

Citation: *R. v. Ackerman and Baillargeon*, 2009 YKTC 62

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Docket: 07-05401A  
07-05402A  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Cozens

Regina

v.

Brett Ackerman

and

Oneil Baillargeon

Appearances:  
Lee Kirkpatrick  
Nicholas Weigelt

Counsel for Crown  
Counsel for Defence

**REASONS FOR JUDGMENT**

[1] Brett Ackerman and Oneil Baillargeon have been charged on separate Informations with having committed the offence of allowing meat to be wasted, contrary to s. 32(1) of the *Wildlife Act*, R.S.Y. 2002, c. 229 (the “*Act*”).

[2] Both accused are represented by Mr. Weigelt. Counsel agreed that both Informations would proceed to trial at the same time. Mr. Weigelt sought leave of the Court to appear as agent for Mr. Baillargeon at the trial. Noting that Crown counsel did not object, and considering the provision in s. 800(2) of the *Criminal Code*, which is applicable to summary conviction proceedings commenced under the *Act*, allowing for appearance of an accused by agent at a summary conviction trial, I allowed Mr. Weigelt’s application.

## Overview

[3] In September 2007, Mr. Ackerman and Mr. Baillargeon were employed as guides by Lone Wolf Outfitters (“Lone Wolf”). They were operating out of an outfitting camp on Cottoneva Creek in the Livingstone Creek area of the Yukon (the “Camp”). Mr. Ackerman was the chief guide, with approximately seven to eight years experience guiding for Lone Wolf. Mr. Baillargeon was fairly inexperienced as a guide and was being trained by Mr. Ackerman.

[4] During the period of September 21 – 28, 2007, Mr. Ackerman was guiding for hunter Duke Lovetere, and Mr. Baillargeon was guiding for hunter John Lovetere. The Loveteres are residents of the United States of America. They did not testify at the trial.

[5] With Mr. Baillargeon acting as his guide, John Lovetere shot a moose on September 21, 2007 in Paradise Valley. Mr. Baillargeon then left to locate Mr. Ackerman, and they returned to the kill site for photographs. After dropping the two hunters back at the Camp, Mr. Baillargeon and Mr. Ackerman returned to the kill site that afternoon on all-terrain vehicles with trailers. They field dressed the moose and left the kill site with two quarters of meat, the antlers and the backstrap. The quarters were hung in an open and uncovered pole shed at the Livingstone airstrip (the “Pole-shed”), without any game bags over the meat. The airstrip is situated approximately three kilometers from the Camp. The antlers and the backstrap were taken to the Camp.

[6] Mr. Ackerman and Mr. Baillargeon returned to a distance of approximately 200 – 400 yards from the kill site area the next morning, in order to recover the remaining meat. They did not do so, however, citing concerns about wolf scavenging at the site, based on hearing wolves howling in the area of the kill. The kill site was in a depression and not easily visible. At trial, Mr. Ackerman also raised safety concerns about approaching the kill site.

[7] Conservation officers Ryan Hennings and Tony Grabowski attended the Camp on September 25, 2007, in part to further investigate observations made by other conservation officers, Russ Knutson and T.J. Grantham on September 22, 2007. On the earlier occasion, moose antlers were observed at the Camp, and meat was seen hanging in the Pole-shed. The latter information was not communicated to Officer Hennings prior to his attendance at the scene, although Officer Grabowski was aware of the meat having been hung in the Pole-shed.

[8] After a brief initial discussion, Officer Hennings made a demand to Mr. Baillargeon to accompany him to the kill site. He and Mr. Baillargeon were unable to attend the kill site, however, due to inclement weather.

[9] Officers Hennings and Grabowski subsequently attended the Pole-shed on the 25<sup>th</sup> and observed a grizzly bear defending a mound of dirt. Using a helicopter, the grizzly was scared away. The two quarters of moose meat had been buried and covered by a mound but were salvaged by the officers and taken back to Whitehorse. This meat was edible.

[10] Conservation Officers Hennings and Grabowski returned to the Camp on September 28, 2007 and were taken to the kill site by Mr. Baillargeon. A grizzly bear was observed at the kill site, and was scared off by the helicopter. Mr. Baillargeon was taken back to the Camp and the officers returned to the kill site. The helicopter hovered over the kill site while the officers jumped out. They observed that a bear had buried the moose carcass and the two quarters. While the helicopter continued to hover around at a distance from the kill site, the officers recovered the two remaining quarters, de-boned the meat and took it back to Whitehorse. This meat was also edible. The quarters at the kill site were not scavenged. There had been some minor scavenging of the carcass.

[11] The total meat recovered was 235 lbs at the Pole-shed (bone-in), and 92.5 lbs at the kill site, de-boned.

## Issues

1. Can a guide be charged with having committed an offence under s. 32(1) of the **Act**?
2. If so, did Mr. Ackerman and Mr. Baillargeon take the necessary reasonable steps to avoid the moose meat from being scavenged and/or spoiled at:
  - a. the kill site
  - b. the Pole-shed
3. Did Mr. Ackerman and Mr. Baillargeon unlawfully abandon the meat at the kill site?

### Issue #1: Application of s. 32 of the **Act** to Guides

[12] Section 32 of the *Act* reads:

**32(1)** No person who has possession of a dead game bird, big game animal or small game animal shall allow any of the meat to be wasted.

...

**32(3)** A person shall be deemed to have allowed meat to be wasted if that person allows any portion of a game bird, big game animal or small game animal that is reasonably suitable for human consumption to be

- (a) fed to dogs or other domestic animals, or to wildlife in captivity;
- (b) destroyed or to become spoiled;
- (c) abandoned;
- (d) used for bait; or
- (e) left in the field without being properly dressed and cared for to prevent the meat from being scavenged or spoiled.

**32(4)** The regulations may prescribe the circumstances in which meat shall be deemed to be abandoned under paragraph 3(c).

[13] I am unaware of any *Regulation* relevant to this case that has been enacted pursuant to this section.

[14] Counsel for Mr. Ackerman and Mr. Baillargeon argues that s. 32(1) of the *Act* applies to hunters only, and does not apply to guides. In advancing this somewhat novel argument, he relies on the distinction between the authorization

given to the hunter, as compared to the non-hunting role of the guide, as well as the specific provisions of the *Act* that are directed at hunters and guides.

[15] He argues that, inasmuch as guiding is not mentioned in Part 1 of the *Act*, in which ss. 32 and 36 (the provision governing “possession”) are contained, by operation of the maxim *expressio unius est exclusio alterius* (“to express one thing is to exclude another”), Part 1 is not applicable to any of the actions of a guide. The failure to mention guides in Part 1, and the specific application of Part 2 to guides gives rise to an implied exclusion of the application of Part 1 to the activities of guides.

