

SUPREME COURT OF YUKON

Citation: *Maraj v Commissioner of the Yukon Territory*,
2023 YKSC 55

Date: 20230914
S.C. No. 21-AP002
Registry: Whitehorse

BETWEEN

RAMONA MARAJ, PhD

APPELLANT

AND

COMMISSIONER OF THE YUKON TERRITORY

RESPONDENT

Before Chief Justice S.M. Duncan

Counsel for the appellant

Vincent Larochelle

Counsel for the respondent

Lesley Banton

REASONS FOR DECISION

Overview

[1] This appeal under the repealed *Access to Information and Protection of Privacy Act*, RSY 2002, c 1 (the “Act”), requires a balancing of the goals of transparency, accountability, and public education through public access to records held by the Yukon government, with the goal of preventing certain harms that could be expected to result from the unconditional disclosure of such information.

[2] The appellant, Ramona Maraj, was a carnivore biologist employed with the Department of Environment, Government of Yukon, from 2003 to 2018. Since 2018, she

has been an Ecologist Team Lead at Parks Canada Agency. She seeks GPS, VHF, and satellite collar relocation data for all caribou herds in the Yukon over their entire range, from January 1, 1980, to November 25, 2019, the date of the request. Her purpose is to write a peer-reviewed article about the management of caribou in the Yukon.

[3] The Yukon government, through the Department of Environment, refused disclosure of all the data requested based on exceptions in the *Act*. Ramona Maraj sought a review of that decision by the Information and Privacy Commissioner (the “IPC”). The IPC recommended release of all the information requested by Ramona Maraj except part of the information related to two herds for which the data was obtained by the Alaskan government and shared with the Yukon government on terms set out in Alaskan legislation. Ramona Maraj now appeals that decision under s. 59(1)(a) of the *Act*.

[4] The appellant argues that the Yukon government has not provided sufficient evidence establishing clear links between the disclosure of the information requested and the reasonable expectation of harm. The evidence of harm also lacks specificity as it does not identify clearly which part of the information requested it relates to (e.g. which herd, which government may be affected, which section of the statute is relied on). The appellant states the refusal of the Yukon government to disclose the data in the absence of a data sharing agreement demonstrates their strong desire to control the narrative around caribou management in the Yukon, which detracts from the public interest in independent analysis and research.

[5] The Yukon government offered to disclose all data requested if the appellant signed a data sharing agreement. This would require, among other things, review by the

Yukon government of any work based on the disclosed data before publication. The appellant declined this offer, as she saw it as an affront to her academic and professional independence.

[6] I conclude that disclosure of collar data for all caribou herds in the Yukon could reasonably be expected to harm the conduct of relations between the Yukon government and Yukon First Nations, other Indigenous governments, and the government of Alaska (s. 20(1)(a)(iii) and (iv)). This exception applies to data from 2004 to 2019, because of the 15-year limit in s. 20(3).

[7] I also conclude that disclosure of collar data of all caribou in the Yukon could reasonably be expected to damage or interfere with conservation measures for caribou, which are endangered, threatened, or vulnerable animal species in the Yukon, under s. 20(1)(b). This exception applies to all collar data collected, including data earlier than 2004, beginning in 1980 if such data exists, as long as it was collected in collaboration with Yukon First Nations or other Indigenous government or organizations.

Background

[8] The appellant made the following request for information in the custody and control of the Yukon government, Department of the Environment, on November 25, 2019:

All GPS, VHF and satellite collar relocation data, in entirety, for the caribou/caribou herds in Yukon and including trans-boundary movements into neighbouring jurisdictions. This data may span 1980 to present. This should include collar fix data for any caribou, over the herd's entire range. The information is contained by the Department of the Environment in two to four excel spreadsheets, in two to 20 excel workbooks. I am requesting these spreadsheets in full. Fulfillment of this request should include any data that was provided from the collar through

Argos, Iridium or other remote transmission, as well as through manual download. This will include but not be limited to the following fields: ... If other fields are available, please include those in this information request. I am requesting the information in electronic format (e.g. the excel spreadsheets). Timeline: January 1, 1980 to present [emphasis added].

[9] On December 17, 2019, the Records Manager of the Yukon government advised Ramona Maraj that her request for access to those records was refused on the following bases:

- Section 17(1) – the disclosure of the information could reasonably be expected to harm the financial or economic interests of a public body or the government of Yukon or the ability of that Government to manage the economy, including trade secrets of a public body or the Government of the Yukon; scientific or technical information that belongs to a public body or to the Government of the Yukon and that has, or is reasonably likely to have, monetary value.
- Section 20(1), (2) and (3) – the disclosure of the information could reasonably be expected to harm the conduct of relations between the government of the Yukon and the government of Canada or a province or territory; a Yukon First Nation government or a governing body of a band under the *Indian Act*, or other aboriginal authority or organization; the government of a foreign state, or harm the conduct of negotiations relating to or arising from aboriginal self-government or land claims settlements; and this information must not be disclosed without the consent of Executive Council. Section 20(1) does not apply to information in a record that has been in existence for 15 or more years other than information in a record in respect of unfinished negotiations relating to aboriginal self-government or land claims settlements.
- Section 21(b) – the disclosure of information could reasonably be expected to result in damage to, or interfere with the conservation of a species of animal that is endangered, threatened or vulnerable in the Yukon or in any one or more regions of the Yukon.
- Section 24(1) – information must not be disclosed that would reveal third party scientific or technical information; supplied implicitly or explicitly in confidence, the disclosure of which could reasonably be expected to result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied.

[10] The appellant requested a review by the IPC on January 10, 2020, under s. 48(1)(a) of the *Act*. The IPC attempted unsuccessfully to settle the matter. The IPC then conducted an inquiry during which they received significant submissions from both parties. On March 22, 2021, the IPC released her inquiry report under s. 52 of the *Act*.

[11] On April 19, 2021, the Yukon government, through the deputy minister of the Environment, sent a letter to the IPC, stating it needed to consult with its government partners about the IPC recommendations. Because of the territorial election held on April 12, 2021, it could not do so until the new government was sworn in. The deputy minister wrote he would be providing more information about the IPC recommendations as soon as possible. The new government was sworn in on May 3, 2021. By May 14, 2021, no further information had come from the government about the IPC recommendations. Ramona Maraj appealed to this Court under s. 59(1)(a) of the *Act*. The Yukon government was deemed to have refused to follow the recommendations of the IPC.

