

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Caldwell

REX

v.

AARON FLORIAN

Appearances:
Kelly McGill and
David McWhinnie
Vincent Larochelle

Counsel for the Territorial Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] Mr. Florian is charged with violating s. 32 of the *Wildlife Act* ¹ (the “*Act*”). This section prohibits the wastage of meat from big game animals hunted in the Yukon Territory.

[2] A review of the *Act* makes it clear that it is directed at wildlife management, conservation, and the regulation of hunting, trapping and outfitting activities in the Territory. *R. v. Heynen* cites the objectives of hunter safety and wildlife conservation. ²

¹ RSY 2002, s. 229

² 2001 YKSC 534 at para. 9.

Section 32, The *Wildlife Act*

[3] The charge reads as follows:

That Mr. Florian “did, between the 31st day of July, 2022 and the 4th day of October, 2022, at or near Whitehorse, Yukon, being a person in charge of big game animals, did allow meat for those animals to be wasted contrary to section 32 of the Wildlife Act RSY 2002, s. 229”.

[4] Section 32 reads as follows:

32. Waste of meat

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

32(2) For the purposes of this section, "meat" does not include the hide, head or viscera of a game bird, big game animal, or small game animal.

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

(a) fed to dogs or other domestic animals, or to wildlife in captivity;

(b) destroyed or to become spoiled;

(c) abandoned;

(d) used for bait; or

(e) left in the field without being properly dressed and cared for to prevent the meat from being scavenged or spoiled.

[5] Section 36 defines possession:

36 Possession defined

(1) For the purposes of this Act, a person has anything in his or her possession if the person has it in their personal possession or knowingly

- (a) has it in the actual possession or custody of another person; or
 - (b) has it in any place, whether or not the place belongs to or is occupied by the person, for the use or benefit of that person or another.
- (2) For the purposes of this Act, if one of two or more persons, with the knowledge and consent of the rest, has anything in his or her custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

[6] Both parties agree that s. 32 is a strict liability offence. The burden rests on the Crown to prove the offence beyond a reasonable doubt; however, there is no requirement for the Crown to prove *mens rea*, otherwise known as intent. The doing of the act makes out the offence but it is open to the accused to then avoid liability by demonstrating that they took all reasonable care in the circumstances to prevent the commission of the offence.

Non-Controversial Facts

[7] Mr. Florian is an American citizen and resident who owns an outfitting operation in the Yukon. He is a man in his fifties who has participated in big game hunting since he was a teenager. He began working in the hunting industry in the United States when he was in his early twenties. In his thirties, his work life shifted course and he began working in Manhattan in the consulting and food retail business.

[8] He returned to the hunting industry in 2011 when he had the opportunity to acquire Yukon Stone Outfitters which operates Concession #15. In 2022, he purchased a second concession, Concession #19, from Mr. Neil Cosco.

[9] Mr. Florian is in the business of guiding hunters who come to the Yukon to hunt big game, predominantly moose and sheep. A great deal of money is involved. The clients mainly come from out of the territory, especially from the United States. On average they pay \$37,000 US for guided trips that last anywhere from ten to fourteen days. Many are trophy hunters though Mr. Florian stated that his clients express an increased interest in keeping the meat. A moose can yield 500 pounds of meat. Clearly an American client cannot transport 500 pounds back to the United States when they are flying as a passenger on a commercial jet.

[10] Mr. Florian purchased a “reefer unit” (“the reefer”) for the 2022-23 hunting season. He stored the reefer on Mr. Spenner’s property. The reefer is a converted shipping container that is equipped with refrigeration equipment which allows the reefer to be used as a large refrigerator or freezer. The reefer has doors at one end and the equipment is contained at the other end.

[11] As I understand it, the term “reefer” or “reefer unit” is applied both to the entire shipping container storage facility and to the installed unit which is the refrigeration and heating mechanism.

[12] The reefer was not functioning properly. It was not cooling to the degree intended by Mr. Florian when he purchased the unit and was malfunctioning at the time the conservation officers inspected the reefer and seized some of the meat stored inside.