[16] The *Act* is divided into four Parts:

- Part 1 “General Rules for Hunting and Trapping”
- Part 2 “Outfitting, Guiding and Trapping”
- Part 3 “Emergency and Defence of Person and Property”
- Part 4 “Miscellaneous”

[17] Under the heading “**Duties of Guide**”, in s. 44(3), the *Act* reads:

- 44(3)** A guide has a reasonable responsibility
- a) for the safety and well-being of the person he or she is guiding;
  - b) for the proper care and handling of any wildlife killed by the person he or she is guiding; and
  - c) for such other matters as may be prescribed by the regulations.

[18] Under the heading “**Prevention of Violations**” the *Act* reads:

**46** A guide shall, without using force, make every reasonable effort to prevent a person he or she is guiding from committing a contravention of this Act.

[19] The guide has a responsibility to prevent his hunter from committing an offence under Part 1 of the *Act*. If a guide fails to do so, then the guide can be charged under s. 157 for having violated s. 46 of the *Act*. Section 157 also

applies if the guide fails to discharge his or her responsibility under s. 44(3) of the *Act*. Section 157 reads:

**157(1)** A person who contravenes any provision of this Act is guilty of an offence.

[20] In sum, defence counsel's argument is that Part 1 does not reference guides at all, only persons or hunters. Part 2 specifically sets out the duties of a guide. Improper handling of meat or wildlife is dealt with in both Part 1 and Part 2, with a specific sanction available in either case. As such, the appropriate charge for Mr. Ackerman and Mr. Baillargeon would have alleged the commission of an offence for failing to comply with s. 44(3)(b) of the *Act*. Only John Lovetere could have been charged with having committed an offence under s. 32(1) of the *Act*. The *Act* does not place upon a guide an additional responsibility of not wasting meat as per s. 32(1), given the clear responsibility of dealing properly with the meat that is set out in s. 44(3)(b).

[21] When considering how to interpret legislation, the fundamental principle has been well-stated by Driedger as follows:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. (*Construction of Statutes*, 2<sup>nd</sup> ed. (Vancouver: Butterworths, 1983 at p. 87)

[22] Defence counsel argues that the *Act* is a penal statute and thus the "...overriding principle governing the interpretation of penal provisions is that ambiguity should be resolved in a manner most favourable to accused persons" (*R. v. McIntosh*, [1995] 1 S.C.R. 686, para. 38).

[23] Crown counsel argues that the duties of guides as set out in ss. 44- 47 of the *Act* are in addition to any duties they may have in other sections of the *Act*,

including s. 32(1). Section 32(1) applies to any person who has possession of big game meat, regardless of whether the person is a hunter. In this case, Mr. Ackerman and Mr. Baillargeon took possession of the meat and told the hunters to remain at the Camp.

[24] Crown submits that the *Act* is not a penal statute but is public welfare legislation.

[25] In a supplemental argument filed February 19, 2009, Crown counsel points to s. 57(1)(b) of the *Act* under the heading “Cancellation or suspension of operating certificate”, which reads in part:

57(1) An outfitter’s operating certificate may be cancelled or suspended in whole or in part by the Minister if

...

(b) the outfitter, or anyone employed by or retained by or acting on behalf of the outfitter,...is convicted of an offence in relation to the operations of the outfitting concession under sections 20, 22, 102, or 133 or subsections 8(1), 15(1), 21(1), 24(1), 27(1), 30(1), 32(1), 37(1), 104(1), or 105(1) and the time for appealing the conviction has expired.

[26] Crown submits that it is clear from s. 57(1) that the *Act* contemplates outfitters and guides being charged under sections of the *Act* outside of Part 2.

[27] I agree with Crown counsel on this point. While from a purely narrow and restrictive approach to legislative interpretation, defence counsel’s submissions may appear at first glance to have some arguable merit, these submissions must fail when considering the *Act* as a whole.

[28] Part 2 is not intended to be an exhaustive declaration of the applicable law as set out in the *Act*. To extend the principle of *expressio unius est exclusio alterius* as far as defence counsel urges would be to lose sight of the

cohesiveness of the *Act* as a whole. This principle must always be applied with caution, and generally restricted to those circumstances where the legislation clearly intends one aspect within it to be the exhaustive word on the subject matter in question.

[29] The provisions of the *Act* consistently delineate the rights and responsibilities of “a person”. Indeed, it is “a person” that can be charged with having committed an offence, and “a person” that can avail themselves of the emergency and defence provisions. It is clear that the terminology of “a person”, far from being exclusive, is intended to be inclusive. In s. 1 of the *Act*, guide “means a person issued a license under this *Act* authorizing the person to act as a guide...”.

[30] In *R. v. Heynen*, 2000 YTTC 502, at para. 52, Judge Stuart summarized the principles of the predecessor *Wildlife Act*, R.S.Y. 1986, c. 178, as they apply to the outfitter, and hence to the persons employed by the outfitter, as follows:

In the context of the *Wildlife Act*, the specific provisions governing the outfitting business advance three principal objectives:

- i) protection of big game;
- ii) hunter safety;
- iii) promoting big game outfitting as a viable Yukon business.

[31] The present *Act* was passed, in December 2001, subsequent to the *Heynen* decision. There is no purpose clause or preamble to the *Act*. I consider that the objectives of the *Act* remain the same as they were when characterized by Judge Stuart. The objective is to protect wildlife resources, while at the same time promoting hunter safety and the viability of the outfitting industry.

[32] In the *Act*'s former version, the “waste of meat” provision was contained in Part 1 – Duties and Prohibitions under the subheading “Carcasses and Live

Animals”. Also contained in PART 1 were the duties of guides under a separate subsection, “Hunting Expeditions and Outfitting”. This structure appears to make it clear that the duties and prohibitions were meant to apply to everyone, including outfitters and guides.

[33] It would be an illogical consequence of narrowly construing the responsibilities of guides if they, with their presumed familiarity with the *Act*, were able to escape substantial liability for offences committed by the hunters they were guiding, given that these hunters are often from outside the Yukon. The hunters could then potentially evade punishment by relying on the defence of officially induced error. I recognize that defence counsel argues that there is a means by which the guide can be convicted of an offence through the more circuitous route of ss. 43, 46 and 157. I find, however, that the most effective way of achieving the goals of the *Act* is to interpret the *Act* such that guides assume the same basic responsibilities of “a person” under the *Act*, as well as some additional responsibilities particular to their position within the regulatory scheme.

[34] In fairness to defence counsel, I note that his argument on this first issue was largely made prior to the supplemental argument of the Crown being filed and the potential impact of s. 57(1) brought forward.

**Issue #2: Were reasonable steps taken to prevent scavenging and spoiling?**

[35] In order to best address both the second and third issues, I will briefly summarize the evidence of the witnesses.

Witnesses

*Conservation Officer Ryan Hennings*

[36] As of September 2007, Officer Ryan Hennings had been a conservation officer with the Government of Yukon, Department of the Environment for approximately 11 years. He had conducted numerous investigations of outfitter camps, outfitter hunters and resident hunters, as well as being a hunter himself.

