



Issue Date: May 3, 2022
Citation: *Cameron Wildlife Solutions v. Canada (Environment and Climate Change)*, 2022 EPTC 2
EPTC Case No.: 0021-2021
Case Name: *Cameron Wildlife Solutions v. Canada (Environment and Climate Change)*
Applicant: Cameron Wildlife Solutions
Respondent: Minister of Environment and Climate Change Canada

Subject of proceeding: Review commenced under s. 15 of the *Environmental Violations Administrative Monetary Penalties Act*, S.C. 2009, c. 14, s. 126 (“EVAMPA”) of an Administrative Monetary Penalty issued under s. 7 of EVAMPA for a violation of s. 5(a) of the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22.

Heard: In writing

Appearances:

Parties

Cameron Wildlife Solutions

Minister of Environment and
Climate Change Canada

Counsel/Representative

Trevor Cameron

Matthew Chao

DECISION DELIVERED BY:

LESLIE BELLOC-PINDER

Summary and Conclusion

[1] On March 29, 2021, Trevor Cameron (the Owner/Operator of Cameron Wildlife Solutions or “CWS”) was hired by homeowners in Sherwood Park, Alberta, to remove two birds which had become stuck in a false chimney. CWF successfully removed the birds and transported them to a veterinary clinic for care. One of the birds died at the clinic, and the other was ultimately returned to its natural habitat. The birds were Canada Geese, a species protected by the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22 (“MBCA”) and the *Migratory Birds Regulations*, C.R.C., c. 1035 (“MBR”).

[2] After investigating, a federal wildlife officer with Environment and Climate Change Canada (“ECCC”) determined CWS did not have a permit to possess the birds, contrary to s.5(a) of the MBCA. The officer issued a Notice of Violation accordingly and assessed a \$2,500 administrative monetary penalty calculated according to the *Environmental Violations Administrative Monetary Penalties Regulations*, SOR 2017-109 (“EVAMP Regulations”).

[3] The Applicant CWS seeks a review of the Notice of Violation, thereby invoking the jurisdiction of the Tribunal under the *Environmental Violations Administrative Monetary Penalties Act*, S.C. 2009, c.14, s. 126 (“EVAMPA”).

[4] The parties agree that CWS was in possession of two Canada Geese without a permit. Given the absolute liability regime imposed by s.11(1) of EVAMPA, this circumstance might in some cases end the inquiry. As many of the Tribunal’s prior decisions have emphasized, absence of intent to commit an offence, mistake of fact, good faith, or due diligence are not available defences. Further, the Tribunal has no jurisdiction to interfere with an officer’s discretionary decision to issue a Notice of Violation. As a result, the Tribunal’s review is often limited to ensuring the amount of the imposed penalty is correct and in accordance with the EVAMP Regulations.

[5] However, before the Tribunal can uphold the Notice of Violation and Administrative Monetary Penalty (“AMP”) at issue, the Minister of ECCC (“Minister”) must prove all elements of the offence, on a balance of probabilities. With reference to s.5(a) of the MBCA, this means the Minister must prove possession of one or more migratory birds, and the absence of any lawful excuse. Possession in this case is conceded and established, and this case turns on evidence of lawful excuse.

[6] The Minister cannot satisfy its burden of proof if an Applicant seeking a review can produce sufficient evidence supporting a common law defence as contemplated by s.11 (2) of EVAMPA. For the reasons set out below, the Tribunal finds the constituent elements of the common law defence of necessity are established by the evidence. The request for review is granted and NOV 9400-5977 is cancelled.

Background

[7] The evidence for this review was provided in writing. The parties agreed on the essential facts, supplemented by one Affidavit for the Minister and 2 Affidavits for CWS. Comprehensive written submissions, containing legal arguments and reference to jurisprudence, were also filed by both parties. Dates and details regarding the documents are as follows:

- a. Partial Agreed Statement of Facts dated January 18, 2022
- b. Affidavit of Jason John Cunningham dated January 14, 2022 (for Minister)
- c. Minister's written submissions dated February 8, 2022
- d. Affidavit of Kim Berscheid dated January 27, 2022 (for Applicant)
- e. Affidavit of Trevor Cameron dated January 27, 2022 (for Applicant)
- f. Applicant's written submissions dated February 18, 2022
- g. Minister's Reply submission's dated March 1, 2022
- h. Applicant's supplementary submissions dated April 5, 2022
- i. Minister's supplementary submissions dated April 5, 2022.

