



ENVIRONMENT IN THE COURTROOM II

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Enforcement of the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act

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Introduction

The *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*² (WAPPRIITA or the Act) is Canada's implementing legislation for the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES or the Convention).³ However, the Act and regulations⁴ go beyond merely implementing CITES and, in practice (and in conjunction with relevant provincial and territorial law), also serve to regulate interprovincial trade in wildlife.⁵ Thus, while one of the legislation's objectives is undoubtedly implementation of CITES, other objectives include controlling the spread of alien or exotic species and disease,⁶ and assisting provinces in the enforcement of their wildlife statutes and regulations.

This chapter begins with a short introduction to the Convention and then examines WAPPRIITA and the regulations, drawing examples from the interpretive case law. This chapter does not deal with sentencing decisions or administrative monetary penalty decisions.⁷

The Scheme of the Convention

The Convention aims to restrict and regulate trade in threatened and endangered species. Appendix I to the Convention lists species threatened with extinction; Appendix II lists species not yet threatened with extinction but

which “may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival.” Trade in Appendix I species is strictly controlled and is not permitted for commercial purposes. Trade requires both an export permit and an import permit. Trade in Appendix II species is less strictly controlled and only requires an export permit. An export permit may only be issued if the scientific authority of the state of export has made a “no-detriment finding,” that is, a finding that “such export will not be detrimental to the survival of the species.”⁸ “Look alike” species may also be listed in Appendix II. The Conference of the Parties (which meets every three years) has elaborated on many of the requirements of the Convention, including the form of the permit.⁹

The Scheme of the Act

This part of the chapter examines the scheme of the Act. It begins with an examination of the scope of the Act through a consideration of the definitions of the Act (as supplemented by the regulations) and the main prohibitions established by the Act. The chapter then considers the case law dealing with some of the administrative powers under the Act, specifically the power to detain and inspect. The final section in this part deals with the offence and punishment provisions. Environment and Climate Change Canada (ECCC) oversees enforcement of the Act assisted by customs officials at ports of entry. ECCC “maintains enforcement agreements and memoranda of understanding with Manitoba, Saskatchewan, Alberta, British Columbia, the Northwest Territories and Nunavut. Under the agreements and memoranda of understanding, these four provinces and two territories are responsible for enforcing *WAPPRIITA* with respect to interprovincial wildlife trade, while the Department oversees the enforcement of *WAPPRIITA* for international trade.”¹⁰

SCOPE, DEFINITIONS, AND PROHIBITIONS

The Act applies to “plants” and “animals,” each of which is defined in terms of a species of flora or fauna listed in a *CITES* appendix.¹¹ However, the regulation-making power of the Act¹² allows the governor in council to amend the definitions of animal and plant for the purposes of individual sections of the Act, as noted below.

The main operative provisions of the Act consist of a set of prohibitions. Section 6(1) prohibits the *import* into Canada of “any animal or plant that

was taken, or any animal or plant, or any part or derivative of an animal or plant, that was possessed, distributed or transported in contravention of any law of any foreign state.” The key element of this prohibition is clearly taking in violation of the law of another state. While on its face, this only applies to Convention-listed species, the regulations redefine the terms animal and plant for the purposes of this prohibition to mean *any* animal or plant.¹³

Section 6(2) creates a second prohibition that applies to the import or export of Convention species (or any part or derivative of) except in accordance with a permit issued under section 10. In this case, the regulations redefine animals and plants with respect to the different activities of export and import. With respect to import, the definition of plant is unchanged while the definition of animal is expanded to include mongoose, raccoon dog, starlings, mynas, oxpeckers,¹⁴ and any species of the order Caudata (salamander).¹⁵

With respect to export, the regulations expand the definition of animal and plant in each case, on a contingent basis, to include any species for which the transportation out of a province is regulated by the province.¹⁶

It is, of course, the Crown’s responsibility, if it alleges that goods are being imported into Canada without the necessary permit under sections 6(2) and 10, to demonstrate that the goods do indeed need a permit, that is, that they are a “part or derivative of” a listed animal or plant.¹⁷ In so doing, the Crown may take advantage of a presumption created by section 20 of the regulations:¹⁸

Where a person imports into Canada or exports from Canada anything that is identified by a mark, label or accompanying document that indicates that the thing is an animal or plant, or a part or derivative of one, that is listed in Schedule I or II, that thing is, unless there is evidence that raises a reasonable doubt to the contrary, deemed to be the thing so identified.