[37] He agreed that the manner in which Mr. Ackerman and Mr. Baillargeon field dressed the meat at the kill site showed an intention to harvest and properly care for the meat. While it is his normal practice to remove the guts from the moose before removing the meat, he also agreed that the meat could be harvested without removing the guts.

[38] Officer Hennings testified that he saw the tenderloin (two to five lbs each) still on the carcass as well as 20 – 30 lbs of neck meat. There were also slight traces or slivers of meat on the ribcage.

[39] He agreed that it is an acceptable practice to lay the meat removed from the carcass on the moose hide.

[40] In terms of the manner in which meat taken from the kill site by Mr. Ackerman and Mr. Baillargeon, he felt that there were suitable locations at the Camp for hanging meat, such as under ATV shed or further back from the living area. He had never seen meat stored three kilometres from a camp before. Generally, the meat was kept where it could be observed or visited daily. He agreed that moving the meat closer to the Camp could have the effect of attracting predators to the Camp. He also agreed that the storing of the meat at the Pole-shed was indicative of an intention to move it out.

[41] Officer Hennings testified that he asked Mr. Baillargeon whether he and Mr. Ackerman had abandoned the kill site, to which Mr. Baillargeon responded “yes” and said that he and Mr. Ackerman had no intention of going back there.

*Conservation Officer Tony Grabowski*

[42] As of September 2007, Officer Tony Grabowski had approximately 20 years experience as a conservation officer in the Yukon and an additional 12.5 years in British Columbia. He had attended between 450 – 500 outfitter camps and likely twice as many resident camps.

[43] Officer Grabowski stated that he expects to see a tarp covering a meat pole for water protection, and game bags or similar used to prevent birds and/or insects from getting at the meat. He considered the storing of the meat at the Pole-shed as inadequate due to the lack of covering of the meat and the three kilometers distance from the Camp. He had never seen meat stored three kilometers from a camp before. He testified that in order to properly exercise care and control over the meat, it should be stored within sight of a camp. He agreed though, that if the meat had been flown out right away there may not have been a violation of s. 32(1) of the *Act* in regard to this meat.

[44] Officer Grabowski testified to the recommendations set out in the orange Hunter Ethics and Education Development folder provided to hunters, which was filed as an Exhibit in the trial, and which contains the following excerpts:

**BEARS/SCAVENGERS AT THE KILL-SITE**

Stay alert while field dressing your animal.  
 Pack the meat out first, all in one trip if you can, if not in one trip, return ASAP.  
 If, for a short time you must leave some/all the meat at the kill-site:  
     Move it a short distance from the gut pile  
     Leave a well worn shirt or jacket on the meat  
     Urinate around the meat  
     Hang surveyor's tape to flap in the breeze

**MEAT CARE IN THE FIELD**

COOL:       Skin and gut animal without delay.  
               Hang up or prop up meat to air  
 CLEAN:      Put meat in game bags.  
               Cover meat while transporting

DRY: Place a tarp shelter above meat (not on meat)  
Cover while transporting

[45] Also filed as an Exhibit was the Yukon Hunting 2007-2008 Regulations Summary. The summary is not a legal document. Excerpts from this summary read:

**Keep it cool, keep it clean, keep it dry and keep scavengers away**

...

**Keep it dry:** A dry protective crust will protect the meat from egg-laying insects and prevent spoiling. This crust will form only if the meat is wiped dry and exposed to the air.

The field-butchered pieces of meat should be wrapped in game bags or cheese cloth. This will protect the meat while allowing air to circulate around it...

**Keep scavengers away:** If you must leave your meat pile for short periods as you make a series of packing trips, urinate around the pile or leave a jacket or other piece of clothing on the pile. Although they aren't fool proof, these techniques will often keep scavengers away from the meat.

...

**Bear Safety for Hunters**

Hunters need to be aware that the presence of meat and carcasses can increase the risk of bear encounters. This section includes general bear safety tips as well as special advice applying to kill sites.

*Take these general precautions*

...

*At the kill site*

- ▶ Stay alert while field dressing your animal. Look around and listen.
- ▶ Keep a firearm within easy reach.
- ▶ Take all the meat out in one trip if possible. If not, return to the site as quickly as possible.
- ▶ Separate the meat pile from the gut pile if you have to leave the site.
- ▶ Leave your odour on or near the meat pile. Urinate around it or leave your shirt or jacket.
- ▶ Mark the kill site with lots of surveyor's tape so it flaps in the breeze. Remove the tape when you leave the site.

*Returning to the kill site*

- ▶ Carry at least one rifle in your group when returning to the site.

- ▶ Approach the site from higher ground, if possible, to give yourself a long-distance view.
- ▶ Make noise as you approach the site.
- ▶ Approach from upwind if possible.
- ▶ If a bear is present, noise and gunshots may scare it away. Remember, you cannot kill a bear to protect your meat.

[46] Officer Grabowski testified that placing the meat on the moose hide does not prevent scavenging, but that, in addition, the meat should be moved away from the guts. The meat located at the kill site had not been moved any distance away from the guts.

[47] He observed grizzly bear tracks only in the snow at the kill site.

[48] Officer Grabowski also stated that, due to operational limitations affecting the conservation authorities' ability to police the *Act*, reliance is on the outfitters, as professionals, "...to conduct themselves in a manner where they adhere to and comply with wildlife legislation that's in place to protect and enhance wildlife".

[49] He stated that Lone Wolf participates every year in the voluntary guide talk given by conservation officers, when this talk is offered.

*Conservation Officer Russel Osborne*

[50] Officer Russel Osborne has been a conservation officer for approximately eight years and a hunter for most of his life. He was a guide for Ruby Range Outfitters for three years, and for two years with Kluane Outfitters, acting primarily as a sheep hunting guide.

[51] Officer Osborne was not qualified as an expert for the purpose of giving evidence, but rather relied upon his own experiences to testify as to general hunting and guiding practices.

[52] Officer Osborne testified that it was common to leave meat at a kill site and to return later to retrieve it. It was his practice to put meat into meat bags and lay out for the air to cool. He would put brush on the meat to keep birds away, and leave clothing, jackets, hang ribbons, make the kill site look different and move the meat some distance from the gut pile, perhaps up to a few hundred metres away. If visibility of a kill site is an issue, he would move the meat to where it was visible.

[53] He testified that, as a guide, he had never lost meat to predators, although on two occasions as a hunter he had experienced some minor scavenging by marmots and a wolverine.

[54] While meat is usually shipped out within one to two days, it can be maintained at a meat storing facility in the field for perhaps up to eight days, as long as there is no concern about the meat degrading.

[55] Officer Osborne stated that while meat is usually stored at a camp, it can be stored at a more remote location, however, this is usually done just prior to the meat being picked up.

[56] He further said that it is allowable to hunt off the kill site so long as the carcass is not moved to enhance the chances of a predator attending.