Appeal Process and Objections to Evidence

[12] Section 60 of the *Act* sets out the process for an appeal. The Supreme Court may conduct a new hearing and consider any matter that the IPC could have considered. The Court may examine any record under control of the public body, ensuring precautions are taken in the examination of documents or receiving submissions not to disclose information at issue. There is no further guidance in the *Act* for the conduct of an appeal. Section 60(4) provides that the Court may make rules of procedure for the conduct of an appeal under this section, and in the absence of a rule

on any matter, a judge may on application give directions on how the matter is to be dealt with. No rules of procedure have ever been created by the Supreme Court.

[13] In deciding an appeal, the Supreme Court determines whether or not the public body is authorized or required to refuse access. The Court may confirm the public body's refusal to give access to the requested records, or order access to all or part of the records.

[14] Here, no directions on procedure were sought by way of application. Both parties agree this Court is not required to defer to the recommendations of the IPC or the decision of the Yukon government. The parties agree there is no doubt that the *Act* allows the Court to conduct a new hearing and consider evidence and information that the IPC could have considered.

[15] However, counsel for the appellant urges this Court to exercise its discretion and impose restrictions on the evidence proffered by the Yukon government on this appeal. Counsel says all of this evidence was available at the time of the IPC inquiry and there is no reason why the Yukon government should be allowed to file it now. In addition, counsel for the appellant objects to the multiple new affidavits from the Yukon government. Counsel argues that the affiants' subjective opinions, vague assertions, and new reasons for refusing to disclose the information appear to form part of a strategy contrary to the spirit and purpose of the *Act*, that is, to provide a speedy and efficient resolution of information requests. The appellant says the IPC Report is a complete and thorough answer to all the arguments raised by the Yukon government.

[16] I decline to impose restrictions on the evidence submitted on this appeal. Counsel for the appellant advances no rationale for the restrictions requested other than

it could and should have been provided earlier and the IPC recommendations provide a complete answer to the appeal. I agree it would have been preferable for the Yukon government to have provided the new evidence to the IPC for her consideration. In particular, the evidence in support of the s. 20(1) exception – harm to relations with other governments – would have been helpful at an earlier stage. The filing of fourteen new affidavits from the Yukon government for this appeal was surprising. However, the *Act* specifically allows for the introduction of new evidence on an appeal as long as the IPC could have considered it. As a result, I impose no restrictions or limits on the evidence presented by the parties at this appeal. I note that the appellant provided three new affidavits on this appeal that do not appear to have been provided to the IPC.

[17] The Yukon government objected to an affidavit filed by the appellant from Dr. Troy Hegel, who worked as the ungulate biologist at the Department of Environment, Yukon government from 2008 to 2018. Dr. Hegel is the husband of the appellant. This was confirmed orally at the hearing by counsel for the appellant, after it was raised orally by counsel for the Yukon government, and in her written submissions. None of Troy Hegel, Ramona Maraj, or her counsel disclosed this relationship earlier.

[18] This relationship should have been disclosed in advance of the hearing by the appellant or her counsel. Although Troy Hegel appears to be a reputable scientist, the existence of the relationship and failure to disclose it means I give his affidavit little weight. I note that some of the content is repeated in the other affidavits. Much of his affidavit consists of his personal opinions and observations derived from his experience as an employee of the Yukon government.

[19] Due to the lack of clarity in some of the affidavits about which herds they refer to and which sections of the *Act* the affidavits relate to, counsel for the Yukon government filed a guide at my request after the hearing setting out those details. The appellant had no objection. I have relied on this guide for the purpose of these reasons.

Matters not in dispute

[20] The appellant has conceded that any information related to the Nelchina, Fortymile, and Chisana herds supplied by the government of Alaska is no longer at issue. She accepts that Alaskan legislation prevents disclosure of collar information collected and shared by Alaska.

[21] The appellant agrees that the collar data requested is scientific or technical information for the purpose of deciding whether the exceptions in the *Act* apply.

Legal Principles

[22] The purposes of the *Act* are set out in s. 1. Generally, they are to make public bodies more accountable and to protect privacy and personal information. Personal information is not an issue in this case. Other relevant purposes of the *Act* include giving the public a right of access to government records; specifying limited exceptions to the rights of access; and providing for an independent review of decisions made under the *Act*.

[23] The jurisprudence interpreting access to information statutes across the country is consistent in that it provides the exceptions to disclosure must be limited and specific and interpreted narrowly.

[24] This Court in *Branigan v Commissioner of the Yukon Territory*, 2004 YKSC 79 ("*Branigan*") at para. 37, concluded that in conducting a new hearing under the *Act*, the

principles and procedures of the *Act* shall be followed. I agree with those reasons; not to follow the principles of the *Act* might result in appellate decisions based upon entirely different reasons from those of the IPC, leading to greater confusion and uncertainty in the interpretation and application of the *Act*.

[25] The burden of proof on an appeal lies with the Yukon government, where it has refused an appellant's request for access to a record (s. 54(1)). Section 54 applies to a review under s. 48 by the IPC. In keeping with the approach in *Branigan* of following the logic of the *Act* on appeal where the *Act* is silent on an issue, I conclude this burden of proof also applies on an appeal under s. 59(1)(a).

[26] The statutory exceptions to disclosure relied on by the Yukon government in this case provide the rationale for non-disclosure as harm or damage that "could reasonably be expected to" result. Similar language is found in other access to information statutes across the country. Courts have concluded that this standard is between a possibility and a probability. To meet this standard the public body must produce "detailed and convincing evidence to establish a reasonable expectation of probable harm" (*Ontario (Ministry of Transportation) v Consulting Engineers of Ontario* (2005), 50 CLR (3d) 189 (Ont CA) at para. 36). Further, the public body must show a "clear and direct connection between the disclosure of specific information and the injury that is alleged" (*Lavigne v Canada*, 2002 SCC 53 at para. 58).

Context

[27] There are many different caribou herds in the Yukon. Excluding the Nelchina, Fortymile and Chisana herds because they are not in issue in this case. The herds include the Porcupine, the BC and Yukon, the Yukon, and the Boreal. The BC and

Yukon caribou herds and the Yukon caribou herds consist of a number of different caribou. All are members of the Northern Mountain sub-population and are Woodland Caribou sub-species. They are referred to in the affidavit evidence as follows:

- BC and Yukon herds include the Liard Plateau, Little Rancheria and Swan Lake herds, as well as the Southern Lakes caribou which are Carcross, Ibex, Atlin, Laberge.
- Yukon herds include Aishihik, Bonnet Plume, Clear Creek, Coal River, Ethel Lake, Finlayson, Hart River, Horseranch, Klaza, Kluane, Labiche, Little Salmon, Magundy, Moose Lake, Pelly, Redstone, South Nahanni, Tatchun, Tay River, Wolf Lake.