Nevertheless, it will still be necessary for the Crown to establish that the label corresponds to a listed species. While that may be straightforward in many cases, *R v. Kwok Shing Enterprises Ltd*¹⁹ illustrates that that may not be the case where the label is in a foreign language or uses a non-Roman script, or where a species has multiple names, or where there are many species of a particular plant type but only some of which are listed. In *Kwok Shing*, the accused was charged with importing a listed plant without the necessary

permit. The goods imported consisted of individual packages of Lidan tablets. The exhibited package was described as:²⁰

... a small cardboard box containing a clear plastic bottle and a one-page brochure. ... There is a list of ingredients. ... The ingredients are listed in Chinese characters and Latin.

... Each one lists the second ingredient as *Radix Saussurea*. It is the nature of this second ingredient, which is the central focus of this trial.

Appendix I of *CITES* lists the plant, *Saussurea costus*, as do the regulations.²¹ The defence argued that the Crown had “failed to prove beyond a reasonable doubt that the words, *Radix Saussurea*, as they appear on parts of Exhibit 1, describe a plant referred to in Section 20 of the Regulations.” The only evidence as to the meaning of the words and what they might describe came from two Crown witnesses, one of whom was described as having worked as a customs inspector for seven to eight years; the other was described as a conservation officer. Both claimed experience in using lists prepared by Environment Canada as well as reference works and claimed that, on this basis, they were able to satisfy themselves that the Chinese characters used on the labels were referencing *Radix Saussurea*. Neither witness was fluent in either written or oral Chinese: their only background was based on experience working with lists and textbooks and some instruction received from (the unnamed) “Scientific Authority of Canada.”²² While Judge Low seems to have been of the view that the expert evidence tendered by these witnesses was admissible, he concluded that it had serious shortcomings and was entitled to little weight. Accordingly, Judge Low was “not satisfied beyond a reasonable doubt that the words *Radix Saussurea* found with Exhibit 1 are to be interpreted to mean the species of plant *Saussurea Costus (=Lappa)*.”²³ It may be useful for future guidance to list the shortcomings identified by Judge Low:²⁴

- a) There is no evidence . . . whether any of the books read by these two officers are regarded as authorities on the subject;
- b) There is no evidence as to the names of any of these books;

c) There is no evidence that the lists of Chinese Characters relied on by Officers Graham or Cooper were accurate nor am I prepared to infer this simply from their use of the lists as there are other problems with the accuracy of the lists;

d) The list in Exhibit 4 states that it was compiled by Laura Merz, but there is no evidence of her capacity or role with Environment Canada;

e) Officer Cooper agreed in cross-examination that there was more than one list prepared by Environment Canada, they were not necessarily the same, and this might affect an individual list's reliability;

f) The problem with the accuracy of the lists was compounded by the fact that neither Officer Graham nor Cooper had any fluency in the Chinese language;

g) Officer Graham, although not qualified as an expert, was nonetheless a highly experienced officer. He testified that the Chinese Characters he observed on Exhibit 1 were for the words *Radix Saussurea* not *Saussurea Lappa* as testified to by Officer Cooper;

h) Officer Cooper relied, to some extent, upon the opinion of a person he called the Scientific Authority of Canada in forming his own opinion about the TCM pharmaceutical use of the words, *Radix Saussurea*. There is no evidence as to who this person is or their qualifications or background, other than Officer Cooper's assertion that the person was regarded as an authority on plants.

