of the following…

(b) a black bear less than 2 years old or a black bear in the company of it…

An offence under subsection (1) of this section is prescribed as an offence for the purposes of Section 84(1)(b)(ii) of the Act.

7. It is prescribed as an offence for the purposes of Section 84(1)(b)(ii) of the *Wildlife Act*, as referred to by Section 108(3)(l)(ii) of the *Wildlife Act*.

PENALTY SECTIONS

8. The penalty sections applicable to both of these two offences are set out in Section 84(1)(b) of the *Wildlife Act*:

…(1)(b) subsections (3) and (4) apply in relation to an offence
(i) under section… 26(1)(c) [Count 1]
(ii) prescribed under Section 108(3)(l)(ii) [Count 3]

(3) Subject to subsection (4), a person who commits an offence referred to in subsection (1)(b) is liable,
(a) on a first conviction, to a fine of not more than **$100,000** or to a term of imprisonment not exceeding one year, or both, and
(b) on each subsequent conviction for the same offence or another offence referred to in subsection (1)(b), to a fine of not more than $200,000 and not less than $2000 or to a term of imprisonment not exceeding 2 years, or both.

(4) Despite subsection 3(a), if the person referred to in that subsection has previously been convicted of an offence referred to in subsection (1)(a), the person is liable to the punishment set out in subsection (3)(b).

9. It should be noted that fines under the *Wildlife Act* can be characterized as a "three- tiered pyramid". For example, the upper and most serious tier can attract fines of up to $250,000 and/or imprisonment of us to 2 years. These offences would include destruction of wildlife habitat, trafficking in live wildlife or wildlife meat, hunting endangered species, using lights at night, using poison, and hunting from aircraft.

10. The penalties for the present offence are located within the Second Tier which calls for fines of up to $100,000 and/or imprisonment of up to 1 year. Includes the present charge, and other offences such as non-resident hunting, false statements to an officer to obtain a licence/permit, import/export of endangered species, feeding wildlife, and destroying a bird or its egg/nest.

11. The Third Tier relates to the remaining offences with fines of up to $50,000 and/or imprisonment of up to 6 months, which does not relate to either of the convictions before this Court.

12. The Crown submits that the current charges are both captured within the Second Tier (as highlighted above) which reflects the importance of public safety and protecting wildlife, and the seriousness which the government and the residents of British Columbia are taking these offences.

SENTENCING PRINICPLES

13. Section 133 of the Offence Act incorporates the Purpose and Principles of Sentencing of the Criminal Code as a subject matter where the provincial legislation is silent.

14. Therefore, the principles of sentencing contained in Section 718 to Section 718.2 of the Criminal Code should provide guidance in this prosecution. The following principles are most germane for the offence before the court today:

- To denounce unlawful conduct - Section 718(a);
- To dissuade the offender and others from committing offences (deterrence) - Section 718(b);
- To provide reparations for harm done to the victims or to the community
- -Section 718(e); and
- To promote a sense of responsibility in offenders, and acknowledgment of the harm done to the victims or to the community - Section 718(f).

15. In addition, Section 718.1 of the *Criminal Code* requires the Court to impose a penalty proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2(a) requires that the sentence be adjusted in light of any aggravating or mitigating circumstances.

16. The case of *R. v. Jacobs and Elliot*, 2015 BCPC 273 **[see attached – TAB 1]** sets out a good summary of the sentencing regime and principles of sentencing arising from offences pursuant to the *Wildlife Act*. Of note in the *Jacobs/Elliot* decision applicable to the sentencing in the present case are the following factors:

> **Paragraph 24 –**
>
> There are a limited number of Conversation Officers who are responsible for protecting wildlife in vast areas of land in British Columbia.
>
> Given the limited enforcement resources it is fortuitous when offenders are detected and caught when hunting contrary to the provisions of the

Wildlife Act and undermining the wildlife management and conservation goals of the government and of the First Nations.

Paragraph 31 –

Confirms that general and specific deterrence are both important factors in this type of case for people who choose to participate in violations of the *Wildlife Act*.

17. The *Jacobs/Elliot* case involved the hunting of a moose and abusing the Limited Entry Hunting authorization system and involved an ongoing and continued deception by the accused. It is not submitted for sentencing range or parameters as the offence fell within a lower tier in the *Wildlife Act.* Judge MacCarthy levied a fine of $3000 and a 2 year ban on hunting. The circumstances of the *Jacobs/Elliot* case are significantly different than the current case in terms of Mr. Millar's actions and the resulting death of two bears within the urban setting of Tofino.

