

Precedent-setting sentencing in bear killing case

By **V. Victoria Shroff**

Law360 Canada (November 29, 2023, 2:22 PM EST) -- In November 2023, a significant wildlife case involving the execution of a baby black bear cub and their mother was handed down by the B.C. Provincial Court. This precedent-setting case highlights the importance of wild animals, Indigenous knowledge keepers and balances the objectives of sentencing in wildlife law offences



V. Victoria Shroff

In October 2021, in a small town in B.C., a mother and baby bear were up a tree in a backyard. The court found that the bears posed no risk to the accused, Ryan Owen Millar, his property or his family, yet Millar deliberately killed the black bears with bows, cross bow and arrows. Not only were the bears not aggressive, but Millar, a wildlife guide-hunter, did not first attempt to try a non-lethal alternative to scare the bears away. Instead, as Justice Alexander Wolf noted at paragraph 70: "He simply executed them." (*R. v. Millar [2023] B.C.J. No. 2140*). The hapless sow and cub suffered painful lingering deaths. The court noted at paragraph 71: "The bears did not die instantly. They were injured and were in considerable pain before they died. A number of arrows had to be deployed to 'finish them off'."

The court found that after he executed the bears, Millar then concealed their furry bodies and later lied to authorities.

Unfortunately, crimes against vulnerable wild animals are often far too easy to commit and notoriously difficult to detect. However, in this case, two tourists renting an AirBnB at the neighbouring property happened to be soaking in an outdoor hot tub, witnessed and documented the horror show on Millar's property unfold, and called the police.

Applicable wildlife legislation

Millar was charged for killing a black bear, at a time not within open season, contrary to the *Wildlife Act*, R.S.B.C. 1996 and for taking or killing a black bear less than 2 years old; or a black bear in the company of it, contrary to s. 13.7 (1)(b) of the Hunting Regulation, B.C. Reg 190/84, pursuant to the Act,

The Wildlife Act is the principal legislation in this case. Section 84(1)(b) of the Act sets out the penalties:

... (1)(b) subsections (3) and (4) apply in relation to an offence

- i. under section ... 26(1)(c)
- ii. prescribed under Section 108(3)(I)(ii)

(3) Subject to subsection (4), a person who commits an offence referred to in subsection (1) (b) is liable,

(a) on a first conviction, to a fine of not more than \$100,000 or to a term of imprisonment not exceeding one year, or both ...

Of note: To align itself with the Declaration on the Rights of Indigenous Peoples, the B.C. government introduced statutory amendments to B.C.'s *Wildlife Act* in an effort to support reconciliation, to increase collaboration with Indigenous people and to assist with wildlife stewardship in B.C.. Indigenous knowledge keepers gave salient evidence in the Millar case about the sanctity of wildlife.

After a lengthy trial, Millar was found to have killed two bears, a sow and her cub, without provocation and then lied to the authorities about it. The Crown provided thorough written submissions including statements from Indigenous elders. The court found the Crown's submissions so compelling that they were appended to the reasons for sentence and may well prove to be helpful in future wildlife offence sentencing.

Stewardship and cultural significance of black bears

Evidence provided by Indigenous Elder Dr. Barney Williams, Tla-o-qui-aht First Nation:

[56] In a statement given to the B.C. Conservation Service officer Sgt. Dan Eichstadter on Aug. 9, 2023, Elder Dr. Williams said:

Black Bear, cims, hold a culturally significant role in not only westcoast First Nation culture, but First Nation culture across Canada. These animals represent the qualities of Courage and Strength in spirit and represent the sacredness of these attributes. Their importance is reserved for leaders, where the bear dance is performed only at special occasions such as coronations of a chief, and the dance belongs to that leader. Communities do not hunt these animals because of the symbolic connection to courage and strength, and the animals hold a special connection spiritually to all members of the Nation. A family unit of animals, cims especially, is also considered sacred and teach lessons to First Nations. A mother defends her cubs from threats, teaching people to model this behaviour and protect children so that no harm comes to them. Family is important and needs to be protected so that children can be left alone to grow into strong adults. ... If someone were to kill a cims not out of necessity, they would be held accountable.

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

Blackbears are honoured and considered very important animals in the environment. Blackbears are revered as the river keepers, keeping the rivers and creeks safe, where they keep the salmon run and its required habitat safe, where salmon are a critical food source for community. Blackbears are honoured and respected for this role they assume in the environment.

Aside from noting that the killings were unprovoked, the court underlined the importance of the lives of the bears to the overall wildlife habitat:

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

A key to preserving wild animals and their habitat is to listen to Indigenous knowledge keepers. The Indigenous elders' understanding highlighting preservation, community, accountability are self-explanatory, reflecting deep knowledge, kinship and stewardship of wild animals.

Vet evidence

The B.C. conservation officer and a senior provincial wildlife veterinarian played key roles in the Millar case. The veterinarian undertook a detailed necropsy and the forensic report was filed as an exhibit.