*Brett Ackerman*

[57] Mr. Ackerman had worked as a guide with Lone Wolf for approximately seven or eight years as of September 2007.

[58] He testified that, at the kill site, he and Mr. Baillargeon dressed and quartered the moose with the guts in. They removed the quarters, ribs, tenderloins, backstrap and neck meat on both sides. They cut behind the tendon

on the right hindquarter for hanging and loading purposes, then placed all the meat on the moose hide to keep it clean. It was then moved an unspecified distance away from the carcass.

[59] Mr. Ackerman said that he and Mr. Baillargeon ferried the meat to the trailers located at the base of Paradise Valley, taking approximately 30 minutes to do so. It was now after dark, being 9:30 p.m. – 10:00 p.m. or later. One trailer was full, but Mr. Ackerman considered it to be too late, and he and Mr. Baillargeon were too exhausted, to bring down the other half of the moose. In addition, the weather was cold, and he did not consider a further trip that evening to be safe or feasible. He stated that the trail conditions at the time were “treacherous”. They arrived back at the Camp at approximately 11:00 p.m.

[60] Mr. Ackerman and Mr. Baillargeon returned to the kill site area before sun-up with a trailer. Mr. Ackerman stated that when they stopped to unhook the trailers approximately 200-300 yards from the kill site, he heard wolves howling in the direct area of the kill site, although he could not see any wolves. He testified that he was unable to see the kill site itself. In a four page handwritten, warned and cautioned statement to Officer Hennings, Mr. Ackerman stated the following:

...Upon return to the site, (200-300 yards away) we found wolves had found the site. With this in mind I felt that the remaining meat was lost to these animals and was unsalvageable (sic) and unusable. 1 day after this a bear had taken the salvaged meat from our meat shed and buried it nearby. I then felt that this was unsafe to retrieve the meat, as per the bear, and considered it lost.

*(Officer Hennings: How did you determine the meat was unsalvagable (sic) at the kill site on the morning of September 22, 2007.)* I felt that the wolves, being carnivorous would have eaten the meat, dragged (sic) the meat and potentially soiled the meat with urine etc.

...

*(Officer Hennings: Did you use the firearm to attempt to scare away the wolves?)* No, I felt over the course of the night most of the meat would already be tainted or consumed by the wolves.

[61] In this statement, Mr. Ackerman only made reference to having a safety concern related to the bear at the Pole-shed, and not to having any similar safety concern about approaching the kill site.

[62] In his testimony at trial, however, Mr. Ackerman stated that “The reason I didn’t go to the kill site is because I didn’t feel it was safe to enter the kill site”. He stated that he was concerned that, with the wolves howling, there could be another predator on the kill site. He testified that he did not want to “cowboy in” with the quads, but instead wanted to obtain a better vantage point to attempt to view the kill site. The weather at the time was wind with blowing snow, and temperatures below freezing. He testified that he never “blindly” enters a kill site.

[63] Also in his warned statement to Officer Hennings, Mr. Ackerman said that “we” returned later to spot the site from a distance with spotting scopes but could not do so because of the weather, which he stated continued to prevent them from seeing the kill site for several days.

[64] In his testimony at trial, Mr. Ackerman stated that he and Mr. Baillargeon went to the location where the moose was originally spotted, approximately 800 – 1200 metres away, but could not see site due to blowing snow and cloud cover. They remained there for one hour and he then left Mr. Baillargeon there to monitor the site with binoculars. Mr. Ackerman continued to hunt with Duke Lovetere. Upon his return to the Camp later that day, Mr. Baillargeon advised him that he had been unable to view the kill site all day due to the weather conditions. Mr. Ackerman testified that every day Mr. Baillargeon went to the top of the mountain to attempt to monitor the site using a spotting scope, on occasion with Mr. Ackerman.

[65] Mr. Ackerman testified that he had decided to try again the next morning (September 23) at first light to attempt to view the kill site. He stated that he and

Duke Lovetere saw a grizzly bear on the kill site, as well as a mound of dirt. His hunter did not shoot the grizzly with the tag he possessed, as this grizzly was only a smaller sow and not a significant animal for a trophy hunter. While he agreed that he could have tried to scare this grizzly away with rifle shots, he did not feel that there was a safe way to enter the kill site to do so. Regardless, he testified that his experience is that bears urinate and defecate on the mound and allow the meat to rot. He did not feel that the meat was consumable any longer. He also stated that he saw an attempt to scare away the grizzly as a suicide mission, as the bear would defend the meat to the death.

[66] With respect to the Pole-shed location, Mr. Ackerman testified that the airstrip was littered with cabins, camps, vehicles, trash, oil barrels, fuel drums and clothing. He stated that he drove past the airstrip every day from September 20 – 27 on his way to that day's hunting location and that he would check the meat at the Pole-shed each time; therefore at least two times a day. In his years with Lone Wolf he had never had a problem with a bear at the airstrip, and had never lost any meat there.

[67] Mr. Ackerman testified that he would attempt to have the meat flown out of the airstrip to the butcher as soon as possible in order to minimize the time the meat was in Camp, but that he would also try to have one or two moose ready to go before doing so. He had not made any arrangements to have the two quarters flown out prior to them being scavenged by the bear, and said this was because he did not yet have at least one full moose.

[68] He agreed that the Pole-shed was not suitable for long-term storage of meat.

[69] Mr. Ackerman stated that he did not cover the meat at the Pole-shed because of the cold temperature. He did not leave any flagging or garments at either location because it has never been his practice to do so. In his

experience, he considers these measures to be ineffective as a deterrent. He also does not consider urinating at a site to be a deterrent, citing an incident where a bear made its den in an outhouse.

[70] He agreed that most of the hunters he guides are not interested in obtaining the meat from the kill, other than what they eat in Camp. It is standard for the outfitter to keep the meat and distribute it.

[71] Mr. Ackerman stated that he never abandoned the meat in contravention of his obligations under the *Act*, although he agrees that he otherwise lawfully abandoned the meat due to his conclusions about scavenging and spoiling of the meat from his observations of the wolves, in conjunction with his safety concerns about a possible bear presence at the kill site.

*Craig Yakiwchuk*

[72] Mr. Yakiwchuk is the owner of Lone Wolf. He has been outfitting in the Cottoneva Creek area for approximately 12 years. It is Lone Wolf's practice to always properly field dress a moose and to retrieve all edible meat. No Lone Wolf guides had been charged with having committed an offence under the *Act* in the 12 years he has operated Lone Wolf.

[73] Mr. Yakiwchuk stated that it is common in Paradise Valley to have to return to a kill site the next day to retrieve meat, and that about 30% of the time there is a predator on the kill site when the guide returns. It is important to make sure the kill site is visible when approaching it, and to ensure that no predator comes to the kill site when the guide or hunter is there.

[74] In Mr. Yakiwchuk's experience, the only reason that wolves would be howling at a kill site was because they had been dispersed and were regrouping. This would only be due to the presence of a bear at the kill site.