Other provisions of *WAPPRIITA* expand the regulatory scope of the Act to cover the *interprovincial* transportation of animals and plants. Section 6(3) prohibits interprovincial transport of an animal or plant (or any part or derivative of) without a permit issued under section 10 from one province to another,²⁵ while section 7(1) requires that any provincial rules with respect to permitting should be observed as part of interprovincial transport. Similarly, section 7(2) makes it an offence to transport an animal or plant (or any part or derivative of) from one province to another where that "animal or plant

that was taken, or any animal or plant, or any part or derivative of an animal or plant, that was possessed, distributed or transported in contravention of any provincial Act or regulation.”²⁶ Once again, the regulations expand the definitions of plant and animal on a contingent basis. Thus, in the case of section 6(3), the definition of plant or animal is expanded to include any plant or animal the “import” of which into the relevant province is regulated or prohibited.²⁷ Similarly, the regulations expand the definition of plant or animal for the purposes of section 7 to include any plant or animal, the “export” of which from the relevant province is regulated or prohibited.²⁸

Section 8 of the Act also prohibits, “subject to the regulations,” knowingly being in possession of a listed species (or any part or derivative thereof)²⁹ that has been imported or transported in contravention of the Act, or for the purpose of transporting between provinces or exporting in contravention of the Act, or for the purposes of distributing—but only if the species is listed in Appendix I of *CITES*. Section 8 is not further defined or expanded upon by the regulations.

Section 10 authorizes the minister to issue permits on such terms and conditions as the minister thinks fit for the import, export, or interprovincial transport of an animal or plant. Consistent with the Convention, section 6(1) of the regulations provides that a person importing a species listed in Appendix II of the Convention does not need a permit to import “where the person has obtained, before import, a permit certificate or written authorization that satisfies the requirements of the Convention and is granted by a competent authority in the country of export.”

An important result of the expansion of the definitions of animals and plants is that an accused will frequently face liability under both provincial or territorial wildlife legislation and *WAPPRIITA*. For example, a person who harvests wildlife illegally in province A and transports that wildlife to province B will commit an offence under A’s Wildlife Act, likely also under B’s Wildlife Act, and also under *WAPPRIITA* (and in some cases other federal legislation such as the *Migratory Birds Convention Act*). In *R v. Ensor*, the accused was charged with multiple offences under Yukon’s *Wildlife Act* and regulations and also under *WAPPRIITA*.³⁰ The charges under the *Wildlife Act* included two charges with respect to being in possession in the Yukon of wildlife killed contrary to the laws of another jurisdiction (British Columbia); in addition, the accused was charged under section 7(2) of *WAPPRIITA*. Ensor pleaded guilty to all of the offences.³¹ In *R v. LaPrairie*, the Crown originally

proceeded under both territorial legislation and *WAPPRIITA* but subsequently stayed the charges under the territorial legislation when the accused pleaded guilty to the charges under section 6(3) of *WAPPRIITA*.³²

THE POWERS OF OFFICERS AND ANALYSTS: DETENTION AND INSPECTION

The Act is implemented by designated officers and analysts. Officers have the powers of a peace officer for the purposes of the Act.³³ Under section 13, an officer may detain “[a]nything that has been imported into or is about to be exported from Canada or has been transported, or is about to be transported, from a province to another province . . . until the officer is satisfied that the thing has been dealt with in accordance with this Act and the regulations.”³⁴

The Power to Detain

The scope of the power to detain goods was examined in *Druyan v. AG Canada*.³⁵ In that case, Druyan, a collector of Inuit art, purchased certain Inuit art items from an online auction in Denmark. The items consisted of ten tupilaks made from sperm whale ivory, two tupilaks made from caribou antler, and a kayak figurine made from wood, seal leather, and seal bone. The items were inspected and detained by an official of Environment Canada at the time of entry. Druyan did not have an import permit for the items, but the items were accompanied by a document in the Danish language issued by the Danish Nature Agency, Denmark’s management authority for the Convention. Further inquiries of the Danish authorities by Environment Canada revealed that the document was not an export permit but instead certified that the objects were pre-Convention. The document was intended for use within the European Union. All of the objects, save the sperm whale ivory tupilaks, were subsequently returned to Druyan. Sperm whale is listed in Appendix I of *CITES*. Druyan commenced an application for judicial review of the decision to detain the tupilaks and an order setting aside that decision and authorizing importation.