[28] The Yukon government has responsibility pursuant to s. 18(1)(m) of the *Yukon Act*, SC 2002 c. 7, for the conservation of wildlife and its habitat in the Yukon (other than a federal conservation area). The Yukon government exercises this responsibility through the *Wildlife Act*, RSY 2002, c 229. Wildlife is a public resource. The Yukon government must carry out its duties in the public interest, including the interests and rights of Yukon First Nations who have a constitutional right to hunt, local resident hunters, wildlife viewers, outfitters, environmentalists, farmers, eco-tourism operators (*Yukon Big Game Outfitters Ltd v Yukon*, 2022 YKSC 31 at para. 4).

[29] There are 14 Yukon First Nations. Eleven of them have Final and Self-government Agreements (“Final Agreements”), also referred to as modern treaties. All Final Agreements contain the provisions set out in the Umbrella Final Agreement negotiated by the Council of Yukon First Nations on behalf of the Yukon First Nations

with the governments of Canada and Yukon and finalized in 1993. In addition, each Final Agreement contains provisions specific to that First Nation.

[30] The land in the Yukon is divided into traditional territories of each Yukon First Nation, including those without Final Agreements. The self-governing First Nations all have settlement land within their traditional territory, where they may exercise full governance responsibilities. Yukon First Nation members have the right to harvest wildlife for their needs without limitation on numbers or time of year, within their traditional territories, on their settlement land, and on Crown land. Restrictions may only be imposed for reasons of conservation, public health or public safety, using the processes set out in the Final Agreements. For those Yukon First Nations without Final Agreements, the Yukon government is required to consult with them about any contemplated restrictions or other government actions with the potential to affect that First Nation detrimentally.

[31] The objectives set out in Chapter 16 – Fish and Wildlife – of the Final Agreements include: ensuring conservation in the management of all fish and wildlife resources and their habitats; to preserve and enhance the culture, identity and values of Yukon First Nations; to ensure the equal participation of Yukon First Nations with other Yukon residents in fish and wildlife management processes and decisions; to guarantee the rights of Yukon First Nations to harvest.

[32] Each Yukon First Nation has one or more caribou herds within their traditional territory. Many of the caribou herds range through more than one traditional territory and there may be several herds in each traditional territory. Some of the caribou in the Yukon migrate across borders with Northwest Territories, British Columbia, and Alaska.

Consequentially, there are Indigenous governments outside the Yukon with asserted traditional territory in the Yukon who have an interest in these transboundary caribou herds. The Inuvialuit in the Northwest Territories have provisions in their Final Agreement relating to caribou. The governments of British Columbia, Northwest Territories, and Alaska have shared responsibility with the Yukon government and Yukon First Nations over the transboundary caribou herds.

[33] The Yukon does not have legislation designating wildlife whose population is threatened or at risk. The federal *Species at Risk Act*, SC 2002, c 29 (“SARA”), has designated some of the Yukon caribou as herds of “special concern”. The IPC in her report accepted that caribou in the Yukon were either vulnerable or threatened.

[34] Several agreements providing for caribou management pre-date the Final Agreements and remain part of the caribou management regime. For example, the Porcupine Caribou Management Board (the “PCMB”) is a co-management board established under the Porcupine Caribou Management Agreement (“PCMA”), included as Annex L of the Inuvialuit Final Agreement. The members of the PCMB are nominated by Tr’ondëk Hwëch’in First Nation, the First Nation of Na-cho Nyäk Dun, the Vuntut Gwitchin First Nation, the Gwich’in Tribal Council, the Inuvialuit Game Council, the Government of Canada, and the governments of the Northwest Territories and the Yukon. These governments are the parties to the PCMA. The PCMB works closely with Renewable Resource Councils created under the Final Agreements and the Hunter and Trapper Committees created under the Inuvialuit Final Agreement, as the primary instruments to manage local renewable resources. This is to ensure as partners in the caribou research program they are involved in all aspects of caribou research and

monitoring. The duties of the PCMB include reviewing scientific and technical information related to the management of the Porcupine Caribou Herd, recommending the development of Porcupine Caribou Herd research proposals and the need for further data collection, assisting with co-management and conservation, and providing recommendations to the Minister on any matter affecting the Herd.

[35] Another caribou management tool pre-dating the Final Agreements is the International Porcupine Caribou Board, established by a 1987 Agreement between Canada and the United States. The purpose of this international treaty is to conserve the Porcupine Caribou Herd and its habitat through international co-operation and co-ordination. The Board members include members from the Government of Canada, the Yukon government, the Northwest Territories government, the PCMB, the United States federal government, the government of Alaska, the Inupiat Peoples, and the Gwich'in People in the United States.

[36] Some Final Agreements contain specific provisions related to caribou management. For example, under Schedule B to Chapter 16 in the Tr'ondëk Hwëch'in Final Agreement a working group and management plan were established for the Fortymile Caribou Herd. The Fortymile Caribou Herd Harvest Management Plan is a co-management instrument that allows for the Tr'ondëk Hwëch'in and the Yukon government to coordinate harvest management for the herd, based on the objectives in Chapter 16. Although data from the Fortymile Caribou Herd is not at issue in this case, I reference this to illustrate the importance of co-operative caribou management by the inclusion of the Management Plan in the Final Agreement.

[37] Another caribou management committee more recently established (2018) is the Southern Lakes Caribou Steering Committee (“SLCSC”), a partnership of nine governments: Champagne and Aishihik First Nations, Carcross/Tagish First Nation, Kwanlin Dün First Nation, Ta’an Kwäch’än Council, Teslin Tlingit Council, Taku River Tlingit First Nation in British Columbia, the Government of Yukon, the Government of British Columbia, and the Government of Canada. This committee is working to create a management plan for caribou in the Southern Lakes region, including the Atlin, Carcross, Ibex, and Laberge herds. The SLCSC evolved from the Southern Lakes Wildlife Committee, established in 1993 for the purpose of the recovery of the Southern Lakes herds.

[38] These agreements, treaties and management plans are examples of the co-management of caribou among the various governments within and outside the Yukon. Where formalized agreements do not exist, there are ongoing processes and procedures that have been established among the Yukon government, other governments, and Yukon First Nations to implement co-management.

[39] The primary tools used to manage caribou populations are population monitoring and harvest management. Caribou herd information, including location data, calving grounds, known migration patterns, population estimates and censuses, and harvest information form part of the Yukon government’s engagements, consultations, and conversations with Yukon First Nations and Indigenous governments.

