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

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1.0 Introduction

The *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* [1] (*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).[2] However, the Act and regulations[3] 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.[4] Thus, while one of the objectives of the legislation is certainly implementation of CITES, other objectives include controlling the spread of alien or exotic species and disease[5] and assisting provinces in the enforcement of their wildlife statutes and regulations.

The paper begins with a very short introduction to the Convention and then examines *WAPPRIITA* and the regulations drawing examples from the interpretive case law where available. The paper does not deal with sentencing decisions.[6]

2.0 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 closely 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" i.e. a finding that "such export will not be detrimental to the survival of the species."[7] "Look alike"

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[1] SC 1992, c 52. Prior to its adoption Canada implemented its CITES obligations through regulation under the *Export and Import Permits Act*, RSC 1985, c. E-17. See also the former Game Export Act.

[2] 3 March 1973, 993 UNTS 243, Can TS 1975 No 32 < https://www.cites.org/>.

[3] Wild Animal and Plant Trade Regulations, SOR/96-263 (WAPTR). The RIAS for the original version of the regulations is at 130 Canada Gazette Part II 1797. The RIAS describes the Act as "framework legislation". Environment and Climate Change Canada (CCC) issues an annual report on the implementation of the Act and the regulations, available here http://publications.gc.ca/site/eng/9.505775/publication.html

[4] Section 4 of the Act provides that "The 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."

[5] RIAS (n 3) at 1797. *R. v. LaPrairie*, 2003 YKTC 24 [9], a case dealing with the interprovincial transport of wood bison from Alberta to Yukon. LaPrairie was charged with an offence under s.6(3)of WAPPRIITA. The Court noted that "Although 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".

[6] 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 48, *R v Shmyr*, 2017 YKTC 53, *R v Ensor*, 2017 YKTC 2 and *R v Luah*, 2006 ABCA 217.

[7] CITES, Article IV. Environment Canada (now Environment and Climate Change Canada) is the designated Management Authority and Scientific Authority for CITES. Fisheries and Oceans Canada is responsible for CITES-

species may also be listed on 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.[8]

3.0 The Scheme of the Act

This part of the paper 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 the Act establishes. The paper then considers the case law dealing with some of the administrative powers under the Act, specifically the power to detain and the power to 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 in particular 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."[9]

3.1 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 which is listed in a CITES appendix.[10] However, the regulation-making power of the Act[11] 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 a 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.[12]

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 s.10. In this case the Regulations redefine animal and plant with respect to the different activities of *export* and *import*. With respect to *import*, the definition of plant is unchanged while the definition of

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listed aquatic species, including fish, marine plants and marine mammals. Natural Resources Canada serves as an advisor with respect to timber species.

[8] See in particular Resolution 12.3, Permits and certificates; on line <https://www.cites.org/sites/default/files/document/E-Res-12-03-R17.pdf>.

[9] WAPPRIITA Annual Report for 2015 at 2. These annual reports also contain discussion of enforcement activities and more detailed discussions of a number of examples.

[10] *WAPPRIITA*, s. 2.

[11] *WAPPRIITA*, S.21(1)(c).

[12] WAPTR, s.4.

animal is expanded to include any species of the order *Caudata* (salamander)[13] and mongoose, racoon dog and starlings, mynas and oxpeckers.[14]

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.[15]

It is of course the Crown's responsibility, if it alleges that goods are being imported into Canada without the necessary permit under s.6(2) and s.10, to demonstrate that the goods do indeed need a permit i.e. that they are a "part or derivative of" a listed animal or plant.[16] In so doing the Crown may take advantage of a presumption created by s.20 of the Regulations:[17]

> Where a person imports into Canada or exports from Canada any thing 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.

But 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*[18] illustrates that that may not be the case where the label is in a foreign language, or uses 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:[19]

> … 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 in 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, S*aussurea Costus (=Lappa)* as do the regulations.[20] 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

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[13] WAPTR, s.5.
[14] WAPTR, Schedule II.
[15] WAPTR, s.7.
[16] See, for example *WAPPRIITA*, s.6(1).
[17] WAPTR, s. 20 entitled "labelling". Note however that in *R v Kwok Shing Enterprises Ltd*, 2001 BCPC 305 counsel for the accused 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.
[18] 2001 BCPC 305.
[19] Id [5] – [6].
[20] Id [7] and WAPTR, Schedule I, Part II, Item 1.12.0.

as a Customs Inspector for seven to eight years and the other 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".[21] 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)".*[22] It may be useful for future guidance to list the shortcomings identified by Judge Low:[23]