Noting that there was no binding precedent with respect to the applicable standard of review of the power to detain under section 13, Justice O’Keefe applied the *Dunsmuir* factors³⁶ concluding that they indicated a deferential standard of review. Justice O’Keefe was not swayed in this by the indication from some cases that international conventions (and hence implementing legislation) should be interpreted consistently and thus on a correctness

standard. That was not the case where, as here, “the convention in issue allows state parties to choose how to achieve the convention’s objectives”³⁷ and where the officer was exercising powers conferred by the Act and regulations.³⁸ Here, Article XIV(1)(a) of the Convention expressly authorized states to take stricter domestic measures than those required by the Convention.³⁹ That was important in this case because *WAPPRIITA* did not expressly carry through the exemption contained in Article VII (2) for pre-Convention goods.⁴⁰ In sum, the standard of review was reasonableness, which meant that the court should not intervene in the officer’s decision to detain the goods if the decision was “transparent, justifiable, intelligible and within the range of acceptable outcomes.”⁴¹ While this might ordinarily require examination of the reasons offered for the decision, where no reasons were given, and where there was no duty to provide reasons, it was appropriate for the court to identify possible reasons⁴² and thus, “the officer’s decision will be set aside only if the record does not disclose how the facts and applicable law could possibly support the officer’s conclusion.”⁴³

Justice O’Keefe concluded that the original decision to detain the goods was reasonable. There was no import certificate, and the officer could not read the accompanying documentation. While the Danish certificate met the criteria of Article VI (3) of the Convention, it did not meet the criteria elaborated by Conference Resolution 12.3.⁴⁴ Furthermore, it was not even unreasonable to detain the non-sperm whale items (which were not made from listed species) since the Danish certificate did not specify the sources of the materials.⁴⁵

Justice O’Keefe went on to examine whether the officer had reasonably concluded that Druyan was in breach of any of the prohibitions contained in the Act—presumably on the basis that the officer could not reasonably continue to detain the tupaliks if there was no breach. The counsel for the attorney general argued that the officer could have concluded that Druyan was in breach of both sections 6(1) and 6(2). Justice O’Keefe, however, decided that there was no indication that the officer relied on this section⁴⁶ and, furthermore, that there was no reasonable basis on which the officer could have concluded that there had been a contravention of the law of any foreign state.⁴⁷ In order for the officer to have been able to reasonably reach such a decision, there should “at least be some evidence before the decision-maker that Denmark’s laws were violated.”⁴⁸ That was not the case: “Here, the record discloses nothing. There is no evidence that the exporter was convicted or is being charged of some regulatory or criminal offence, nor is there any

communication from an official in Denmark saying that an offence was committed. . . .”⁴⁹

By contrast, Justice O’Keefe was of the view that an officer could reasonably have concluded that the importation was in breach of section 6(2) of the Act. Section 6(2) requires that an importer have a permit, and Druyan had no such permit. Furthermore, while section 6 of the Regulations creates some exemptions from the need to hold a permit, none of these exemptions applied to products created from sperm whale since it is an Appendix I species. In reaching this conclusion, Justice O’Keefe also rejected the argument that the regulations should have been read as containing an additional exemption for pre-Convention goods. While Justice O’Keefe was prepared to accept that the Danish certificate was adequate for the purpose of demonstrating that the goods were pre-Convention—withstanding some formal deficiencies,⁵⁰ it was reasonable for the officer not to have regard to the exemption contained in the Convention.⁵¹ This was because “the officer was required to implement the Act, so any exemptions have to be found in the legislation, not the Convention. Further, article XIV(1)(a) of the Convention itself allows state parties to adopt stricter legislation than the Convention requires.”⁵² Furthermore, Justice O’Keefe was of the view that the failure to provide an exemption for pre-Convention goods was entirely consistent with the purpose of the Act. He reasoned that the decision not to create the exemption:⁵³

. . . closes the market for products from Appendix I species, thus removing any financial incentives for poachers to kill the animals anyway and fabricate their age. That is rationally connected to the purpose of protecting endangered species. An exemption for pre-Convention goods certainly does not advance the objectives of the Act, so it was reasonable for the officer to obey the plain meaning of the legislation and not read in the exemption that the applicant wants.