[75] He testified that for safety reasons he wanted to have the meat pole/cache away from the Camp. He would not allow his guides to build a meat cache at the Camp to store meat. He related one occasion at the Camp where a grizzly bear followed a hunter from the outhouse and had to be scared away by shots. He stated that in his experience there are more bears in the Cottoneva area than in other camps, and that these bears have less fear of humans than in other areas.

[76] Mr. Yakiwchuk stated that there had never been a bear incident where meat had been taken from the Pole-shed in 12 years. He continues to use the Pole-shed for storing meat for transport. He agreed that the Pole-shed should be covered by a tarp, but stated that it usually was.

[77] Upon learning that there had been helicopter activity in the area on September 21, Mr. Yakiwchuk contacted Conservation Officer John Klein to make further enquiries. He was unable to obtain any information and was not contacted by any other conservation officer, despite being available.

[78] He testified that the best practice at a kill site is to separate the meat from the guts, which are the most attractive to scavengers, and return to the kill site as soon as possible to retrieve the meat. He does not consider urinating, flagging, leaving garments and tarping the meat as being effective deterrents for scavengers or predators. He agreed that the practice of flagging the meat and/or the carcass at a kill site to enhance visibility in order to assist in determining if a predator was or had been at the site, was a practice of some outfitters and/or hunters, but said that it was not a Lone Wolf practice.

### Law and Analysis

[79] In *R. v. Koser*, [1992] Y.J. No. 101 (T.C.), a case involving the unintended wasting of meat due to inadequate storage facilities, Judge Faulkner stated that:

...a very high standard of care in this regard is imposed upon licensed guides, because they have been given a very considerable privilege to use the wildlife resource, and quite frankly, the actions of the professional guides really set the standard and tone for the whole industry and for all hunters. (pp. 2, 3; See also the comments of Judge Stuart in *Heynen* at para. 59).

[80] In *R. v. Coburn*, [1998] Y.J. No. 83 (T.C.), Judge Faulkner further stated:

I also have to say, as well, having heard a number of these cases, that in my view the wastage of meat by big game outfitters is a problem. It's an ongoing one and cannot be dealt with by the imposition of nominal sentences. It's a problem because, of course, the foreign hunters usually don't want the meat. If they do want any of the meat, they don't want the inferior cuts, and from the point of view of the guides and the outfitters the meat is, to put it bluntly, an expensive nuisance because it takes time and money to deal with it and transport it, particularly where aircraft and so forth have to be used. It's an expense and a bother and the temptation to leave it behind, therefore, is considerable. (para. 4; See also *R. v. Marsters*, [1994] Y.J. No. 83 (T.C.), at p. 3)

[81] The offence charged under s. 32(1) of the *Act* is a strict liability offence. Once Crown counsel proves the *actus reus* of the offence beyond a reasonable doubt, the onus shifts to the accused to adduce evidence to show that they took all reasonable care to avoid having committed the offence. In this case, the Crown must prove that the meat was wasted. The Crown does not have to prove that the guides intended to commit the offence charged.

*Wastage of meat due to scavenging and/or spoiling*

[82] The Crown takes the position that there was no wastage of meat after the bear was observed at the kill site or on the mound of meat at the Pole-shed. At this point there was no obligation on the guides to go in and try to reclaim the meat.

[83] The Crown submits that the accused were in possession of the meat, Mr. Ackerman having directed the hunter to stay at the camp while he and Mr.

Baillargeon returned to the kill site to field dress the moose. The possession of the meat never reverted from the guides back to the hunter.

[84] Crown counsel points out that taking only some reasonable steps is insufficient for the accused to discharge the burden upon them to demonstrate the necessary due diligence.

[85] Defence counsel's position is that both accused properly field dressed the moose at the kill site and had every intention of returning to retrieve the remaining meat. Their decision to not approach the kill site and attempt to retrieve the meat on September 22 and afterwards was reasonable in the circumstances.

[86] Defence counsel further submits that the decision to hang the meat at the Pole-shed was reasonable, and the subsequent scavenging by the bear was simply an unexpected circumstance that had never occurred before. Nothing in the actions of the guides improperly contributed to this scavenging taking place.

*Findings on section 32(3)(e)*

[87] I find that the *actus reus* of the offence of wasting meat as set out in s. 32(3)(e) has not been made out. The *actus reus* of the offence requires evidence proving beyond a reasonable doubt that the accused did not properly field dress or care for the meat in order to avoid it being scavenged or spoiled. It is not enough to show that the meat was scavenged or spoiled. If that was the intention of s. 32(3)(e), then the wording of the section would not have included the element of improper field dressing or care of the meat.

[88] As the evidence made clear, there are a number of suggested or recommended means by which guides and hunters can attempt to prevent the scavenging and/or spoiling of meat that is left unattended. These include urinating in the area, leaving clothing, hanging flagging, moving the meat a

distance from the gut pile, using game bags and meat bags, putting a tarp over the meat if hanging, and having the pole shed, or equivalent facility, within sight of the camp.

[89] There was some disagreement between the Crown and defence witnesses as to the utility of these suggestions or recommendations, other perhaps than agreement on the use of a tarp to keep rain off the meat.

[90] The bottom line here is that these suggestions or recommendations are not legislated in the *Act* or the *Regulations*, as could be done if the government wanted guides or hunters to be required to take some or all of these steps when leaving or hanging meat. I have some trouble with the notion that once meat has been scavenged, a failure to take some or all of these steps then causes the actions, or lack of action, of a hunter or guide sufficient to constitute the commission of an offence. Does a failure to take some or all of these steps itself constitute the commission of an offence, even if the meat has not been scavenged or spoiled? If not, then the simple fact that the meat has been scavenged or spoiled does not turn a previously lawful action, or inaction, into an unlawful one.

[91] The context in which the meat has been spoiled or scavenged must be considered. Obviously, if it is raining and meat is left untarped, thus causing it to become spoiled, the hunter or guide will likely find he or she has “rolled the dice and lost”. The same could be said to be true if meat was left unprotected at a time and place when it should be obvious to the hunter or guide that birds and/or insects would likely scavenge and/or spoil the meat.

[92] Perhaps that is specifically why these suggestions and recommendations are left as that, and not required by the legislation. What constitutes best practices may well depend upon the circumstances faced by the hunter or guide at the time.

[93] In the present case, the only evidence is of scavenging, not of spoiling. The scavenging, for all intents and purposes, consists of the bears at the kill site and the Pole-shed taking possession of the meat and burying it, subject to the unresolved question as to what happened to the tenderloins, rib meat and neck meat. Therefore, whether game bags or a tarp should have been used is not relevant as they would not have prevented nor did their absence contribute to the scavenging in this case.

[94] The other recommendations are more relevant to the issue of whether they, if utilized either in whole or in part, would have successfully deterred the bears from taking the meat. That said, I cannot find that the evidence is so clear as to make it obvious to me that any or all of them together would have acted as a successful deterrent at either location. They are recommendations and not legal requirements.