> a) There is no evidence … whether any of the books read by these two officers are regarded as authorities on the subject;
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> b) There is no evidence as to the names of any of these books;
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> 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;
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> d) The list in Exhibit 4 states that it was compiled by Laura Merz but there is no evidence as to her capacity or role with Environment Canada;
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> 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;
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> f) The problem with the accuracy of the lists was compounded by the fact that neither Officer Graham or Cooper had any fluency in the Chinese language;
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> 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;
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> 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

[21] The Scientific Authority for Canada under CITES is either ECCC or the Department of Fisheries and Oceans.
[22] *Kwok Shing* (n 17) [40].
[23] Id [38].

> 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 s.10 from one province to another,[24] while s.7(1) requires that any provincial rules with respect to permitting should be observed as part of interprovincial transport. Similarly, s.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." Once again, the regulations expand the definitions of plant and animal on a contingent basis. Thus, in the case of s.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.[25] Similarly, the regulations expand the definition of plant or animal for the purposes of s.7 to include any plant or animal, the "export" of which from the relevant province is regulated or prohibited.[26]

The Act also (s. 8) prohibits, "subject to the regulations", knowingly being in possession of a listed species (or any part or derivative thereof):[27] 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, s.6(1) of the regulations provides that a person importing a species listed on 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*[28]. The charges under the Wildlife Act included two charges with respect to being in possession in Yukon of wildlife

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[24] WAPTR s.11 provides that a s.10 permit is not required "where all required provincial permits have been obtained".
[25] WAPTR s. 10.
[26] WAPTR, s.12.
[27] It follows from the "knowingly" that the s.8 offences requires that the Crown demonstrate *mens rea*: see *Marsland v The Queen*, 2012 SKCA 47 [30].
[28] *R v Ensor*, 2017 YKTC 1.

killed contrary to the laws of another jurisdiction (BC); in addition, the accused was charged under s.7(2) of *WAPPRIITA*. Ensor pled guilty to all of the offences.[29] 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 plead guilty to the charges under s.6(3) of *WAPPRIITA*.[30]

3.2 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.[31] Under s.13 an officer may detain "Any thing 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."[32]

3.2.1 The power to detain

The scope of the power to detain goods was examined in *Druyan v AG Canada.*[33] In that case, Druyan, a collector of Inuit art, purchased certain Inuit art items from an online auction in Denmark. The items consisted of 10 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 on 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. Section 13 of the Act provides "an officer" with the authority to detain:

> Any thing 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, may be detained by an officer until the officer is satisfied that the thing has been dealt with in accordance with this Act and the regulations.

Noting that there was no binding previous decision with respect to the applicable standard of review of the power to detain under s.13, Justice O'Keefe applied the *Dunsmuir* factors[34] concluding that they indicated a deferential standard of review. Justice O'Keefe was not swayed

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[29] 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 also charged under WAPPRIITA for transporting moose parts to Alberta which were not legally possessed in Yukon because the original hunt was illegal.
[30] *R. v. LaPrairie*, 2003 YKTC 24 [7].
[31] *WAPPRITTA*, s.12.
[32] *WAPPRITTA*, s.13.
[33] 2015 FC 705.
[34] See *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

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"[35] and where the officer was exercising powers conferred by the Act and regulations.[36] Here, Article XIV(1)(a) of the Convention expressly authorized States to take stricter domestic measures than those required by the Convention.[37] That was important in this case because *WAPPRIITA* did not expressly carry through the exemption contained in Article VII(2) for pre-Convention goods.[38] 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".[39] 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 reasons[40] 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."[41]

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.[42] 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.[43]

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. Counsel for the Attorney General argued that the officer could have concluded that Dryuan was in breach of both ss.6(1) and 6(2). Justice O'Keefe however concluded that there was no indication that the officer relied on this section[44] and furthermore there was no reasonable basis on which the officer could have concluded that there had been a contravention of the law of any foreign

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[35] *Druyan v AG Canada* (n 33) [38].
[36] *Id*.
[37] *Id*.
[38] *Id* [57]. Article VII(2) provides that "Where 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." There is a partial exemption in s.13 WAPTR but this is only an exemption for the purposes of s. 8(c) of the Act.
[39] *Id* [40] and referencing *Dunsmuir* (n 34) at para 47.
[40] Id [40] and referencing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 (CanLII) at paragraph 54, [2011] 3 SCR 654.
[41] *Id* [41] and referencing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII) at paragraph 16, [2011] 3 SCR 708
[42] *Id* [42]. CITES Conference Resolution 12.3, Permits and Certificates (see n 8).
[43] *Druyan v AG Canada* (n 33) [45].
[44] *Id* [52].