The Power to Inspect

Officers also have broad powers to enter premises and conduct inspections in any place “in which the officer believes, on reasonable grounds, there is anything to which this Act applies, or there are any documents relating to the administration of this Act or the regulations” and may do so without a

warrant, except in the case of a dwelling place.⁵⁴ In exercising this section 14 power of inspection, an officer may:⁵⁵

- (a) open or cause to be opened any container that the officer believes, on reasonable grounds, contains such a thing;
- (b) inspect any such thing and take samples free of charge;
- (c) require any person to produce for inspection or copying, in whole or in part, any document that the officer believes, on reasonable grounds, contains any information relevant to the administration of this Act or the regulations; and
- (d) seize anything by means of or in relation to which the officer believes, on reasonable grounds, this Act or the regulations have been contravened or that the officer believes, on reasonable grounds, will afford evidence of a contravention of this Act or the regulations.

The section 14 power of inspection was judicially considered in *R v. Leong*.⁵⁶ Leong was charged with six counts of importing live corals into Canada without a section 10 permit and, therefore, in breach of section 6(2) of the Act. Leong filed an application to exclude evidence, which led the court to examine, *inter alia*, whether an officer had obtained evidence in accordance with the section 14 power of inspection. Leong was expecting a shipment of goods through the Vancouver International Airport. On arrival, the goods were moved to a “sufferance warehouse” where they could be inspected before being released to the importer. A number of officials, including Buchart, were present at the warehouse to conduct an inspection of the goods and accompanying documents. Leong also showed up at the warehouse. He was carrying a number of plain manila folders, which Buchart asked to see. Leong initially declined but eventually handed them over for inspection after being told that the officers would not release the shipment until they had the opportunity to review the documents.

One of the questions that arose in the course of argument on a *voir dire* was whether or not Buchart was examining the documents based upon the power to inspect conferred by section 14(1). Judge Smith concluded that Buchart was not. Judge Smith observed that the purpose of conferring a power

of inspection in section 14 and similar powers conferred by the *Fisheries Act*⁵⁷ was to permit an inspection without requiring a warrant.⁵⁸ Judge Smith went on to observe that the original encounter with Leong was in the public part of the warehouse; the officers did not need a warrant to be in that public area. Thus “the officers’ attendance at the public area of the Warehouse was not an ‘inspection’ of the Warehouse within the meaning of s.14(1)”⁵⁹ and since there was no inspection Butchart⁶⁰

... had no statutory authority to compel the production to her of the documents in Mr. Leong’s possession while he stood in the Warehouse.

[153] That is to say, a section 14(1) inspection is a precondition to a s. 14(1)(c) compulsion power and, given that there was no section 14(1) inspection, the officer could not lawfully rely on subsection 14(1)(c) to justify the warrantless compelled production of the folders and documents enclosed therein, and Mr. Leong was under no correlative duty under s. 14.2 to give her the documents.

THE OFFENCE AND PUNISHMENT PROVISIONS

Any person who breaches any provisions of the Act or a provision of certain designated regulations⁶¹ or a court order under the Act commits an offence.⁶² The prohibitions contained in section 6 of the Act create strict liability offences;⁶³ section 8 applies to a person who knowingly possesses an animal or plant or derivative thereof and is thus a *mens rea* offence, which requires the Crown to prove intent.⁶⁴

In *R v. Clemett*, the accused was charged under both section 6(1) and section 8 with respect to the importation of an Alaskan brown bear that the accused had shot and killed in Alaska.⁶⁵ The harvest was alleged to be illegal on the basis that the bear was taken in breach of an Alaskan law that prohibited the taking of big game with the use of bait or scent lures. In addition, there was also alleged to be a breach of a provision of the federal (US) *Lacey Act* for the export of wildlife taken in violation of a law or regulation of a state.