Sentencing jail time

Laying the groundwork for sentencing, the court enumerated several aggravating factors. Millar's

actions and words were found to be deceitful, highly disrespectful to preservation and conservation of wildlife. Millar took active steps to avoid detection. He did not plead guilty or show remorse. The court found that the two neighbouring tourists who witnessed the killings were also traumatized and victimized by Millar's offences.

The detailed reasons for sentencing in the Millar case demonstrate that wild animals, habitat, preservation and conservation matters to First Nations, to society in general, and that in specific cases, fines for offenders of the *Wildlife Act* are inadequate. The court found that sometimes, a custodial sentence is warranted to have a deterrent effect, to signal that the sentence needs to accord with the culpability, moral blameworthiness of an offender's actions. Defence counsel tried to argue that a fine would suffice, and that there were no prior cases where a B.C. court imposed a custodial sentence for killing of a black bear.

The court, however, was clear why a fine alone would not suffice in this particular case:

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

Justice Wolf canvassed the case law in detail, considered the seriousness of the offence, the actions of Millar including balancing the aggravating and mitigating factors and reasoned that deterrence and denunciation would be served with a 30-day jail sentence to be served concurrently. The court found that Millar's moral blameworthiness was exceptionally high.

The sentence imposed on Millar appears to be the first time a B.C. court sentenced an offender to serve a prison term for unlawfully killing a black bear. The court further imposed a fine of \$11,000; \$5,500 per each count. Ten thousand dollars of the fine will be payable to the Habitat Conservation Trust Foundation to benefit B.C. wildlife.

A weapons and firearm prohibition was imposed for 20 years as was a prohibition on hunting for 20 years for Millar along with a seizure of his bow and crossbow.

Animals are sentient beings. The B.C. Provincial Court appears to be signalling that an offender who thinks that they can pay a fine and walk away if they get caught harming or killing wildlife is mistaken. British Columbia's prevailing legislation allows for a \$100,000 fine and up to one year in jail as potential penalties for first offences.

The court took pains to outline facts, evidence, Millar's responsibility, why jail time was required and proportionate to the gravity of the commissioned offences against wildlife. (For a detailed discussion on the Millar case, listen to my Nov. 27, 2023 radio interview on CKNW.)

'Sometimes a fine is not enough'

The court explained why:

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

[52] The message must be clear, if you kill a bear, and lie to the police and Conservation Officers, you will go to jail.

R. v. Stevikova a.k.a., the Whistler Bear case

In another recent B.C. bear case of *R. v. Stevikova* 2021 BCPC 235, also known as the Whistler bear case, the offender was fined \$60,000 after pleading guilty for placing attractants and feeding black bears in Whistler which sadly resulted in three bears being euthanized.

Stevikova's sentencing was later successfully appealed (*R. v. Stevikova* 2022 BCSC 2094). The B.C. Supreme Court engaged in an analysis of the original joint submission and lowered the offender's financial penalty.

Each case turns on its own facts, the commission of the offence and the offender. A contextual analysis is required in wildlife cases. In the Millar case, the offence was intentional killing of black bears and differs from Stevikova's actions, but the sentencing principles, particularly relating to culpability, are applicable. Overarching principles of sentencing: deterrence and denunciation are involved. It is clear that jail time is rightly reserved as a last resort as in egregious cases like this one. While the case could potentially be appealed, I believe the decision and reasons for sentence fit within the guidelines and legislation, are tailored to the facts and evidence presented in this case and send a message that wild animals are precious, to be treasured, not wantonly killed.

Communities are starting to learn about co-existing with sentient animals rather than doing what they want with no regard. (For a deeper dive into co-existence see *Why Animals Need Law*.)

Conclusion: Wild animals are sentient treasures

It is a sad fact that we are losing wild animals in Canada at an alarming rate due to human-mediated activity like habitat degradation and climate change. Protective measures and stewardship are needed to preserve, conserve and honour wildlife. Importantly, Indigenous knowledge must be considered and applied.

We have a duty to protect sentient animals using the law. "Canada's wild animals should be treasured and protected, mostly from human-caused harm. The law needs to help. Keeping Canada wild and free with an abundance of wildlife has to be more than words or touristic slogans, we need to act, or else we may end up only being able to see caribou on the back of a toonie in 25 years' time." (*Canadian Animal Law* (LexisNexis 2021) by V. Shroff)

We are beginning to see a shift where legislatures and courts are looking at offences against wild animals in a new light. The Millar case shows that sentences for offenders who execute precious, vulnerable wild animals who would otherwise be voiceless in our legal system, are changing to reflect the gravity of the offences.

V. Victoria Shroff is one of Canada's first and longest serving animal law practitioners and the longest serving in B.C. Shroff practises animal law in Vancouver at Shroff and Associates; is adjunct professor of animal law at UBC's Allard School of Law and faculty, Capilano University. Shroff is an associate fellow at the Oxford Centre Animal Ethics. Recognized locally and internationally as an animal law expert, she is frequently interviewed by media. Her book, Canadian Animal Law, is available at LexisNexis Canada. www.shroffanimallaw.com | [LinkedIn](#).

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