[8] There is little dispute about the facts giving rise to issuance of the Notice of Violation. On March 29, 2021, CWS attended at a private residence as requested by the homeowners. CWS brought equipment to gain access to the residence's false chimney and retrieve the geese and was successful in doing so. After securing the site, CWS transported the geese to Pulse Veterinary Emergency in Sherwood Park, as CWS had arranged to do following consultation with Wild North Animal Rescue and Rehabilitation. The homeowners paid CWS for its services. The following day, on March 30, 2021, CWS posted images of Trevor Cameron holding the birds in a dog crate in front of a decal on a truck with an advertisement for CWS on its Instagram page ("@cameronwildlifesolutions").

[9] Public posting of the images brought CWS's activity on March 29 to the attention of Alberta Fish and Wildlife Officer Eric Von Platten who sought information about CWS's permits. Officer Von Platten contacted ECCC Wildlife Officer Cunningham on April 28, 2021, and Cunningham commenced his investigation.

[10] Cunningham spoke with the homeowner who confirmed retaining and paying CWS to assist with removing the geese from their residence. Cunningham confirmed with Pulse Veterinary Emergency ("Pulse") that CWS brought two geese in for treatment. One died while in the care of Pulse, but the other was revived. Cunningham confirmed with the Director of Wild North Animal Rescue and Rehabilitation ("Wild North") that they picked up the live goose from Pulse and released it at Hermitage Park on April 1, 2021. Cunningham conducted a permit verification for CWS and determined that neither Trevor

Cameron nor CWS applied for or were issued permits for goose removal or relocation. As a result, Cunningham issued the Notice of Violation against CWS.

[11] The thrust of CWS's evidence is that it was appropriate, reasonable, and necessary for it to take the urgent actions it did to rescue the two geese trapped in the false chimney. Trevor Cameron's Affidavit details his communication with others and his decision-making process around whether to assist the homeowners with their request.

[12] According to his Affidavit, after being advised about the problem the homeowners were having, Cameron contacted "Edmonton Fish and Wildlife" (presumably the Alberta Fish and Wildlife District Office) to inquire about permits. He was told they do not "deal with geese." Cameron then contacted Wild North and was advised that it did not have the personnel, equipment, or mandate to attend on site or retrieve the animals. Cameron deposed that Wild North "directed" him to retrieve the birds and bring them to Pulse. Cameron deposed he had a conversation with an individual at Wild North who reassured him that "their permit" would cover CWS's activities in retrieving the birds provided they were ultimately brought to Wild North.

[13] Neither Cunningham's Affidavit nor the disclosure filed confirm that either Pulse or Wild North have a permit to possess migratory birds, but a reasonable inference may be drawn that one or both agencies do, and/or their possession of migratory birds from time to time is acceptable to ECCC. In paragraph 9 of his Synopsis, Cunningham states "Pulse Veterinary Emergency Clinic located in Sherwood Park, Alberta, is a drop-off location for injured wildlife before transferring to Wild North."

[14] Upon arriving at the residence, Cameron determined that two injured Canada Geese were stuck in a false chimney. He observed exposed screws in the walls that the birds would have contacted while falling down the chimney approximately 15 feet and noted significant blood and feathers throughout the chimney. Cameron concluded that the geese were in serious distress and needed urgent medical attention. It took approximately 90 minutes for the birds to be removed from the chimney. Cameron determined that no other nesting material or eggs were in the cavity of the false chimney, and the geese were placed in a transportation crate.

[15] Cameron deposed that the homeowners advised him the birds were "stuck in the wall of the house for two days or longer". Once Cameron assessed the situation, he viewed it as an emergency which required him to "act quickly and diligently to ensure removal of the live birds from the house in a safe manner to prevent further injury to the birds and damage to the house. The birds were in obvious distress, covered in blood with missing feathers and overall poor body condition... one of the birds died due to its condition and injuries in Pulse Veterinary care. If I had not rescued the birds from the house, they may have died in the wall of the house and would have caused even worse

property damage including but not limited to bacterial contamination from decomposition of the dead birds.”¹

Analysis and Findings

Legislative Framework

[16] The migratory birds convention is an agreement between Canada and the United States which recognizes the necessity for international cooperation to protect migratory birds from the many threats they face during annual migration. The MBCA sets out Canada’s plan to ensure conservation of the migratory bird population by regulating potentially harmful human activities within the country. Among other tools, the Act authorizes the issue of its permits to regulate activities which affect migratory birds such as hunting, agriculture, scientific research, and taxidermy.