[40] Much of the data necessary for caribou management is obtained through collaring of caribou. Data obtained from collars placed on caribou helps in the following ways:

- determination of herd distribution at various times of year;
- movement analysis including movement corridors, behavioural responses to disturbance, calving location identification;
- habitat modelling – assists in developing predictive models based on animal use and avoidance to evaluate the suitability of habitats;
- survival analyses – monitoring the fates of collared animals for survival/mortality rates;
- planning – including regional land use planning, herd-specific management planning, herd-specific range assessment, and/or evaluation of project-specific and cumulative effects to herds in areas proposed for development;
- communicating information and/or study results to partners and the public.

[41] Technology has evolved over the years of collar use since the 1990s. Currently, close to live location updates from satellite GPS collars are received. Collar data can show the precise location of the collared caribou. From those precise locations, patterns may be discerned, as individual caribou are often representative of the movement of groups of animals.

[42] Collars are usually purchased and deployed by the Yukon government for caribou herds within the Yukon. In the case of transboundary herds into Alaska, British Columbia, and Northwest Territories, collar purchases and deployment are shared among the various governments. Yukon First Nations do not purchase or deploy collars.

[43] Collar data can be accessed only by those who are given secure access by governments collecting the data. Location data available through collar data is shared

by the Yukon government where there is a formal or informal data-sharing agreement with the requesting party.

Analysis

General

[44] There is a reasonable expectation of harm from disclosure of the information requested because of the breakdown of trust in the relationships between the Yukon government and the Yukon First Nations who participate in the co-management of all the caribou herds in the Yukon. There is also a reasonable expectation of a breakdown of trust between the Yukon government and Indigenous governments outside of the Yukon such as the Inuvialuit in the Northwest Territories and with the government of Alaska if the information is disclosed. The information collected, including collar data that discloses specific locations, is shared in confidence during the discussions among governments, the various First Nations and other entities involved in caribou management throughout the Yukon. There are serious implications of its public release to the ongoing co-management relationship among various governments and the First Nations. If this data is disclosed, the evidence demonstrates that co-management cooperation and information sharing will be compromised (s. 20(1)(a)(iii) of the *Act*).

[45] Disclosure of this information could also reasonably be expected to result in damage to, or interfere with the conservation of caribou, as they have been found to be threatened or vulnerable throughout the Yukon. Once the co-management relationship is compromised and loses functionality, then conservation is at risk. Successful conservation depends on robust and complete sharing of the best information possible. Without an open, sharing relationship amongst the co-managers, the best information

will not be in the hands of those responsible for the caribou management. Without the best information, the best decisions about planning, development, harvesting, and habitat will not be made, and conservation efforts may suffer (s. 20(1)(b) of the *Act*).

Evidence in support of exception in s. 20(1)(a)(iii) and (iv)

[46] The following affidavit evidence supports the harm to the conduct of relations between the Yukon government and Yukon First Nations governments or other Indigenous governments, and the government of Alaska.

[47] Kelsey Russell, ungulate biologist (caribou) at the Department of Environment, who works primarily with the Northern Mountain and Boreal herds, deposed:

19. Our Regional biologists especially work hard to collaborate, communicate, and include community interests in the work we do. Caribou collaring programs are always discussed with partners in communities, including First Nation governments, Renewable Resource Councils, and others. Often, it takes many years to build and maintain these relationships and develop trust between partners. Our partners in turn share information and knowledge with us that informs our management decisions.

[48] The development of the relationship plan for the Southern Lakes herds is one of the goals of the SLCSC and is focussed on the relationships between caribou and people and among the parties to the planning process. In a letter from the SLCSC attached to Kelsey Russell's affidavit in response to Ramona Maraj's request, the Committee wrote that the caribou collar data held by the Yukon government:

was collected to support the ongoing caribou recovery program, a collaborative undertaking since 1993. ... The relationship and trust between the parties is paramount to the future of the planning process as well as caribou in the Southern Lakes. ...

The information request made by Ms. Maraj and the subsequent response by YG also raises concerns about the

security of other sensitive information shared with YG through the SLCSC process. ...

The SLCSC Guiding Principles from our agreed-upon *Protocol and Procedures* document stipulate that “Steering Committee members will have equal access to the best available and relevant information, promoting the meaningful participation of all Parties, while respecting the confidentiality of sensitive information”. ...

[49] The SLCSC recommended formal data-sharing agreements be entered into with YG and had no objection to Ms. Maraj receiving the data requested as long as she signed a data-sharing agreement.

[50] Alexander Oakley, Deputy Naa Shaade and long serving member of the Teslin Tlingit Council (“TTC”), Executive Council and General Council, deposed that TTC has been participating in the Southern Lakes Wildlife Coordinating Committee, and subsequently, the Southern Lakes Caribou Coordinating Committee, for several decades. He explained that joint management, cooperation and information sharing by the numerous partners, including Yukon government and First Nations, is critical to achieving common caribou conservation goals. The Southern Lakes Caribou Recovery program was established in 1993 with the cooperation and support of six Yukon First Nations, the Council of Yukon First Nations and the governments of Yukon, British Columbia and Canada. TTC General Council resolutions in 2009, 2014, and 2018 contained provisions supporting actions by all partners to help conserve and rebuild caribou populations in the Southern Lakes region. In addition to the Southern Lakes caribou, there are several other herds within TTC traditional territory included in the collar data request, including Wolf Lake, Little Rancheria/Swan Lake, and Pelly.

[51] Alexander Oakley deposed:

2. If the Court compels the release of the caribou collar data that has been requested by the appellant, the effectiveness of any current and future co-management initiative or government to government process would be challenged due to a lack of confidence that the Yukon Government (YG) is able to adequately protect the sensitive and confidential information TTC shares with YG.

...

11. The precedent that will be set by the release of the caribou collar data is very concerning for two imminent Final Agreement-based and Self Government Agreement-based projects in which YG will be a partner:

a) moose management planning [in which] TTC has collected ... local and Traditional Knowledge of moose distribution and hunting patterns, ... [and]

b) Regional Land Use Planning [for which traditional knowledge has been collected]

[52] Joseph Tetlich is the Chair of the PCMB for the last 27 years, also serving as a member of the International Porcupine Caribou Board, (“IPCB”) representing the interests of Porcupine Caribou User Communities in the Yukon and Northwest Territories. He deposed that disclosure of the collar location data requested for the Porcupine Caribou Herd would be a breach of trust and therefore harmful to the relationships between the government of Yukon and Porcupine Caribou User Communities¹ and would negatively impact relationships among the government parties to the PCMA, part of the Inuvialuit Final Agreement. Collar data is collected, along with other research and monitoring data, to inform the PCMB’s recommendations and ultimately the management decisions made by the parties to the PCMA. Recommendations to government made within the co-management context “helps

¹ Dawson, Mayo, Old Crow, Inuvik, Aklavik, Fort McPherson, Tsiigehtchic, and Tuktoyaktuk

ensure that all knowledge sets are brought together and properly contextualized before they are utilized”. Joseph Tetlichi explained that proposed research projects requiring collar data are vetted and managed by the Porcupine Caribou Technical Committee, who attend each PCMB meeting to provide and receive advice, consistent with the PCMB’s tasks under the PCMA. In this way the PCMB guides required research and monitoring on the herd, including levels of engagement with communities and the PCMB itself.