Judge Van de Veen concluded that the Crown had proven the elements of the offence under section 6, including the breach of Alaskan and federal law.⁶⁶ Judge Van de Veen then went on to consider the defence of due diligence,

acknowledging that the accused was entitled to an acquittal if he could show that he had taken all reasonable steps to avoid the commission of the offence, or that he held a reasonable belief in a set of facts which, if true, would render the acts or omissions innocent.⁶⁷ The court rejected submissions to the effect that the accused was entitled to rely on the fact that he was hunting with a licenced guide (as he was required to do). The Alaskan regulations made it clear that the use of a guide did not relieve a hunter from responsibility for knowing the regulations and hunting in accordance with the regulations. Furthermore, the evidence showed that the accused had made no effort to acquaint himself with the regulations, notwithstanding that the accused and his friends had, in the past, been concerned about the standards employed by the guide. In sum, the accused failed to establish a due diligence defence to the section 6 offence.

The court concluded, however, that the Crown had not succeeded on the section 8 charge. To succeed on that charge, the Crown had to “prove beyond a reasonable doubt that the accused knew or was wilfully blind that he was violating the law by shooting his bear over bait.”⁶⁸ Judge Van de Veen’s assessment was that “the evidence falls just short of the reasonable doubt standard of proof in relation to the accused’s knowledge or wilful blindness that his bear was lured by bait.”⁶⁹ In so concluding, it is evident that Judge Van de Veen applied the “knowingly” requirement not just to the act of possession but also with respect to the knowledge that the bear had been taken in breach of Alaskan law.

Conclusions

WAPPRIITA is the implementing legislation that Canada relies on to fulfil its obligations under *CITES*. However, the Act and the regulations go beyond *CITES*. The Act and regulations cover additional species, and they extend some of the rules and prohibitions to cover interprovincial and international trade.

The limited case law on the Act and regulations draws attention to the following:

- The Act and regulations should be interpreted according to the ordinary rules of interpretation, and no great heed should be paid to the fact that WAPPRIITA, *inter alia*, implements *CITES*,

given that the legislation also has other objectives: *Druyan v. AG Canada*.

- While the Crown may rely on the presumption created by section 20 as to the utility of marks, labels, and accompanying documents, it still has the responsibility in the case of *CITES*-listed species to show that the marks, labels etc. pertain to a listed species: *Kwok Shing*.
- A charge under section 6 requires evidence that the law of another state was breached: *Druyan v. AG Canada* and *R v. Clemett*.
- The power to detain under section 13 is an administrative act. The standard of review with respect to the (continued) exercise of the power to detain is reasonableness: *Druyan v. AG Canada*.⁷⁰

The power to inspect under section 14(1) does not afford an officer an independent power to require a person to produce a document without a warrant. An officer can only exercise this power if the officer has entered a place for the purposes of ensuring compliance with the Act and where the officer believes on reasonable grounds that there are things or documents relating to the administration of the Act or regulations: *R v. Leong*.

NOTES

- 1 Professor of Law, University of Calgary, <ndbankes@ucalgary.ca>.
- 2 *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, SC 1992, c 52 [WAPPIITA]. Prior to its adoption, Canada implemented its *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (*CITES*) obligations through regulation under the *Export and Import Permits Act*, RSC 1985, c E-17. See also the former *Game Export Act*, RSC 1985, c G-1.
- 3 3 March 1973, 993 UNTS 243, Can TS 1975 No 32 [*CITES*], online: <cites.org/>.
- 4 *Wild Animal and Plant Trade Regulations*, SOR/96-263 [WAPTR]. For the Regulatory Impact Analysis Statement (RIAS) of the original version of the regulations, see Regulatory Impact Analysis Statement, (1996) C Gaz II, 1797 [RIAS]. The RIAS describes the Act as “framework legislation.” Environment and Climate Change Canada (ECCC) issues an annual report on the implementation of the Act and the regulations. See ECCC, “Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act: Report” (last modified 3 April 2013), online: *Government of Canada* <publications.gc.ca/site/eng/9.505775/publication.html>.