[17] Possession of a migratory bird is broadly prohibited, as set out in the s. 5 of the MBCA below:

<p>Prohibition</p> <p>5 Except as authorized by the regulations, no person shall, without lawful excuse,</p> <p>(a) be in possession of a migratory bird or nest; or</p> <p>(b) buy, sell, exchange, or give a migratory or nest or make it the subject of a commercial transaction.</p>	<p>Interdiction relative aux oiseaux migrateurs et à leurs nids</p> <p>5 Sauf conformément aux règlements, nul ne peut, sans excuse valable :</p> <p>(a) avoir en sa possession un oiseau migrateur ou son nid;</p> <p>(b) acheter, vendre, échanger ou donner un oiseau migrateur ou son nid, ou en faire le commerce.</p>
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[18] Contravention of s.5 is an offence according to s.13(1)(a) of the MBCA with potential penalties described in s.13(2). Additionally, a violation of the MBCA is subject to the procedure in EVAMPA, which provides that administrative monetary penalties may be imposed and calculated in accordance with the formulas set out in the EVAMP Regulations.

¹ Affidavit of Trevor Cameron, para 24

[19] As is clear from s.13.09 of the MBCA below, the purposes for punishing those who violate the Act are intended to deter such conduct and promote the multi-faceted importance of migratory birds in Canada:

<p>Fundamental purpose of sentencing</p> <p>13.09 The fundamental purpose of sentencing for offences under this Act is to contribute, in light of the longstanding recognition of the social, cultural, environmental importance of migratory birds, to respect for the law protecting and conserving migratory birds and their nests through the imposition of just sanctions that have has their objectives:</p> <p>a) To deter the offender and any other person from committing offences under the Act;</p> <p>b) To denounce unlawful conduct those damages or creates a risk of damage to migratory birds and their nests; and</p> <p>c) To reenforce the “Polluter Pays” principle and to restore migratory birds and their habitats.</p>	<p>Objectif premier de la détermination de la peine</p> <p>13.09 La détermination des peines relatives aux infractions à la présente loi a pour objectif premier de contribuer, compte tenu de la reconnaissance de longue date de l’importance sociale, culturelle et environnementale des oiseaux migrateurs, au respect des lois visant la protection et la conservation des oiseaux migrateurs et de leurs nids. Cet objectif est atteint par l’imposition de sanctions justes visant ce qui suit:</p> <p>a) dissuader le contrevenant et toute autre personne de commettre des infractions à la présente loi;</p> <p>b) dénoncer les comportements illégaux causant des dommages ou des risques de dommages aux oiseaux migrateurs ou à leurs nids;</p> <p>c) renforcer le principe de pollueur-payeur et rétablir les oiseaux migrateurs et leurs habitats.</p>
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[20] The fact that permits are issued for activities that might be harmful to migratory birds (such as hunting) demonstrates that balance can be established and maintained in the complicated milieu of environmental protection. While the overall purpose of the MBCA is to protect and preserve migratory bird populations and their habitats, threats, harms, and competing interests can never be eliminated entirely. In this context, wildlife officers make decisions about how best to discharge their responsibilities and uphold the law. Often, officers encounter novel situations, and must exercise discretion while relying on their training and experience to achieve protective outcomes.

[21] The Tribunal’s review does not involve re-examining the officer’s discretion. Instead, the Tribunal focuses on the legal foundation for, and consequences of, the notice of violation. For that reason, this case turns on interpretation of the phrase “lawful excuse” and consideration of whether the offence has been proven in law.

Guidance from the Tribunal and Other Jurisprudence

[22] The Tribunal has issued several decisions interpreting the scope of its jurisdiction as a result of the absolute liability regime imposed by s.11(1) of EVAMPA.

<p>Certain defences not available</p> <p>11 (1) A person, ship or vessel named in a notice of violation does not have a defence by reason that the person or, in the case of ship or vessel, its owner, operator, master or chief engineer:</p> <p>(a) exercised due diligence to prevent the violation; or</p> <p>(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person, ship, or vessel.</p>	<p>Exclusion de certains moyens de défense</p> <p>11 (1) L’auteur présumé de la violation — dans le cas d’un navire ou d’un bâtiment, son propriétaire, son exploitant, son capitaine ou son mécanicien en chef — ne peut invoquer en défense le fait qu’il a pris les mesures nécessaires pour empêcher la violation ou qu’il croyait raisonnablement et en toute honnêteté à l’existence de faits qui, avérés, l’exonéreraient.</p>
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[23] It follows from the above provision that mistake of fact, mistake of law, good faith, or due diligence are not available defences to a Notice of Violation. (See *Hoang v. Canada (Environment and Climate Change)*, 2019 EPTC 2, *Sirois v. Canada (Environment and Climate Change)*, 2020 EPTC 6, *Krueger v. Canada (Environment and Climate Change)*, 2020 EPTC 1, *Legault v. Canada (Environment and Climate Change)*, 2021 EPTC 1.