[53] Joseph Tetlichi deposed:

16. Releasing collar data without these important steps [described above in para 52] harms the co-management system which is centred on and only possible in the context of trust among members ...

17. Releasing the data to the applicant [sic] means that this data could be available publicly without the context and appropriately informed interpretations of the co-management Parties and User Communities. The release of sensitive data without consent of the Parties to the PCMA jeopardizes the relationship between Government of Yukon and the other Parties of the PCMA going forward.

...

19. Circumventing the processes established under these land claims-based regime has an imminent risk of damage to long-cultivated relationships with other Parties to the PCMA and to the co-management structure itself, including the function of the PCMB going forward.

...

36. The PCMB has had significant participation in regulatory processes associated with oil and gas leasing in the calving and post-calving grounds of the PCH [Porcupine Caribou Herd] for many decades. This includes the development and dissemination of information, and ongoing communication efforts to help ensure critical habitats are protected. The application of properly contextualized information to this process is paramount and necessary to minimize and mitigate the public dissemination of misinformation. The loss

of our ability to ensure information that is properly contextualized and rigorous will lead to increased confusion and deterioration of trust in relationships ...

...

40. Releasing data collected for collaborative management purposes would not uphold the commitment under the PCMA and the many land claims that rely on the PCMA to effectively integrate Indigenous people, their traditional and cultural values, and their unique perspectives into decision-making related to wildlife management by ensuring Parties maintain shared authority in decision-making around confidential and sensitive management issues, including the application of caribou satellite collar data and interpretations which consider the fuller context in conjunction with that data.

[54] Brenda Butterworth-Carr, Executive Director of Tr'ondëk Hwëch'in ("TH")

Government deposed there are numerous caribou herds within TH traditional territory subject to the appellant's request, including the Porcupine, Hart, Clear Creek, and Klaza herds. She wrote:

2) If the Court compels the release of the data that has been requested by the Appellant, I believe it will cause numerous harms, including: jeopardizing the willingness of TH to collaborate with the Yukon Government ("YG") on wildlife management and conservation in the future; ...

...

4) ... TH views such government to government partnerships as imperative in managing and maintaining healthy caribou populations. However, these collaborative efforts, and the ability of TH and YG to effectively manage and sustain caribou populations, are at risk if information shared between TH and YG is made public as TH will be compelled to reassess what if any, information or data it can share with YG if such data is at risk of being shared with the public.

[55] Jennifer Smith is the chairperson of the Wildlife Management Advisory Council

(North Slope), a co-management board established under the Inuvialuit Final

Agreement to provide advice to the ministers on all matters relating to wildlife policy and

the management, regulations, and administration of wildlife, habitat and harvesting for the Yukon North Slope. She deposed that the release of the collar data would be harmful to the relationships between the Yukon government and the Inuvialuit people and their governance bodies, as well as the Community of Aklavik, the Aklavik Hunters and Trappers Committee (established under the Inuvialuit Final Agreement) and the Inuvialuit Game Council. The data is collected through a joint decision-making process, to inform management decisions. Jennifer Smith wrote:

13. Releasing the data without the co-management context would be harmful to the relationships in the co-management system. Trust is implicit to the relationship and to an effective co-management system. Releasing the data to the applicant means that this data could be available publicly without the context and interpretations of the Co-management Parties and agencies. The release ... jeopardizes the relationship between Yukon government and Inuvialuit going forward.

14. The release of the data that has been collected under a land claim-based co-management system would circumvent the processes established under the Inuvialuit Final Agreement (IFA), and it risks damage to long-cultivated relationships with Inuvialuit management and co-management partners in the Inuvialuit Settlement Region.

[56] Michael Sutor, North Slope and Migratory Caribou biologist for the Department of Environment, Yukon government, is the principal biologist responsible for working with Dawson City, Old Crow, Aklavik, Fort McPherson, Tsiigehtchic, Inuvik and Tuktoyaktuk, and the primary technical advisor to several co-management bodies, including the PCMB. His office works on three migratory herds – Porcupine, Fortymile, and Nelchina caribou herds that cover the eastern half of Alaska, the northern half of the Yukon and into the Northwest Territories. The following paragraph applies to the

Porcupine Caribou Herd only in this case, as information about the Fortymile and Nelchina herds is no longer at issue. He deposed:

23. Data collected from collared caribou in my purview is frequently used for management/stewardship, education, research, and knowledge sharing.

...

40. The release of data will damage intergovernmental relationships with many other agencies, ...

...

63. ... [Alaska Department of Fish and Game] has very clear mandates that that data [they share] not be released publicly as such a release may be a breach of their State statutes.

[57] Douglas Vincent-Lang, the Commissioner of the Alaska Department of Fish and Game has responsibility among other things for overseeing management of wildlife populations throughout Alaska. He deposed that 1/3 of the GPS data and 90% of the VHF location data for the Porcupine Caribou Herd, 33% of the VHF location data for the Chisana Caribou Herd, and 95% of aerial survey data (derived from collars) for the Fortymile Caribou Herd is obtained from the Alaska Department of Fish and Game (“ADF&G”). The following comments apply to the data from the Porcupine Caribou Herd only as the other herds are not in issue in this case. He deposed the release of the ADF&G collected data or other data collected cooperatively with the Yukon Department of Environment will:

- Result in the loss of a functioning partnership between our governments and cause a significant increase in financial, logistical, and staff requirements to the Yukon Department of Environment and ADF&G to achieve the same goals.
- Violate Alaska laws.
- Violate the international Agreement between the Government of Canada and the Government of the

United States of America on the conservation of the Porcupine Caribou Herd.

- Prevent ADF&G from sharing information in the future.
- Significantly and adversely impact the management and conservation of the Porcupine Caribou Herd and Chisana Caribou Herd by restricting the information that can be shared by ADF&G with our Canadian partners.