[95] However, and notwithstanding the evidence of Mr. Ackerman and Mr. Yakiwchuk about the pointlessness of these measures, I find that there may well be value in them. The three conservation officers' evidence, and the documents in which these recommendations and suggestions are contained, should not be so easily discounted. I did not hear Mr. Ackerman and Mr. Yakiwchuk testify that the use of these measures would attract predators or scavengers or increase the chances of the meat being spoiled (other than perhaps the idea of storing meat in a closed and secure shelter which would require enhanced air movement to ensure that the meat dried properly).

[96] I find it somewhat difficult to believe that these recommendations, made, I expect by or with input from persons with considerable experience in dealing with conservation in the hunting context, would not have some basis in evidence and experience and some positive deterrent effect. Most of these recommendations are not difficult or time-consuming to implement and, colloquially speaking, what would a hunter or guide have to lose by utilizing them?

[97] This does not, however, elevate these suggestions and recommendations to a level where the failure to implement any or all of them will amount to leaving meat “in the field without being properly dressed and cared for to prevent the meat from being scavenged or spoiled”.

[98] The whole of the circumstances must be looked at in order to see whether the actions or inactions of a hunter or guide constitute the commission of an offence. For example, if the general nature of the hunt and treatment of the meat is sloppy and careless, or the history of the hunter or guide is lawfully brought into play and shows a track record of a sloppy and careless discharge of the hunting or guiding responsibilities, then the significance of a failure to follow the suggestions and recommendations for handling meat may well increase.

*Kill site*

[99] In the present case, the guides attended at the kill site shortly after the moose was shot. They butchered the moose in a manner that clearly indicates they intended to retrieve some meat immediately and return later for the rest. I accept that, while the preferred method of butchering a moose for the conservation officers was to remove the guts, the alternative method of field dressing around the intact guts is also acceptable.

[100] There is a dispute between the evidence of Mr. Ackerman and Officer Hennings as to whether the tenderloin or neck meat had been removed. I cannot resolve this dispute on the evidence before me. There is no photograph that clearly shows the tenderloin still remaining in the carcass. It seems somehow inconsistent that the guides would have taken the care they did to field dress the moose for retrieval and yet leave some of the choicest meat remaining on the carcass where it would be sure to have been spoiled. That said, I cannot reject the evidence of Officer Hennings either. Frankly, either witness could have been

honestly mistaken. In the end, however, I do not consider that anything turns on this point.

[101] There is also a dispute on the evidence as to whether the meat was moved a distance away from the carcass. Officer Grabowski could not state for certain whether the bear had or had not moved the meat from where it had been left by Mr. Ackerman and Mr. Baillargeon to a place closer to the carcass, where he and Officer Hennings located it. The evidence of Mr. Ackerman was that the meat was placed on the hide beside the carcass and that the hide with the meat was moved away from the carcass, although he did not specify how far away. The best that I can determine on the evidence is that the meat was moved away from the carcass, but likely not very far away.

[102] I find that, after deciding the safest course was to leave the kill site for the night, Mr. Ackerman and Mr. Baillargeon returned for the meat as soon as was practicable the next morning.

#### *Pole-shed*

[103] While I have some concern about the fact that the two quarters of retrieved meat were left hanging at a pole shed approximately three kilometres from the Camp rather than within sight of the Camp, I am not prepared to find that this act constitutes a lack of the required care for the meat. The *Act* and *Regulations* do not stipulate that meat must be hung within sight of the camp, even allowing for exceptions to be made upon approval of the district conservation officer for reasons of safety in areas of high bear population density.

[104] The undisputed evidence is that the Pole-shed location had been used for approximately 12 years by Lone Wolf without any meat having been lost to scavengers. While I hesitate to accept that the choice by Lone Wolf to hang meat at the Pole-shed is due entirely to safety concerns about having meat in the

camp, given the convenience of its location at the airstrip between the hunting area and the Camp, I do not consider the use of the Pole-shed in these circumstances to be evidence of improper handling of the meat.

[105] That said, I would think that the evidence disclosing that a tarp had previously been covering the Pole-shed, would result in better efforts being made to ensure that a tarp is in place at all times and replaced as often as necessary during the guiding season. It would also make some sense, given the minimal expenditure of cost and effort involved, to consider the use of flagging and other similar potential deterrents in future. It may well be that, if Mr. Ackerman and Mr. Baillargeon had of been able to satisfy the conservation officers that they had used many, if not all, of the suggested recommendations to prevent scavenging or spoiling, this case would not have come before me on this issue.

[106] I find, therefore, that no offence has been committed contrary to s. 32(1) of the *Act* for waste as defined in s. 32(3)(e).

### **Issue #3: Was the meat wasted by being abandoned?**

[107] This applies only to the meat at the kill site, as there was no abandonment of the meat at the Pole-shed. The question as to whether the guides unlawfully “abandoned” the meat at the kill site is more difficult to resolve.

[108] Crown counsel takes the position that the intent to abandon the meat at the kill site was not present at time of the initial field dressing and retrieval of the two quarters, but was formed afterwards, at the time the guides chose not to re-approach the kill site.

[109] An initial aspect of this issue is, firstly, whether the assumption made by Mr. Ackerman that wolves had been at the kill site and spoiled the meat was warranted, and secondly, whether he and Mr. Baillargeon had an obligation to

confirm whether this assumption was true or not and, if so, did they comply with that obligation.

[110] The only evidence as to whether wolves were in the vicinity or not came from Mr. Ackerman and through the statements made to Officer Hennings by Mr. Baillargeon. Officer Grabowski testified that the only tracks he observed on the 28<sup>th</sup> were grizzly tracks in the snow. His evidence, however, does not assist me in determining whether wolves were in the vicinity on the 22<sup>nd</sup>. I do not know whether there had been recent snow which may have covered any wolf tracks. There was a reference in Officer's Hennings' evidence as to there having been snow falling the night of the 21<sup>st</sup>, however it is not clear on the evidence how he knew that.

[111] I also do not know the scope of area covered by Officer Grabowski's observations. If, in fact, the grizzly bear observed at the site on the 28<sup>th</sup> was in fact present as early as the 22<sup>nd</sup>, then, as Mr. Yakiwchuk testified to, the wolves would have likely been dispersed from the immediate kill site area due to the presence of the grizzly.

[112] As such, I am satisfied that when Mr. Ackerman and Mr. Baillargeon attended the site on the 22<sup>nd</sup>, they heard wolves howling in the general area of the kill site. I cannot determine whether there was in fact a bear on the site on that date, however.

[113] The evidence of Mr. Ackerman, and Mr. Baillargeon, through the statements he made to Officer Hennings, was that the kill site was not visible from where they heard the wolves howling, a distance of approximately 200 – 400 yards, (I note the evidence of Mr. Ackerman was 200 – 300 yards and the notes of Officer Hennings indicated Mr. Baillargeon told him 300-400 yards, hence the 200-400 yards) nor was it otherwise safely approachable, without first

moving to a location from where they could observe the kill site. This evidence as to the visibility of the kill site is uncontradicted.