[24] Following 11(1), the next subsection reads:

Common law principles	Principes de la common law
<p>11 (2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under an Environmental Act applies in respect of a violation to the extent that it is not inconsistent with this Act.</p>	<p>11 (2) Les règles et principes de la common law qui font d'une circonstance une justification ou une excuse dans le cadre d'une poursuite pour infraction à une loi environnementale s'appliquent à l'égard d'une violation dans la mesure de leur compatibilité avec la présente loi.</p>

[25] Section 11(2) is a reminder that any common law defence must be consistent with the overall objectives of the environmental legislation it is designed to enforce. As a result, scanning for consistency between s.5(a) of the MBCA and s.11(2) of EVAMPA is important, as is examining an Applicant's reasons for acting the way he/she did.

[26] While the terms used are not identical, it is significant that the MBCA prohibition against possession of a migratory bird is not absolute, and a "lawful excuse" might make possession acceptable. Consideration about a lawful excuse might be the same exercise as considering whether a common law defence, justification, or excuse, applies to a Notice of Violation and AMP.

[27] The Minister concedes that common law excuses or justifications can be raised in AMP proceedings but takes the position the evidence does not support any such defence in this case.² Three previous tribunal decisions have explored the prospect of common law defences such as entrapment: *Rice v. Canada (Environment and Climate Change)*, 2020 EPTC 4; *Legault v. Canada (Environment and Climate Change)*, 2021 EPTC 1; and, *Bell Canada v. Canada (Environment and Climate Change)*, 2021 EPTC 3.

[28] In *Rice*, the Tribunal found there was insufficient evidence to support the defence of entrapment but set out the process for determination of whether a common law defence might be available:

Applying the guidance of the Federal Court of Appeal in *Klevtsov (Canada (Attorney General) v. Klevtsov)*, (2018 FCA 196) this Tribunal must determine whether the constituent elements of an entrapment defence exist on the evidence before it can find the charges not proven. In other words, the Tribunal must first consider what the evidentiary and legal elements might be to establish the entrapment defence to the charge set out in the Notice of Violation. Then it must

² Minister's submissions, Page 4 para 9.

examine the evidence itself and determine if it is sufficient to satisfy the required elements.

[29] The Applicant raised several possible common law defences for the Tribunal's consideration. For reasons set out briefly below, none of the defences, nor the constitutional argument posed by the Applicant are available – except one.

Defence of Necessity

[30] Courts in Canada have considered the defence of necessity where non-compliance with law is excused by an emergency or justified by the pursuit of a greater good. Applying the defence in this case rests on the proposition that CWS's relatively brief possession of two Canada Geese, although contrary to the law, was necessary and, as a result, excusable. In this respect, the defence rests on a "realistic assessment of human weakness, recognizing that a liberal and humane ... law cannot hold people to the strict obedience of laws in emergency situations where normal human instincts, whether of self-preservation or of altruism, overwhelmingly impel disobedience." (*Perka v. the Queen* (1984) 2 SCR 232 at page 248).

[31] In *Perka* and amplified in *R. v. Latimer* (2001) 1 SCR 3, the Supreme Court of Canada set out three elements that must be present for the defence of necessity to succeed:

- (1) There must be an **urgent situation of clear and imminent peril**, where "normal human instincts call out for action and make a counsel of patience unreasonable." (*Perka* at page 251);
- (2) The accused must have had **no reasonable legal alternative** to the course of action he or she undertook; and
- (3) There must be **proportionality** between the harm inflicted and the harm avoided by the unlawful act, which is assessed using an objective standard.