APPLICATION OF THE PRINCIPLES

18. The Crown submits that the priority in the present sentencing is to stop this type of offending behaviour and to prevent unauthorized killing of bears in areas where there is no open season on Vancouver Island. There is also the public safety factor concerning hunting within 100 meters of dwellings and other urban buildings.

19. This case calls for a need for specific deterrence. The sentence imposed must have some effect in terms of dissuading this accused from pursuing his urban hunting activities hoping that he could "*get away with it*" by lying to the police and conservation officers on several occasions, and deliberately hiding relevant evidence. The Court should denounce the intentional non-compliance by the accused in his actions arising from the killing of a mother bear and her cub on October 14th, 2021.

20. It is submitted that this case also calls for a great degree of general denunciation. Non-compliance with the *Wildlife Act* and its corresponding *Closed Area Regulations* and *Hunting Regulations* (no shooting/hunting areas) can result in significant threats to the public in urban areas and impact the depletion of the black bear species. The Court should denounce the intentional non-compliance and deception by the accused, and to convince other hunters not to be stalking and killing wildlife in closed areas (especially around dwelling in urban settings), and the killing of a mother and cub at any time and any place in the Province of British Columbia.

21. As set out in in Section 718(f) of the *Criminal Code*, today's sentencing must promote a sense of responsibility by the offender, and an acknowledgement of the potential harm to the community and the black bear population.

22. The accused does not have any previous convictions under the *Wildlife Act*.

23. However, the deliberate activities of the accused in killing two bears in an urban setting, then not being truthful to an RCMP police officer and subsequent Conservation Officers, are a concern to the Crown. Crown submits that the accused is unable or unwilling to comply with regulatory requirements and demonstrates a complete disregard of the laws of the Province of British Columbia.

IMPACT ASSESSMENTS

24. The Impact Assessment of Parks Canada and the Province of British Columbia wildlife biologists, concerning Black Bears in relation to this prosecution are submitted to this Court to assist in the impact of the actions of the accused by killing a mother bear and her cub.

25. The reports provide information about the Black Bear and their existence in the Tofino area. The Provincial Government and First Nations have a special interest with respect to maintaining the Black Bear population in this area of the Province.

Marshall Report - Implications of the Unlawful Removal of a Black Bear Family Group in Unit 1-8

26. Attached is a Report prepared by Shelley Marshall, Senior Wildlife Biologist – West Coast Region. Her *Curriculum Vitae* follows her Report.
[see attached - TAB 2]

27. The Report provides background and impact on the coastal BC ecosystem by the actions of the accused in killing a female bear and her cub. Millar's actions also defeat the significant efforts being taken by all levels of government, and conservation authorities to reduce black bear mortality and maintain the population of black bears in the Tofino area.

Zharikov Statement – Pacific Rim National Park Reserve

28. Attached is a one page summary by Yuri Zharikov, PhD, Monitoring Ecologist for Parks Canada**. [see attached - TAB 3]**

29. Dr. Zharikov sets out the ongoing monitoring program undertaken by Parks Canada in the Kennedy Flats area of the Pacific Rim National Park. Of note in this summary is the sensitivity of losing reproducing female bears on the stability and vitality of the black bear population in this area.

Cultural Significance of Black Bears to Indigenous People in their Traditional Territory

Report of Elder Dr. Barney Williams

30. Sgt. Dan Eichstadter of the BC Conservation Officer Service, transcribed a statement from Elder Dr. Barney Williams on August 9, 2023 **[see attached –TAB 4]**

31. Dr. Williams describes the cultural significance of the black bear from his upbringing and his wildlife research projects on the west coast of Vancouver Island. As set out in his report, the black bear represents qualities of courage and strength in spirit and represent the sacredness of these attributes. Dr. Williams confirms that if a person were to kill a black bear not out of necessity, that they would be held accountable – especially if food has been left out accessible to the black bear.