[114] As previously pointed out, during his statement to Officer Hennings, Mr. Ackerman only stated his concerns about wolves having spoiled or scavenged the meat, and made no mention of safety concerns until his testimony at trial. I have some concern about the failure of Mr. Ackerman to mention these safety issues during his initial statement to Officer Hennings. He was not caught by surprise at the attendance of Officers Hennings and Grabowski, having been advised by Mr. Baillargeon of their attendance on the 25<sup>th</sup>. There is some merit to the argument of Crown counsel that this was an “after-the-fact” explanation produced at trial to bolster the original explanation. It seems logical to me that one would normally expect Mr. Ackerman to have stated these safety concerns to Officer Hennings on September 28<sup>th</sup>, if in fact these concerns existed on September 22<sup>nd</sup>.

[115] The fact that Mr. Ackerman and Mr. Baillargeon attended within 200 – 400 yards of the kill site on the 22<sup>nd</sup>, a travel time of approximately 40 minutes one way, points to an intent at the time of travel to retrieve the remainder of the meat. Otherwise this is a considerable expenditure of possible hunting time that could be spent with paying clients. I find that they in fact intended to retrieve the meat.

[116] To come as close as they did, given this expenditure of time and effort, and not actually attend the kill site is consistent with the guides having quickly formed the opinion, based upon their observations at the time they heard the wolves howling, that there was no reason to approach the kill site as the meat was no longer salvageable. It would also be logical to conclude as a possibility that another predator, such as a grizzly, may have been at the kill site, as in fact was true, at the latest, by September 28<sup>th</sup>.

[117] The guides had good reason to retrieve the remainder of the meat from the kill site. The meat hung at the Pole-shed was not economically feasible to transport on its own. With the addition of the remaining meat, transport made more sense, although I expect that there would likely have been some delay regardless to see if a second moose could be shot.

[118] I must ask myself, however, whether there is any merit to the additional safety explanation offered by Mr. Ackerman. It is clear that by September 28<sup>th</sup> there was a grizzly bear on the kill site. I cannot determine on the evidence how long before the 28<sup>th</sup> the grizzly may have been at the kill site. There was no evidence as to how much of the meat would likely to have been eaten by the grizzly over a given number of days after taking possession of the meat. There is also no definitive evidence as to what happened to the tenderloin, neck meat or the rib meat, whether it was eaten, on the carcass, or simply not located by the conservation officers.

[119] The evidence of Mr. Ackerman is also unclear as to when he first noticed the grizzly bear on the kill site. In his statement to Officer Hennings on the 28<sup>th</sup>, he stated that it was approximately four days after the 21<sup>st</sup>, when the weather cleared enough to see the kill site. In his testimony at trial, he stated at first that it was the day after the 22<sup>nd</sup>, subsequently in cross-examination he adopted what he said in his statement (the 25<sup>th</sup>), but in redirect he again reiterated his belief that he saw the grizzly on the site on September 23<sup>rd</sup>. Given Mr. Ackerman's other evidence regarding the inability to view the kill site from a vantage point for several days due to inclement weather, I find that it is most likely that it was not the 23<sup>rd</sup> but several days after that, that Mr. Ackerman observed the grizzly bear at the kill site.

[120] Interestingly enough, Officer Hennings' notes from his questioning of Mr. Baillargeon do not mention the spotting of a grizzly bear at the kill site. It is difficult, however, to ascribe too much weight to Mr. Baillargeon's comments at

that time. Mr. Baillargeon was clearly performing his duties under the supervision of Mr. Ackerman, and had been instructed by Mr. Ackerman to direct any questioning regarding the harvesting of the moose to him. He did not provide any written or taped statement. What we have are the notes of Officer Hennings from the conversation, which do not appear to be in a verbatim question and answer format and contain responses from a reluctant individual under directions to redirect any questioning to Mr. Ackerman. Therefore, I will not place any significant weight on what does not appear to have been said by Mr. Baillargeon. In any event, the law is clear that I cannot use the hearsay statements of the co-accused Baillargeon as evidence against Mr. Ackerman, but only against Mr. Baillargeon. (*R. v. Losing*, 2008 ABCA 140, para. 2)

[121] The same holds true for the evidence of Officer Hennings as to Mr. Baillargeon agreeing with Officer Hennings' question regarding whether he and Mr. Ackerman "abandoned" the meat at the kill site. Regardless of the fact that Mr. Baillargeon agreed with Officer Hennings' choice of words, this does not necessarily amount to an acknowledgement of "abandoning" as the commission of an offence within the legal framework of s. 32(1) of the *Act*.

[122] Regardless, I find that it is clear on the evidence that Mr. Ackerman and Mr. Baillargeon, having concluded that the meat was likely spoiled, and, giving full credit for the moment to the safety explanation advanced by Mr. Ackerman at trial for not being able to approach the kill site safely, effectively abandoned what they believed was spoiled and/or irretrievable meat.

[123] Such an "abandonment" does not necessarily constitute the commission of an offence under s. 32(1) of the *Act*. That much is clear from the Crown's position that there was no expectation that Mr. Ackerman and Mr. Baillargeon attempt to retrieve the meat after the grizzly bears had claimed it at either the kill site or the Pole-shed. A hunter or guide can abandon meat in certain circumstances without having committed an offence.

[124] That said, it is clear that the *actus reus* of abandonment has been established, in that field-dressed, edible meat was left at the kill site and not retrieved by the accused, and accordingly, the burden shifts to Mr. Ackerman and Mr. Baillargeon to demonstrate that they exercised due diligence in attempting to retrieve the meat.

[125] Dealing firstly with the possibility that wolves irretrievably scavenged or spoiled the meat, the failure of Mr. Ackerman and Mr. Baillargeon to attempt to confirm this by approaching the kill site after hearing the howling of the wolves, is clearly not an exercise of due diligence. There were no safety concerns raised in the evidence about fear of harm from the wolves themselves and the guides may well have been able to scare the wolves away with gunshots. A guide or hunter has a significant positive obligation to retrieve meat and cannot make an assumption that meat has been scavenged or spoiled without making every reasonable effort to confirm whether this assumption is true or not.

[126] It is a known fact that, generally speaking, guided hunters do not tend to take meat out with them, and it can be expensive for outfitters to retrieve and transport the meat to where it can be butchered and distributed. It is also difficult for conservation officers to monitor the activities of outfitters in remote locations. Therefore, it is fair to say that any time an outfitter does not retrieve the meat from a kill, and it becomes known, there is likely and properly going to be close scrutiny to determine whether the failure to retrieve the meat was tainted by considerations of convenience. Against this backdrop, and given the somewhat privileged position outfitting activities hold in the scheme of hunting in the Yukon, it is incumbent on outfitters and the guides they employ, for their own interests as well as that of the Yukon, to do all they can to avoid the wasting of meat. Actions based upon assumptions will rarely, and only in exceptional circumstances, meet the required threshold of diligence.