State.[45] In order for the officer to have been able to reasonably reach such a decision there should have been "at least be some evidence before the decision-maker that Denmark's laws were violated."[46] 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 …".[47]

By contrast, Justice O'Keefe was of the view that an officer could reasonably have concluded that the importation was in breach of s.6(2) of the Act. Section 6(2) requires that an importer have a permit and Druyan had no such permit. Furthermore, while s.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 notwithstanding some formal deficiencies,[48] it was reasonable for the officer not to have regard to the exemption contained in the Convention. 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."[49] Furthermore, Justice O'Keefe was of the view that the failure to provide an exemption for pre-Convention goods was perfectly consistent with the purpose of the Act. He reasoned that the decision not to create the exemption:[50]

> … 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.

3.2.2 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 any thing to which this Act applies, or there are any documents relating to the administration of this Act or the regulations" and may do

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[45] *Id* [51].
[46] *Id* [51].
[47] *Id* [52]. See by contrast *R v Clemett* (n 4) where the evidence before the Court included an Agreed Statement of Facts as well as evidence from State enforcement officials, 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.
[48] *Id* [58]; or perhaps more accurately, an officer could not reasonably have concluded that the certificate was not adequate to demonstrate pre-Convention status.
[49] Id [59] Justice O'Keefe also noted [60] the regulations (s.13(1)(a) 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."
[50] *Id* [61].

so without a warrant, except in the case of a dwelling place.[51] In exercising this s.14 power of inspection an officer may:[52]

> **(a)** open or cause to be opened any container that the officer believes, on reasonable grounds, contains such a thing;
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> **(b)** inspect any such thing and take samples free of charge;
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> **(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
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> **(d)** seize any thing 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 s.14 power of inspection was judicially considered in *R v Leong*.[53] Leong was charged with six counts of importing live corals into Canada without a s.10 permit and therefore in breach of s,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 s.14 power of inspection or in some other way. Leong was expecting a shipment of goods through 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 attended 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 the voir dire was whether or not Buchart was examining the documents based upon the power to inspect conferred by s.14(1). Judge Smith concluded that Buchart was not. Judge Smith observed that the purpose of conferring a power of inspection in s.14 and similar powers conferred by the *Fisheries Act*[54] was to permit an inspection without requiring a warrant.[55] 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)"[56] and since there was no inspection Butchart[57]

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[51] *WAPPRIITA*, s. 14.
[52] *WAPPRIITA*, s.14(1).
[53] *R v Leong*, 2014 BCPC 99.
[54] *Fisheries Act*, RSC 1985 c. F- 14, s. 49.
[55] *R v Leong* (n 53) [145].
[56] *Id*, [151].
[57] *Id*, [152] – [153].

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

3.3 The Offence and Punishment Provisions

Any person who breaches any provisions of the Act or a provision of certain designated regulations[58] or a court order under the Act commits an offence.[59] The prohibitions contained in in s.6 of the Act create strict liability offences;[60] s.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.[61]

In *R v Clemett* the accused was charged under both s.6(1) and s.8 with respect to the importation of an Alaskan brown bear that the accused had shot and killed in Alaska.[62] 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 s.6 including the breach of Alaskan and federal law.[63] Judge Van de Veen then went on to consider the defence of due diligence, acknowledging that the accused was entitled to the 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.[64] The court rejected submissions to the effect that the accused was entitled to rely on the fact that he was hunting with a licensed 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 s.6 offence.

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[58] 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.
[59] *WAPPRITTA*, s. 22.
[60] *R v Clemett*, 2016 ABPC 137 [12] & [18].
[61] *Id*, [12] & [33].
[62] *Id*.
[63] *R v Clemett*, [15] – [17]
[64] *Id* [19].

The Court concluded however that the Crown had not succeeded on the s.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."[65] 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."[66] 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.

4.0 Conclusions

WAPPRIITA is the implementing legislation that Canada relies on to fulfil its obligations under CITES. But the Act and the regulations go beyond CITES. The Act and Regulations cover additional species and they extend some of the rules and prohibition to cover interprovincial as well as 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 s.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 s.6 requires evidence that the law of another state was breached. *Druyan v AG Canada* and *R v Clemett*.
- The power to detain under s.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*.
- The power to inspect under s.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.*

[65] *Id* [33].
[66] *Id* [33].