Report of Elder Kaamath (Levi Martin)

32. Sgt. Dan Eichstadter of the BC Conservation Officer Service, transcribed a statement from Elder Kaamath (Levi Martin) on August 14, 2023 **[see attached - TAB 5]**

33. Elder Kaamath also confirms the importance of black bears in his traditional territory. He also confirms that if a black bear is harvested for specific purposes, then it should only be a male bear. The female black bear gives life to bear cubs and is the source of the species growth and health. Elder Kaamath outlines the circumstances arising from killing a black bear not out of necessity, and also emphasizes that bears accessing food sources made available to them are naturally responding in their attempt to survive.

GENERAL SENTENCING SUBMISSIONS

34. As noted above, the legislature of British Columbia has considered the illegal possession of wildlife to be a significant offence when enacting fines of up to $100,000.

35. The priority in sentencing is to stop this type of offending behaviour and to prevent a recurrence of these activities.

36. The offences concerning this accused are within the second tier of the sentencing provisions of the *Wildlife Act* which allows for up to a $100,000 fine reflecting the importance of protecting wildlife and deterring such illegal hunting activities in urban areas. This level of sentencing also demonstrates the

seriousness which the government, First Nations and the residents of BC are taking these offences.

37. There is a need to give effect, through sentencing, to statutory purpose. The range of fines in the legislation is an indication of statutory purpose and our Court of Appeal has confirmed that in environmental cases, fines that are viewed as nominal vis-à-vis the statutory limits, may not function to achieve the objectives of the legislation. That is in reference to *R. v. Brown* 2010 BCCA 225
[see attached - TAB 6]

38. The Court of Appeal at paragraphs 13 and 14 of the Brown decision referred to paragraph 54 of *R. v. Terroco Industries Ltd*. 2005 ABCA 141:

"…when the maxium fines under an environmental statute are high, it is a message that low or nominal fines do not meet the goal of the statutes." *Terroco*, recognized "that maximum fines available to sentencing judges are high. This constitutes a message from the Legislature that it does not view low or nominal fines as meeting the goals of [environmental legislation]".

39. In terms of sentencing options, it should be noted that, pursuant to the case of *R. v. Hilbach*, 2019 BCPC 73, a Conditional Sentence is not available nor available for provincial offences such as those before the Court today: paragraphs 71 and 72.
[see attached - TAB 7]

CASELAW – PREVIOUS *WILDLIFE ACT* SENTENCES

40. The following represents jurisprudence with respect to the sentencing parameters for these type of offences. Sentences vary based upon the particular circumstances of each case, the conduct of the accused and the harm done by the actions of the accused. Many of the cases deal with the killing of grizzly bears. However, the Crown submits that the general principles and range of sentences should be comparable in the present case given the similar circumstances and death of female bears and their cubs. As well, it should be noted that the following sentencing cases all involved guilty pleas.

Her Majesty the Queen v. Phillippe Cadorette and Lyall Haines

41. Unreported decision of the Provincial Court of British Columbia – July 20, 1998 Prince George Docket #C01025C (Honourable Judge R.B. Macfarlane)
[see attached TAB 8]

42. A sentencing case involving guilty pleas to charges arising from a hunting incident near Prince George. After shooting a moose cow and calf, a sow grizzly bear and her 3 cubs emerged from the forest to claim the carcasses. The accused hunters shot the bears and left the scene. Neither of the hunters

reported the bear incident. Other hunters in the area reported the killings. Ultimately, the accused's claimed that they had killed all of the bears in "self defence" when confronted by conservation officers. When the conservation officers attended at the site, they found the dead sow, and a still-living but emaciated cub hiding by the sow. The cub had been wounded by a gunshot.

43. Each of the hunters were fined $13,500 by way of joint submission. It should be noted that the minimum fine at that time in the *Wildlife Act* was $1000 and the maximum was $25,000. There was an Order distributing some amounts to the Grizzly Bear Trust Fund by way of the creative sentencing provisions of the *Wildlife Act*. The Judge left the ban on hunting to the government authorities in terms of their administrative powers at that time.

44. At page 9 (paragraphs 44-47) and page 10 (paragraphs 1-8) of the attached Proceedings Transcripts, Crown Counsel observed that the high level of fines:

> "…would provide the fair and necessary general deterrent that the community needs to know about these kinds of offences.
>
> Hunting is a privileged activity. It is one that requires a level of sportsmanship, professionalism, sound judgement, good appropriate behaviour for those who will partake.
>
> The law and the courts have an important place to play in enforcing such standards, and it is my respectful submission, I believe joined in my friend, that the recommended penalties that we are placing before you will do that."