[127] This said, I have not heard any evidence contradicting the reasonableness of the belief expressed by Mr. Ackerman at trial that a predator, such as a grizzly bear, may have been on the kill site on September 22<sup>nd</sup>, or any evidence that indicates there would have been a safe way for Mr. Ackerman and Mr. Baillargeon to approach the kill site to determine whether a grizzly was there or not. Perhaps wolves and/or a grizzly bear would have been scared away by gunshots, perhaps not. There is no evidence before me as to what distance these shots would have to be fired from in order to have any such effect. It appears from the evidence of Mr. Ackerman that he was not able to determine a safe way to enter the kill site to fire shots to scare away the small sow grizzly he spotted several days after the 22<sup>nd</sup>.

[128] It appears on the evidence, other than by use of a helicopter, that the only safe way to have proceeded would have been to find a location where the kill site was visible and choose a course of action from there. On the evidence of Mr. Ackerman, Mr. Baillargeon spent some time on the 22<sup>nd</sup> and for several days afterwards trying to view the kill site but was unable to so because of the weather.

[129] However, given the comments of Mr. Ackerman's belief that the meat was scavenged and spoiled by wolves by the 22<sup>nd</sup>, I find it somewhat unlikely that he instructed Mr. Baillargeon to spend several hours each day trying to see the kill site in the interests of attempting to harvest the remainder of the meat. Mr. Baillargeon may well have spent some time trying to see the kill site each day for the purpose of determining whether there was a large enough grizzly bear to harvest at the kill site. Nothing turns on this however, as, according to the evidence of Officer Osborne, it is permissible to do so as long as the meat is not moved.

[130] In the end, what I am left with is a point between two extremes. On the one hand, had Mr. Ackerman's evidence been that he chose not to make any

further attempts to attend the kill site and retrieve the meat, solely based upon his belief that the meat had been scavenged or spoiled by the wolves, I would have no doubt that he and Mr. Baillargeon had failed to discharge their respective responsibilities and would find them guilty of having committed the offence charged.

[131] On the other hand, had Mr. Ackerman raised the issue of having a safety concern related to the possible presence of a grizzly bear on the kill site at the first opportunity to do so, being the statement he provided to Officer Hennings, I would have found there to be a more persuasive argument for acquitting the accused, notwithstanding the fact that there may have been some additional preventive methods in how the meat and/or kill site was handled.

[132] Instead, I have before me a late-offered explanation for the decision not to make further attempts to enter the immediate area of the kill site, supported by somewhat unclear evidence as to exactly what efforts were made to obtain a visual of the kill site, when it was first viewable and whether and when this was the occasion that the sow grizzly was spotted at the kill site.

[133] The one aspect of this late-offered explanation that makes it credible is that it is a completely logical safety concern to have had and one which, if it did not exist in Mr. Ackerman's and Mr. Baillargeon's minds at the time, should have. The reasonableness of such a safety concern from an objective standpoint, lends some credence to Mr. Ackerman's testimony in this regard.

[134] I could reject some aspects of Mr. Ackerman's evidence on the basis of the inconsistencies, lack of clarity of certain details and the omissions I have noted.

[135] I could also, however, consider his evidence in the context of his apparent "no nonsense" approach to the occupation of guiding he is engaged in, and view

his actions and responses accordingly. There is perhaps more conflict created than needs to exist when hunters and guides view the compliance aspect of a conservation officer's job as somehow interfering with the reality of the actual circumstances in the field at the particular time in question. Conservation officers have an important job to do in situations that often do not lend themselves to easy or straightforward investigations. At times during his testimony it seemed that Mr. Ackerman was somewhat summarily dismissive of the conservation officers' roles, both specifically in this investigation, and generally, at least insofar as to their ideas of best field practices.

[136] In looking at all of the evidence, I find that the difference between conviction and acquittal in this case is a very fine line. I am satisfied, however, if not by much, that Mr. Ackerman and Mr. Baillargeon have demonstrated due diligence with respect to the abandonment of the meat.

[137] Therefore, they are acquitted of the charges against them.

[138] These acquittals are based upon an extremely contextual view of the actions of Mr. Ackerman and Mr. Baillargeon. Had not all of the factors pointing to their positive efforts to harvest the meat been present, as well as the previous lack of any apparent negative history resulting from Mr. Ackerman's involvement with Lone Wolf, or of Lone Wolf itself, I would have found it more difficult to give Mr. Ackerman the benefit of the doubt in considering whether to accept his evidence and to find it capable of allowing him to discharge the burden upon him, and thus also upon Mr. Baillargeon.

#### Section 32(3)(b)

[139] I note that I do not consider s. 32(3)(b) of the *Act* to apply as I am not satisfied on the evidence that any meat was wasted or spoiled.

**Additional Comments**

[140] After reviewing the facts of this case, two of the recommendations for hunters in particular seem to me to be very useful. The first is that the meat be moved to a location where it would be visible from a safe distance for retrieval purposes. No evidence was adduced at this trial as to how feasible this would have been. Clearly, Mr. Ackerman and Mr. Baillargeon had to approach the kill site after the hunter shot the moose and Mr. Baillargeon left to get Mr. Ackerman. The guides had an opportunity to assess the approach to the kill site and, given that they returned to the unoccupied kill site later that day, a second opportunity to consider where they would need to leave the meat for their return the next morning. It may be that that combination of the late time, fatigue, treacherous terrain and the weather simply resulted in no consideration being given to taking such action at the time the meat was harvested.

[141] The second recommendation is to pole-flag the meat to allow for increased visibility and a better determination of whether the meat has been interfered with. This would provide a greater degree of certainty in circumstances where perhaps the meat cannot be practically moved any distance from a kill location. This is not a particularly time-consuming or difficult thing to do and would certainly add to enhancing safety.

[142] The only adverse risk is that, if not properly done, or inclement weather intervenes, the guide or hunter may be led to believe that a predator is at the site when one is not. This could conceivably result in meat being left due to an inability to safely approach the meat. I expect, however, that these occasions would be rare.

[143] In addition, and perhaps somewhat repetitively, it also seems apparent to me that some hunters and guides may wish to reconsider whether their firmly held positions as to the ineffectiveness of many of the suggestions and recommendations to deter predators and scavengers that I have referred to in

this decision, are worth hanging onto. Following these may go a long way, if perhaps not actually successfully acting as a deterrent, to satisfying conservation officers that reasonable efforts had been made by the hunter or guide to prevent scavenging.

[144] I wish to thank counsel for their cooperation and joint efforts to resolve issues and to have this trial proceed as smoothly as possible. I also wish to thank counsel for their submissions throughout the trial.

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Cozens T.C.J.