[58] The Yukon government states that it co-manages all herds in the Yukon in partnership with Yukon First Nations.

[59] The appellant disputes this characterization of co-management, saying the ultimate responsibility for wildlife management rests with the Yukon government and in the event of a disagreement with others that have interests in wildlife management, they have the final word. The appellant says the boards and committees referenced by the Yukon government's affiants are advisory or voluntary and do not necessarily represent the views of First Nation or Indigenous governments. In the appellant affiants' view, based on their experience as wildlife biologists, Indigenous communities and First Nations governments do not object to the public release of collar data.

[60] While these assertions arise from the affiants' many years of experience as wildlife biologists, the appellant provided no evidence directly from First Nations people or government representatives who work currently and regularly in wildlife management that contradicts the evidence provided here by the Yukon government.

[61] The Yukon government submitted three affidavits from members of Yukon First Nations and seven affidavits from Yukon government officials who work directly with Yukon First Nations and other Indigenous government representatives. The affidavits of the public servants described the processes they engage in, showing the collaborative

and cooperative relationship related to caribou management. All the Yukon government affiants expressed their concerns about the public release of collar data and its expected detrimental effect on their relationship with the Yukon First Nations in the management of wildlife.

[62] The appellant's submissions downplay the existence and effect of the Final Agreements both in the Yukon and in the Northwest Territories, especially Chapter 16 of the Yukon Final Agreements. It includes the objectives of honouring the harvesting and fish and wildlife management customs of Yukon First Nations and the provision for the Yukon First Nations' ongoing needs for fish and wildlife, as well as guaranteeing their rights to harvest. The responsibility of the Yukon government under the *Wildlife Act* to manage wildlife must be seen in the context of the modern treaty relationship created by the Final Agreements. The Supreme Court of Canada in *First Nation of Nacho Nyäk Dun v Yukon*, 2017 SCC 58, has described the modern treaties in the Yukon as models for reconciliation, intended to foster a positive and mutually respectful long-term relationship among the signatories (the First Nation government, the federal government and the Yukon government) for governance purposes:

[10] ... This framework establishes institutions for self-government and the management of lands and resources. ...

[63] In *First Nation of Na-Cho Nyäk Dun v Yukon (Government of)*, 2023 YKSC 5, this Court stated:

[86] Further, meaningful participation by Yukon First Nations in the management of public land and resources in their respective traditional territories is one of the purposes of the Treaty. It is a benefit obtained by Yukon First Nations as a result of the negotiated compromise.

[64] For those Yukon First Nations without Final Agreements, there is a legal obligation on the Yukon government to consult them about government action with the potential to detrimentally affect the exercise of their rights in their traditional territory. Appropriate and effective consultation may result in decisions that accommodate concerns expressed by First Nations about effects of the proposed government action on their rights. In this way, their voices and concerns are incorporated into management decisions by the Yukon government.

[65] The concern arising from the appellant's information request is the effect of the release of the collar data on the ongoing co-management relationships, built on trust and confidential information-sharing over many years. The fact that the Yukon First Nations do not directly fund or collect collar data is not relevant to this finding. The Yukon First Nations contribute other kinds of information, including traditional knowledge, necessary for the purpose of herd management, including collection of collar data. While disclosure of traditional knowledge is not at issue in this request, the evidence shows its ongoing disclosure by Yukon First Nations to the Yukon government may be at risk if the collar data is disclosed. As noted from the evidence, all information from the Yukon First Nations related to wildlife management (not only caribou) is shared due to the established trust relationships between governments. If those trust relationships are damaged, it could detrimentally affect other information sharing for wildlife management. Thus, release of the collar data can reasonably be expected to harm those relationships because that data is shared and discussed in a confidential context along with other data. As noted by Alexander Oakley at para. 7 of his affidavit:

First Nations are indeed data collectors and need to be confident that they can share pertinent information and data

with the YG without worrying that such information will be disclosed to others. The objectives of any co-management group cannot be met if partners are not able to trust each other.

[66] The Yukon government's description of wildlife management as co-management with First Nations reflects the reality of the imperatives of the new relationships created by the modern treaties. The evidence provided by the Yukon government is detailed and convinces me there is a reasonable expectation of harm to the conduct of relations between the Yukon government and Yukon First Nations governments, *Indian Act* band governments, and the Inuvialuit government, if collar data is disclosed. This also applies to the collar data collected in the context of the co-management work of the Porcupine Caribou Herd through the PCMB among the Alaskan government, the Yukon First Nations, the Inuvialuit, and the Yukon government.

[67] This exception applies to data or information that is 15 years old or less. In this case this means data between 2004 and 2019. The starting date of the access request in this case is 1980. I will address below the data that may exist between 1980 and 2004.

[68] The Yukon government also argued at the hearing that this exception applies because the Executive Council has not given its approval to the requested release of data as required by s. 20(2), if s. 20(1) is found to apply. However, counsel for the Yukon government confirmed that the request for approval was never made to the Executive Council because of the initial refusal of the request for access. As a result, I will not consider the application of this subsection.

Evidence in support of exception in s. 21(b) – damage to or interference with the conservation of a species of animal that is endangered, threatened, or vulnerable

[69] The first determination under this section is whether caribou in the Yukon are endangered, threatened, or vulnerable. In the absence of territorial legislation designating species in these terms, the Yukon government has relied on SARA as well as the designation of the caribou herds by the Committee on the Status of Endangered Wildlife in Canada (“COSEWIC”), a national independent committee of wildlife experts and scientists, who advise the Government of Canada to ensure wildlife species will continue to be assessed using the best available scientific and Indigenous traditional knowledge.

[70] The Northern Mountain population of woodland caribou (which are all of the BC and Yukon and Yukon herds) are listed as Special Concern under the SARA. This means a wildlife species that may become a threatened or an endangered species because of a combination of biological characteristics and identified threats.

[71] The Boreal population of woodland caribou is listed as threatened under SARA, meaning a wildlife species that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction.

[72] Classification definitions by COSEWIC include:

- endangered – an animal species facing imminent extirpation or extinction;
- threatened – an animal species that is likely to become endangered if nothing is done to reverse the factors leading to its extirpation or extinction;

- special concern – a wildlife species that may become threatened or endangered because of a combination of biological characteristics and identified threats.

[73] Vulnerable is not defined by COSEWIC but, as the IPC noted in her inquiry report, vulnerable is defined in the Oxford online dictionary as “exposed to the possibility of being attacked or harmed.” The IPC concluded that vulnerable for the purpose of s. 21(b) of the *Act* means an animal species that may become threatened or endangered because of a combination of biological characteristics and identified threats. I adopt this definition.