45. Judge Macfarlane agreed with these submissions.

R. v. Brett Michael Eyben, 2013 BCPC 300 **[see attached – TAB 9]**

46. A sentencing case after the accused entered a guilty plea to the killing of a grizzly bear not within open season. The facts of this case also involved failing to promptly report the accidental killing of a bear, and the fact that the accused misrepresented the circumstances of the killing. Of note, is that the actual hunting in the Eyben prosecution did not occur in an urban area or within 100 meters of a dwelling house.

47. The maximum fine at that time of the killing offence was $50,000.

48. This case contains a useful discussion about imposing high fines on hunters who fail to accurately report illegal activities: paragraphs 20 to 24. Judge Challenger has emphasized at Paragraph 24 of the decision:

> "A strong message must be sent that those who fail to report will face a much higher penalty than those who comply with the Act and Regulations."

49. The Court imposed a fine of $10,000 fine/payment given some of the mitigating factors. A one year ban on hunting was ordered taking into account that the accused had already been prevented from hunting for 2 years prior to the date of sentencing.

R. v. Chalupiak, 2018 BCPC **82 [see attached – TAB 10]**

50. A case involving a guilty plea to killing a female grizzly bear not within open season. The accused provided a statement to the Conservation Officers and showed them the site of where he shot the bear with crossbow. The accused was open and completely cooperative with the officers during the investigation. Crown sought a fine in the range of $8,000 to $10,000. The aggravating factors were the failure of the accused to exercise the proper diligence, the loss of a reproductive bear to the population, and the fact that it was not open season. Of note, the actual hunting did not occur in an urban area or within 100 meters of a dwelling house.

51. This case provides a fulsome discussion of deterrence and denunciation for *Wildlife Act* offences: paragraphs 21-48 and paragraphs 59-60.

52. Sentence imposed was $8,000 fine/payment with a 12 month Probation Order involving compelled attendance at the Conservation and Outdoor Recreation Education Program. A hunting ban was also ordered during the course of the Probation Order.

53. The court held at paragraph 40 that the offender "was in the best position to ensure that no harm came to the grizzly bear. He failed to meet those public standards of safety and to ensure that a reasonable standard of care, which included consideration of the gravity of the potential harm, including the damage to the environment, the alternatives, if any available, and the likelihood of harm".

54. The court went on to note at paragraph 46 that "the environment is a precious resource that belongs to each and every one of us, and its preservation maintenance and respect for it is the purpose of the legislation as the actions such as [the offender] directly impact our wildlife, the environment and persons as a whole".

R. v. Wiens, April 8th, 2019 BCPC Penticton Registry 44876-1 and 45060-1 (unreported) Honourable Judge Daneliuk **[see attached – TAB 11]**

(Cited in *R. v. Stevikova*, 2022 BCSC 2094 following at paragraph 67)

55. Involved the hunting of black bears with bait, feeding dangerous wildlife and hunting from vehicle. Fine/payment of $18,500 following a guilty plea.

56. In *R. v. Wiens* the offender ran a guiding operation, in which he set out bait to attract black bears so that his customers could shoot them. In prosecution, the offender was sentenced to a fine of $500 and a $18,000 payment to the Habitat Conservation Trust Foundation. He was also ordered to pay an amount equal to the monetary benefit he obtained from his customers (the undercover officers).

57. Although this case is distinguishable in that *Wiens* was engaged in a regulated industry and was seeking to make a profit, both cases share certain aggravating factors: the degree of planning and deliberation involved (para. 44) and the ongoing nature of the offence (45).

58. Furthermore, the same principles of sentencing apply. Madam Justice Daneliuk noted “the high penalties…are reflective of the high premium that is placed upon the importance of our natural environment through compliance with the legislation carefully designed to ensure effective protection and management of our wildlife (para 19). She also noted that the courts must send a message to the community that there will be no tolerance for these types of offences (para 28).

59. It is submitted that like *Wiens*, the accused Millar in the present case left out some deer meat that could be construed as bait to draw the bears closer to his property for the purpose of killing them.

60. The Crown draws this Court’s attention to the comments of Judge Daneliuk at paragraph 27 about these types of *Wildlife Act* offences which involve a significant abuse of trust and talks of the need for respect of our natural environment and persons to serve as stewards of the environment.