[32] Before turning to the evidence applicable to each of the three elements above, a word regarding the onus of proof is warranted. While CWS has raised necessity as a defence in this case, this does not relieve the Minister of the burden to prove every element of the offence charged. CWS presented evidence indicating that the situation was urgent, and that failure to act would have further endangered the life or health of the trapped geese. The Minister must address this evidence relating to whether compliance with the law by obtaining a permit for possession of the geese in advance of their rescue was not possible on an urgent basis. The Supreme Court has provided clear guidance in this regard, in the following excerpt from *Perka* at page 258:

Although necessity is spoken of as a defence, in the sense that it is raised by the accused, the Crown always bears the burden of proving a voluntary act. The prosecution must prove every element of the crime charged. One such element is the voluntariness of the act. Normally, voluntariness can be presumed, but if the accused places before the Court, through his own witnesses or through cross-examination of Crown witnesses, evidence sufficient to raise an issue that the situation created by external forces was so emergent that failure to act could endanger life or health and upon any reasonable view of the facts, compliance with the law was impossible, then the Crown must be prepared to meet that issue. There is no onus of proof on the accused.

[33] The Minister's material pays scant attention to the practical problem faced by CWS – that obtaining a permit would have required completion and processing an application form, awaiting review by administrative personnel, and being advised about the application's outcome at least a few days later. The Minister simply submits that CWS should have obtained a permit before attending to rescue the geese but provides no evidence to support even a reasonable inference that the permit could or would have been issued immediately.

[34] In its material, the Minister did not directly address the question of how long the permit application process would have taken on March 29, 2021 or the usual time line for application processing. It also did not address the evidence provided by CWS in this regard except to submit that *ad hoc* statements or advice given by wildlife officers uninvolved in the instant case are not persuasive or binding on ECCC in this matter. The Tribunal agrees with the Minister's critical assessment of much of Kimberly Berscheid's Affidavit. That said, some emails between Mr. Cameron and ECCC Senior Permits Officer John Dunlop (with several also copied to Cunningham) are relevant and helpful. These emails were exchanged between May 10-12, 2021 and the Notice of Violation was issued and served by Cunningham on May 18, 2021.

[35] It appears Cunningham enlisted Officer Dunlop ("Dunlop") to guide Cameron through the permit application process for future use. Cameron asked Dunlop whether a permit could be obtained on evenings or weekends, if a situation such as the one he encountered on March 29 ever happened again, and Dunlop replied that "There are no blanket permits available to deal with the situation you are (were) faced with" and that an application would have had to be received in advance. Further, Dunlop advised "permitting staff are only available during normal office hours" and a "general portal" is used to submit applications.³

³ Affidavit of Trevor Cameron, emails attached as Exhibit A, dated May 10-12, 2021.

[36] Several years earlier, Cameron received an email from Dunlop answering his question about scaring migratory birds causing damage to crops or property. Dunlop replied to that question and also provided more general information about the permit process which would facilitate scaring the birds away as well as relocating or killing them, among other things. In the email, Dunlop noted that every permit type has reporting requirements and “We ask you to apply (for a permit) only when there is a reason to do so and either damage to property or threat to human health and safety are imminent or anticipated to occur. Typically, we can process permits in less than a week though it may take slightly longer when our workload is high.”⁴

[37] Based on this information, CWS’s evidence is that it could not have obtained a permit within the one or two hours between receiving the homeowners’ request to attend at their residence and arriving there to find the geese in peril. Dunlop’s advice to Cameron both prior to and after the incident giving rise to the Notice of Violation supports Cameron’s view. Finally, there is nothing in the Minister’s material, including Cunningham’s Affidavit, that demonstrates a permit could have been obtained on the same day CWS was contacted to retrieve the birds.

(1) Imminent peril or danger:

[38] Almost immediately upon gaining access to the false chimney by standing on the roof of the house, Mr. Cameron could see blood, feathers, fecal material, and two geese in distress. His observation of the birds’ circumstances and condition led to Mr. Cameron’s reasonable assessment that the geese were injured, in a fragile condition, and likely to deteriorate if not quickly removed to safety.

[39] This is a different situation than the one faced by the Applicant in the *Hoang* case noted in paragraph 23 above. In *Hoang*, a worker applying stucco to a building found a nest of baby birds, which turned out to be Northern Flickers – a migratory bird species. He removed the birds from their nest and then contacted a wildlife officer for advice on what to do next. Unfortunately, once the birds were disturbed from their nest, their chances of survival to adulthood diminished. The officer directed the worker to take the birds to a wildlife shelter, but the officer also issued a Notice of Violation. The important distinction between *Hoang* and the instant case is that, in *Hoang*, the birds were not in peril and did not need to be removed from their nest at all. The worker’s initiative in removing and relocating them was well intentioned, but not urgent. Instead, it was ill-advised and ultimately punished.