[74] The IPC further found that the Porcupine Caribou Herd and the Boreal Caribou Herd are threatened animal species in the Yukon. She found the BC and Yukon and the Yukon Caribou herds, also referred to as the Northern Mountain caribou, and including the Southern Lakes Herd, are vulnerable. I adopt this characterization. All caribou included in the appellant’s request for data are either threatened or vulnerable species under s. 21(b).

[75] The following affidavit evidence supports the reasonable expectation of damage to or interference with the conservation of the caribou.

[76] Joseph Tetlichy wrote that it is his belief the release of the requested data will be harmful to the caribou herd itself (along with intergovernmental relationships and future research). He deposed:

23. The harm caused to [the intergovernmental relationships] by the release of data could result in a loss of support for collar programs through the loss of social license, the loss of funding, and the impedance of specific methods, including the capture and collaring of Porcupine Caribou. This would result in the loss of what the PCMB considers critical data

that informs work planning, research priorities, and management decisions. ...

25. Data for the PCH is essential to manage the PCH. It contributes to harvest allocations, conservation planning, protected area development, regulation of industrial activities, and more. If support, including funding, is no longer provided for its collection, there would be serious harm to the PCMB's ability to effectively fulfill its management goals, and ultimately it would impact the Minister's ability to implement conservation as required under the PCMA.

37. It is the view of the PCMB that research, including research utilizing caribou collar data, should be guided by the land claims bodies most familiar with the data, the PCH, its landscape and its habitat. Analyses in the absence of these attributes and well-established collaborative procedures will lead to incomplete or erroneous conclusions and the release of information that is devoid of essential context that is required to draw accurate conclusions. The PCMB has witnessed outcomes like this throughout its many decades of operation.

[77] Along the same lines, Brenda Butterworth-Carr deposed:

11) ... TH is concerned about harms to all of these herds [Porcupine, Nelchina, Hart, Clear Creek, and Klaza] that would result from the release of the requested information. Collar location data may direct licensed and/or illegal hunters to important TH hunting areas and may displace subsistence hunters.

13) If the Court compels the release of the caribou collar data that has been requested by the Appellant, TH would reluctantly recommend that all collars be removed immediately and no new collars placed. While removal of collars would impede informed decision-making regarding wildlife management, in TH's view the release of caribou collar data to the public would result in unacceptable risks to caribou herds that enter the TH Traditional Territory and to TH Citizens' Aboriginal and Treaty Rights and interests.

[78] Jennifer Smith echoed the concerns of Joseph Tetlich when she wrote that the harm caused to the intergovernmental relationships by the release of the data could result in funding no longer being provided for data collection for the PH.

19. Data for the PCH is essential to manage the herd. It contributes to harvest allocations, conservation planning, protected area development, development activity and more. If money is no longer provided for its collection, there would be serious harm to the jurisdictions' ability to manage the herd.

[79] Michael Suitor wrote that the loss of the trust relationship among the co-managers would result in a loss of access to data which is used extensively in research seeking to advance knowledge of management requirements. He provided examples of how that data is used: planning for the Recommended Dawson Region Land Use Plan, including the identification of special management areas, special management direction, general management direction, assessment of land use applications such as mining projects, and land use authorizations. The purpose of the data is to avoid or mitigate the effects of such projects on migratory caribou. The data also fulfills the requirements laid out in harvest management plans. Michael Suitor concluded that the inability to collect data or restrictions on collection of this data will result in less knowledge of migratory caribou needs, threatening conservation of the herds he works with.

[80] Alexander Oakley wrote that the TTC is very concerned about harms to all of the herds within its traditional territory resulting from the release of requested information.

[81] The appellant argues that the effect on conservation of caribou through increased harvest pressure by the release of collar data, especially historical data, is not significant. This is because maps of the general location of the caribou and their high use areas and densities are regularly updated and publicly released; caribou ranges are

not consistent from year to year and in fact their movements are often unpredictable; hunting and harvesting is controlled by permits and can continue to be regulated if release of collar data increases harvesting success rates; there is little evidence of poaching or illegal hunting in the Yukon; the collared caribou are females who are often in different locations than the males. The appellant argues that the radio-collar data would be of no use in locating a caribou for harvesting purposes.

[82] The appellant states not only are the effects of disclosure of collar data on conservation of the herds insignificant, but any concern is outweighed by the benefit to wildlife management in general through the public release of data. The appellant points to other jurisdictions where publication of radio-collar data on animals has not harmed conservation but the transparency and accountability have improved wildlife management by allowing independent analyses and increasing the standard of research.

[83] I agree with the appellant that the Yukon government has not provided convincing evidence that historical collar data will impede conservation efforts to threatened or vulnerable caribou through harvesting pressure. And while recent and virtual real time collar data (through GPS) may increase harvest success rates, the robust permitting regulatory regime in the Yukon is a powerful protective measure against overharvest.

[84] The reasonable expectation of damage to or interference with the conservation of the caribou through disclosure of collar data arises from the concern that the relationships among the co-managing parties will be detrimentally affected, resulting in a failure of parties to share information with the Yukon government necessary for

managing the herds, including and especially conservation efforts. The evidence from the Yukon government affiants is clear that this outcome is more than possible. Without data and other shared information from all the parties with responsibility for co-management, there is a risk that successful conservation will be compromised.

[85] Not only could disclosure of the collar data result in the withdrawal of First Nation support for obtaining data through collaring but it could also affect the ongoing exchange of information and research, because of a fear among First Nations of continuing disclosure of confidential data. This would in turn compromise the effectiveness of wildlife management, including conservation.

[86] The Yukon government has provided sufficient detailed and convincing evidence that connects the disclosure of information requested to a significant risk of interference with the conservation efforts for the caribou in the Yukon. This exception does not apply to the Nelchina, Chisana, Fortymile herds. While there is currently a ban on hunting the Southern Lakes Caribou, information is continuously being collected for their ongoing recovery.

[87] There is no statutory time limitation to the exception under s. 21(b) of the *Act*. It applies to all data regardless of the year it was collected. However, because the risk of harm is inextricably connected to the danger to the relationships among the co-managers of caribou, this exception cannot be applied until the co-management relationships began. This could vary amongst the herds, depending on when the Final Agreements or other co-management agreements were entered into. If data were obtained in the absence of a co-management regime, then this exception cannot apply.