- 5 Section 4 of the Act provides that “[t]he purpose of this Act is to protect certain species of animals and plants, particularly by implementing the Convention and regulating international and interprovincial trade in animals and plants” (*WAPPRIITA*, *supra* note 2, s 4).
- 6 See *RIAS*, *supra* note 4 at 1797; *R v LaPrairie*, 2003 YKTC 24 at para 9 (a case dealing with the interprovincial transport of wood bison from Alberta to the Yukon). *LaPrairie* was charged with an offence under section 6(3) of *WAPPRIITA*. The court noted that “[a]lthough the specific concern in this case is the possibility of introducing disease to the wood bison already in the Territory, the danger of unregulated movement of plants and animals goes well beyond this. The world is replete with examples of situations in which the release of exotic species in new areas has had an unintended and devastating impact on the environment or on indigenous species.” *Ibid* at para 16.
- 7 For sentencing decisions, see *R v Deslisle*, 2003 BCCA 196; *Marsland v The Queen*, 2012 SKCA 47; *R v LaPrairie*, 2003 YKTC 24; *R v Clemett*, 2016 ABPC 248; *R v Shmyr*, 2017 YKTC 53; *R v Ensor*, 2017 YKTC 2; *R v Luah*, 2006 ABCA 217. For administrative monetary penalty decisions, see 1952157 *Ontario Inc v Canada (Environment and Climate Change)*, 2019 EPTC 5; *Bhaiyat v Canada (Environment and Climate Change)*, 2019 EPTC 1.
- 8 *CITES*, *supra* note 3, art IV. Environment Canada (now ECCC) is the designated management authority and scientific authority for *CITES*. Fisheries and Oceans Canada is responsible for *CITES*-listed aquatic species, including fish, marine plants, and marine mammals. Natural Resources Canada serves as an advisor with respect to timber species.
- 9 See especially “Conference Resolution 12.3, Permits and Certificates” (accessed 27 November 2021), online (pdf): *CITES* <cites.org/sites/default/files/document/E-Res-12-03-R18.pdf> [*CITES* Conference Resolution 12.3].
- 10 ECCC, “Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act: Annual Report for 2015” (accessed 1 December 2021) at 2, online (pdf): *Government of Canada* <publications.gc.ca/collections/collection_2016/eccc/CW70-5-2015-eng.pdf>. These annual reports also contain discussion of enforcement activities and more detailed discussions of a number of examples.
- 11 *WAPPRIITA*, *supra* note 2, s 2.
- 12 *Ibid*, s 21(1)(c).
- 13 *WAPTR*, *supra* note 4, s 4.
- 14 *Ibid*, Schedule II.
- 15 *Ibid*, s 5.
- 16 *Ibid*, s 7.
- 17 See e.g., *WAPPRIITA*, *supra* note 2, s 6(1).
- 18 *WAPTR*, *supra* note 4, s 20 (under the heading entitled “labelling”). Note, however, that in *R v Kwok Shing Enterprises Ltd*, 2001 BCPC 305, counsel for the accused indicated that s/he intended to question the constitutionality of s 20. In the end, it was not necessary for the court to consider the argument.
- 19 *R v Kwok Shing Enterprises Ltd*, 2001 BCPC 305 [Kwok Shing].
- 20 *Ibid* at paras 5, 6.
- 21 *Ibid* at para 7; *WAPTR*, *supra* note 4 564, Schedule I, Part II, Item 1.12.o.
- 22 The Scientific Authority for Canada under *CITES* is either ECCC or the Department of Fisheries and Oceans.