⁴ Affidavit of Trevor Cameron, email attached as Exhibit B dated August 17, 2018

(2) No reasonable legal alternative:

[40] Prior to attending at the residence, Mr. Cameron had time to consider whether he would undertake the task, and he was aware that handling or possessing migratory birds required a permit. To that end, Mr. Cameron made some calls and tried to gather information. He called “Edmonton Fish and Wildlife” and was told “we do not deal with geese.”⁵ He accessed the ECCC website to explore the process of applying for a permit online but was interrupted by a telephone call from an individual at Wild North, for whom he had previously left a message. According to Mr. Cameron, that person directed him to “retrieve the animals and have them brought to Pulse Veterinarians.” Mr. Cameron “was concerned about possession and transportation of the Canada Geese from the location (but) the representative from Wild North stated that the birds can be brought to them. (Mr. Cameron) asked specifically if their permit covered his activities and was told that it does as long as the birds are brought to them. It would cover him.”⁶

[41] These conversations fortified Mr. Cameron’s view that he was acting in good faith and with due diligence before he attended at the residence to retrieve the birds. If this was all the evidence Mr. Cameron presented, it would not have been sufficient to succeed in this review because the operation of section 11(1) of EVAMPA forecloses such an argument (as it did in *Hoang*). However, the question under this element of the necessity defence is not whether Mr. Cameron thought he was complying with the law; it is whether he had another reasonable alternative to disobeying the law. Mr. Cameron thought Wild North’s permit might be sufficient to provide the legal authority he lacked, but his assumption was incorrect. In fact, the evidence establishes there was no other legal alternative Mr. Cameron could have pursued at the time he made the decision to retrieve the geese. The evidence establishes, on a balance of probabilities, that CWS could not have obtained a permit on an urgent or immediate basis.

(3) Proportionality between harm inflicted and harm avoided:

[42] CWS contravened the law by possessing Canada Geese without a permit for up to 4 hours on March 29, 2021. Possession of the geese began when Mr. Cameron retrieved them from the residence in Sherwood Park and ended when he delivered them for veterinary care to Pulse. The harm Mr. Cameron sought to avoid was the death or continued suffering of two federally protected migratory birds and to stop the property damage their presence was creating in a private residence. Once removed from the chimney, the geese were placed in a crate and both were alive at the time of rescue. One died while receiving emergency veterinary care, but the other was revived and released into the wild a day or two later.

⁵ Affidavit of Trevor Cameron, para 5

⁶ Affidavit of Trevor Cameron, para 8

[43] Assessing proportionality objectively, the Tribunal must weigh the gravity of this offence, considering all its circumstances and context, relative to community standards or values. Using this lens, the Tribunal concludes that Mr. Cameron's actions saved one of two geese when his inaction would likely have resulted in the deaths of both. As a result, the harm avoided was tangible and laudable. Under these circumstances, the Tribunal finds there is proportionality between the harm avoided and the harm inflicted, and that community standards or values would not be offended by the Applicant's mindful decision to disobey the law to try and save the geese.

Other defences and issues raised by the Applicant

[44] CWS filed extensive material which, in addition to raising the defence of necessity, included other novel arguments. For example, Mr. Cameron argued that section 446 (1) (b) of the *Criminal Code of Canada* required him to rescue the geese to avoid prosecution for animal neglect. His Affidavit and the Affidavit of Kim Berscheid also included descriptions of telephone conversations with one or more wildlife officers well after the offence took place. Mr. Cameron and Ms. Berscheid proposed that these conversations could constitute evidence of "officially induced error" and, as a result, could exonerate CWS. These arguments, and others, lack merit and a reasonable connection to the evidence and statutory regime applicable in this matter, as counsel for the Minister ably argued in written submissions. Because the Applicant has been successful in establishing the defence of necessity canvassed above, it is not necessary for the Tribunal to deal further with these other submissions.

Conclusion

[45] In accordance with the Supreme Court's guidance regarding the availability of the defence of necessity, the Tribunal emphasizes the narrow circumstances and specific facts which have resulted in this successful review by the Applicant. The availability of this defence, and other common law defences, must be "strictly controlled and scrupulously limited" (*Perka* at page 250), because compliance with environmental laws is vital to the health of our ecosystem and society. Excused non-compliance with the Canadian environmental statutory regime must remain an exceptional and uncommon circumstance.

Decision

[46] The request for review is granted and notice of violation in 9400-5977 is cancelled.

Review Granted

"Leslie Belloc-Pinder"
LESLIE BELLOC-PINDER
REVIEW OFFICER