[88] There is evidence that collaring of caribou in the Yukon did not begin until the 1990s. No submissions were made by the Yukon government on the date collaring began, or the dates that co-management began. It will be up to the Yukon government to determine when the collar data began to be collected, and whether it was done in the context of co-management with First Nations or other governments. It may be that if there is collar data between 1980 and 2004, that was not collected in the context of co-management or in cooperation or consultation with Yukon First Nations or the Inuvialuit or any other transboundary Indigenous governments or people, it should be disclosed.

No evidence to support s. 17(1)(a) and (b)

[89] Section 17(1)(a) and (b) requires a finding that the disclosure of information could reasonably be expected to harm the financial or economic interests of the Yukon government, including technical information of the Yukon government that has monetary value.

[90] The Yukon government argues that collaring costs money and without relationships with other governments such as Alaska and British Columbia, they would incur more costs of having to do more collaring without funding support from other jurisdictions. Further there may be financial loss or gain to outfitters as a result of release of data showing density or lack of density within their concession. Some concessions may be abandoned or not pursued if the released data shows a small number of caribou in that concession area.

[91] I am not persuaded that this is detailed convincing evidence of reasonable expectation of harm to financial or economic interests. While there may be some increase in costs if the sharing of information was reduced, this is speculative and there

is no evidence that these costs would be significant enough to harm the economic or financial interests of the government. Effect on outfitters is not a direct effect on the financial or economic interests of the government. Outfitters perform their own aerial surveys of their concessions to obtain information about location and density of the animals. The data that is publicly released shows the general density and location of the herds in particular areas already, including within outfitters' concessions. The connection between the potential loss of outfitter concessions and financial harm to the government is highly speculative and would not be a significant loss of revenue to the government even if it occurred. The one-time cost of a concession under the *Wildlife Act* regulation is \$1,400, the annual cost is \$140, and an annual operating certificate is \$75.

No evidence to support s. 24

[92] This exception is the mandatory exception not to disclose information that would reveal scientific or technical information of a third party that is supplied implicitly or explicitly in confidence, the disclosure of which could reasonably be expected to result in similar information no longer being supplied to the public body when it is in the public interest that similar information continues to be supplied.

[93] Section 24 applies to the collar data collected by the government of Alaska for the transboundary herds, as to disclose would be a breach of their statute. This information is no longer at issue in this case. The question is whether section 24 applies to any other data, in particular, from the third party government of British Columbia.

[94] In the case of transboundary herds between Yukon and British Columbia, the collars were purchased and deployed by either the Yukon government or by the

government of British Columbia. If the access to information request does not involve the disclosure of information from a third party (that is, the government of British Columbia), then s. 24 does not apply.

[95] The appellant questions the evidence provided by the affiants from the government of British Columbia. Their affidavits state that the collar data collected by British Columbia for the Yukon and BC transboundary herds, like all other herds in the Skeena or Peace regions, are not routinely or proactively disclosed by the British Columbia government because of concern that it could reasonably result in damage to or interfere with the conservation of the caribou herds. The affidavits are silent on whether the collar data would be provided if requested under British Columbia access to information legislation. The appellant states that in British Columbia the law, practices and procedures allow this information to be provided on request through access to information.

[96] One of the British Columbia affiants also wrote that in his view the data could be categorized as Secure Data and Information, the disclosure of which poses a substantive risk to government programs and activities. However, as noted by the appellant, information about caribou is not listed as Secure Data and Information by the government of British Columbia on a publicly available website. There is no evidence that the British Columbia affiant in this case has the ability to authorize such a categorization.

[97] Counsel for the Yukon government did not respond directly to these arguments. The Yukon government provided no explanation about either the British Columbia access to information law, practices and procedures, or the absence of information

about caribou on the list of Secure Data and Information. Counsel's response instead was that the appellant's arguments were a baseless attack on the integrity of the affiants from British Columbia.

[98] As a result, the Yukon government has not met its burden with respect to data generated and shared by the British Columbia government to show there is detailed and convincing evidence in support of harm reasonably expected to occur from disclosure, and a connection between the harm and the disclosure.

[99] I agree with the appellant that the only application of s. 24 is to the data from the Alaskan government and this has been conceded by the appellant.

Conclusion

[100] The appellant deposed that she initiated this appeal because of her dedication to the conservation of wildlife and her belief that open wildlife data is the gold standard to ensure that conservation research is rigorous, transparent, and depoliticized. The appellant believes that the underlying concern of the Yukon government, and specifically the department of Environment is "about losing control over their narrative." She did not elaborate on what this narrative is or could be. The data sharing agreement offered to her by the Yukon government in exchange for disclosure of the data requested was not acceptable to her because it excluded certain data ordered by the IPC to be disclosed, and it would allow the Yukon government to review any resulting research papers before publication. This potential outcome offended the appellant's view that there should be room for alternative narratives and scientific debate through public disclosure of data.

[101] Although never articulated, these statements suggest an underlying conflict between the appellant and the Yukon government about how wildlife management is conducted in the Yukon. It appears that this litigation is an extension of that conflict and a desire on the appellant's part to change what she views as a power imbalance caused in part by non-disclosure by the government of scientific or technical information.

[102] It is true that one of the purposes of the *Act* is to provide open access to data to maintain accountability and transparency. This must be balanced however, with the second purpose under the *Act*: if disclosure of that data can reasonably be expected to cause harm, more than possibly but less than probably, then the disclosure should not be made.

[103] It is unfortunate that the affidavits most relevant to the exceptions under s. 20(1) that I have found apply here were not provided to the IPC or the appellant earlier. Those affidavits describe the negative impact on Yukon First Nations and other government partners of sharing this information. The Yukon government evidence and submissions have persuaded me for the above reasons that this exception and the s. 21(b) exception apply.

[104] In conclusion, sections 20(1)(a)(iii) and (iv) apply to prevent disclosure of collar data between 2004 and 2019.

[105] Section 20(1)(b) applies to prevent the disclosure of collar data between 1980 and 2004, if it exists and was collected in the context of a cooperative collaborative relationship between the Yukon government, and Yukon First Nations or other Indigenous governments.

[106] There is insufficient detailed and convincing evidence for ss. 17(1)(b), 20(1)(a)(i) and (c), or 24(1) to restrict disclosure.

Costs

[107] There shall be no costs in this application. Although the Yukon government has been substantially successful, this is an appeal under the repealed *Act*, in which the process favoured the Yukon government in this instance. Their ability to bring new evidence on appeal that the IPC did not have a chance to consider in making her decision and the appellant was unable to respond to earlier, changed the nature of the case. The appellant's motivation for this appeal was reasonable, given the IPC's decision mostly in her favour, and the overarching public importance to the legitimacy of government that transparency and accountability facilitated by access to information provides. Each party shall bear their own costs.

DUNCAN C.J.