61. As well, Judge Daneliuk emphasizes at paragraph 28 the vulnerability of wild animals and the primary sentencing objective of deterrence both general and specific. The message to the community is that there will be no tolerance for these types of offences.

R. v. Stevikova, 2022 BCSC 2094 **[see attached – TAB 12]**

62. Sentence appeal from a joint submission in Provincial Court (2021) BCPC 235 which was not accepted by the sentencing Judge. Involved a guilty plea at the Provincial Court hearing to ongoing activities involving feeding black bears in the Whistler townsite. Sentencing Judge Smith rejected the joint submission for sentence and ordered a fine of $1000 plus a payment to the Habitat Foundation of $59,000. On appeal, Supreme Court imposed a fine on Count 2 of $500 and a $3000 contribution to the Habitat foundation, and a fine on Count 3 of $500 and a $6500 contribution to the Habitat foundation for a total of $10,500.

63. The *Stevikova* case provides a good review of jurisprudence from the Provincial Court decision in relation to the "special approach" required in environmental offences: paragraphs 38 to 40.

64. Also referred to in the Supreme Court decision at Paragraph 90 is the strong language from the Provincial Court concerning Stevikova's culpability: "…it was at the gravest end of the continuum from "virtual due diligence" to "virtual intent".

65. Crown submits that the decisions made by Millar in the present case should also be considered at the gravest end of the said continuum and should attract a significant penalty.

AGGRAVATING CIRCUMSTANCES

66. The Crown submits that the following actions of the accused be considered as aggravating circumstances of these offences:

- Leaving deer meat outside the accused's residence knowing that there were black bears in the area;
- Deliberately fabricating and lying to RCMP police officers and Conservation Officers about the bears and his involvement in killing same;
- Millar's distinct lack of remorse in his actions, including wanting to keep the body of the mother bear because it would "make for a good story";
- Millar's position about being fearful and protecting his family which is not borne out by the actual circumstances of this case;
- The shooting of both bears while they were up in a tree on his property and not in a position to threaten the accused or his family at that point in time;
- The close proximity of dwelling houses in this urban area where he killed both bears, including the eye witness observations of the accused being within the legislated 100 metre distance;
- The accused is a mature adult and well aware of the hunting laws and regulations of the Province of British Columbia. He purports to understand bear behaviour and touts himself as an avid hunter and outdoorsman;
- The number of different stories he provided and his deliberate obstruction of the police and conservation officers; and
- The lack of any legitimate reason for not contacting police or conservation officers prior to (or immediately after) killing both bears.

PENALTY SOUGHT

67. Based upon the sentencing with respect to these offences Crown is submitting that fines in the range of $15,000 to $20,000 per count would be a fit and proper sentence in the circumstances of the case, and the behaviour of the accused in trying to escape responsibility for his actions.

68. Crown is taking into account the normal range of sentencing for such offences in relation to bears and urban hunting and would submit that significant fines are justified.

69. The Crown submits that any penalties ordered by this court can include a fine and an additional amount per count as payment to the Habitat Conservation Trust Foundation. These amounts should be substantial to address the aggravating factors set out above and should take into account the significant enforcement actions required to obtain convictions after a lengthy investigation, and a prolonged trial and *voir dire*.

70. In addition, the Court does have the authority to sentence the accused to a period of incarceration up to 1 year per count. It should be noted that there is no ability in the Tofino area to serve an intermittent sentence (90 days or less).

71. Given the aggravating circumstances of this case, the Crown submits that some form of incarceration would be warranted. There had been mention at the previous court appearance of this matter whether an intermittent sentence is possible – which calls for incarceration of up to 90 days. There is no ability to serve an intermittent sentence in Tofino of any length or duration. As well, as set out above (*R. v. Hilbach*), there is no provision for any CSO type of sentence with respect to these Provincial Offences which would allow a term of incarceration under house arrest.

72. Section 84.1(1)(e)(ii) and Section 118 of the *Wildlife Act* allows the Court to pursue creative sentencing which places a portion of the penalty to be paid toward the support and enhancement of the Habitat Conservation Trust Foundation. The wording of which is set out in the proposed draft Order.

73. As well, given the circumstances of this case and the actions of the accused during the course of the events on and after October 14th, the Crown is seeking a forfeiture of weapons used in the killing of the bears, and a lifetime hunting prohibition anywhere in the Province of British Columbia.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

On the 31st day of October in Nanaimo

Brett O. Webber
Crown Counsel