23 *Kwok Shing*, *supra* note 19 at para 40.
 24 *Ibid* at para 38.
 25 But see *WAPTR*, *supra* note 4, s 11 (a section 10 permit is not required “where all required provincial permits have been obtained”).
 26 *Ibid*, s 7(2).
 27 *Ibid*, s 10.
 28 *Ibid*, s 12.
 29 It follows from the use of “knowingly” that the section 8 offences require that the Crown demonstrate *mens rea*. See *Marsland v The Queen*, 2012 SKCA 47 at para 30.
 30 *R v Ensor*, 2017 YKTC 1.
 31 See also *R v Shnyr*, 2017 YKTC 53. The accused was charged and convicted under the Yukon *Wildlife Act* with providing false information and hunting when not permitted but was also charged under *WAPRIITA* for transporting moose parts to Alberta, which were not legally possessed in the Yukon because the original hunt was illegal.
 32 *R v LaPrairie*, 2003 YKTC 24 at para 7.
 33 *WAPRIITA*, *supra* note 2, s 12.
 34 *Ibid*, s 13.
 35 *Druyan v AG Canada*, 2015 FC 705 [*Druyan*].
 36 See *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]. The leading decision on standard of review is now *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].
 37 *Druyan*, *supra* note 35 at para 38.
 38 *Ibid*.
 39 *Ibid*.
 40 *Ibid* at para 57. Article VII(2) of *CITES* provides that “[w]here a Management Authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen, the provisions of Articles III, IV and V shall not apply to that specimen where the Management Authority issues a certificate to that effect.” *CITES*, *supra* note 3, art VII(2). There is a partial exemption in s 13 of *WAPTR*, but this is only an exemption for the purposes of s 8(c) of the Act. See *WAPTR*, *supra* note 4, s 13; *WAPRIITA*, *supra* note 2, s 8(c).
 41 *Druyan*, *supra* note 35 at para 40; *Dunsmuir*, *supra* note 36 at para 47. For current requirements with respect to reasons, see *Vavilov*, *supra* note 36.
 42 See *Druyan*, *supra* note 35 at para 40, citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers’ Association*, 2011 SCC 61 at para 54.
 43 *Druyan*, *supra* note 35 at para 41, citing *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16.
 44 *Druyan*, *supra* note 35 at para 42, citing *CITES* Conference Resolution 12.3, *supra* note 9.
 45 See *Druyan*, *supra* note 35 at para 45.
 46 *Ibid* at para 52.
 47 *Ibid* at para 51.
 48 *Ibid*.
 49 *Ibid* at para 52. See by contrast *R v Clemett*, *supra* note 7 where the evidence before the court included an agreed statement of facts as well as evidence from state enforcement officials and other parties and evidence as to Alaskan and federal law. There was ample

- evidence on which to conclude that the bear in question had been taken in breach of both state and federal law.
- 50 See *Druyan*, *supra* note 35 at para 58.
- 51 See *ibid* at para 50. Or perhaps more accurately, an officer could not reasonably have concluded that the certificate was not adequate to demonstrate pre-Convention status.
- 52 *Ibid*. Justice O’Keefe also noted that section 13(1)(a) of the regulations create an exemption for possession of a pre-Convention good and that such express language could also “have been used had Canada wanted to create the same exemption for importing” (*Ibid* at para 60).
- 53 *Ibid* at para 61.
- 54 WAPPRITTA, *supra* note 2, s 14.
- 55 *Ibid*, s 14(1).
- 56 *R v Leong*, 2014 BCPC 99.
- 57 *Fisheries Act*, RSC 1985, c F-14, s 49.
- 58 *R v Leong*, *supra* note 56 at para 145.
- 59 *Ibid* at para 151.
- 60 *Ibid* at paras 152–153.
- 61 The designated regulations are regulations designated under paragraph 21(1)(g.1) of WAPPRITTA, which seems to allow any provision of the regulations to be so designated. No provisions are currently so designated.
- 62 WAPPRITTA, *supra* note 2, s 22.
- 63 *R v Clemett*, 2016 ABPC 137, at paras 12, 18.
- 64 *Ibid* at paras 12, 33.
- 65 *Ibid*.
- 66 *Ibid* at paras 15–17.
- 67 *Ibid* at para 19.
- 68 *Ibid* at para 33.
- 69 *Ibid*.
- 70 See *Vavilov*, *supra* note 36.