[13] The officers found hanging animal quarters, and six plastic totes with lids on. The officers saw cut up moose meat inside the totes when they removed the lids. They seized the totes, transported them to their office on Burns Road in Whitehorse, and stored them in the office's freezer unit.

[14] It is the condition of that meat that is the subject of this case.

The Issues

[15] The primary issues are:

(a) Did Mr. Florian commit the prohibited act of wasting big game meat?

In this case, the focus is on s. 32(3)(b), allowing meat to spoil which the *Act* deems wasted;

(b) If he allowed the meat to spoil, did he take all reasonable steps to prevent this from occurring?

[16] The defence also raises a preliminary issue of possession which I will deal with briefly at the outset.

Possession

[17] The defence argues that Mr. Florian did not “possess” a dead big game animal.

As I understand the argument, Mr. Larochelle, on behalf of Mr. Florian, is submitting that only the hunter who killed the animal can be found in possession, and that possession only relates to possession in the field.

[18] I do not accept the argument. Mr. Larochelle inserts his own limited definitions of the various terms in order to argue that Mr. Florian cannot be in possession. For example, he argues that “dead big game animal” as stated in the *Act* means carcass which, if I follow correctly, means the entire animal intact. In this case, the meat has been skinned and cut up. No authority is cited for the proposition that a carcass or dead body of an animal ceases to exist as such once it has been divided into pieces.

[19] Further, there is nothing in the *Act* which explicitly limits possession to the person who shot the animal, nor does the *Act* limit possession to possession at the harvest or kill site. If the Yukon legislature had intended to impose such limitations, no doubt it would have made those limitations explicit.

[20] As Mr. Larochelle points out, statutory interpretation requires that the provisions be read in the context of the *Act* as a whole, bearing in mind the scheme of the *Act* and the object of the *Act*. I agree that the *Act* is not directed towards food safety, but it is directed toward the wildlife conservation, management, and the regulation of outfitting operations in the territory. To hold that an outfitter’s or concession owner’s responsibility to prevent wastage ends once the dead animal is removed from the kill site, or once it is cut into pieces, would be contrary to the clear intentions of the *Act*.

[21] Most of the limited cases in this area deal with meat that is found in the field. It is an accepted fact that the greatest risk of wastage occurs in the field. Those facts, however, do not lead to the conclusion that the *Act* is limited to meat prior to its removal from the field.

[22] Mr. Larochelle argues that extending the possession requirement to individuals other than the hunter in the field risks subjecting to prosecution an individual who threw away half a moose burger, or an individual who carelessly dropped a moose steak on their kitchen floor. It is quite a leap, in my view, to equate hunters in the field to an individual who purchased a moose burger at a drive-through or a careless cook in a Whitehorse kitchen. It is not such a leap to include concession owners (“owners”) who take physical control of their hunter clients’ big game trophy animals. Further, if any such case were to be brought against the home cook or moose burger purchaser, I am certain that the de minimis defence would be applied by the Court.

[23] It is clear from the evidence of the conservation officers and from Mr. Florian’s own evidence that there were numerous pieces of dead big game animals, both on and off the bone, which were stored in pieces in Mr. Florian’s reefer unit and that he was the individual who was managing and overseeing the storage of this meat. He was clearly in possession as defined by the *Act*.

The “Wasting” Requirement

[24] Wastage of meat can occur in various ways. Under the legislation, certain acts deem wastage to have occurred. In this case, the focus is on spoilage.

[25] I will outline the evidence I found relevant and make my findings of fact.

[26] Overall, I found all of the witnesses in this case to be credible. This is not a credibility case; instead, it is a matter of applying the law to the evidence which has been put forth.

[27] I heard from three conservation officers, an electrician, the former outfitter and owner of Concession #19, a veterinarian, two friends of Mr. Florian, and Mr. Florian himself. There were more similarities than differences in their evidence.

[28] I will treat the evidence of the conservation officers (“CO”s) as a package. They were consistent with one another and, as already noted, I found them credible overall. On October 3, 2022, the officers decided to inspect Mr. Florian’s reefer unit. I do not know what provoked the inspection.

[29] CO Thurmer described seeing blood coming from under the doors of the reefer. He could smell a strong, sour odour. That odour was stronger once the doors were opened. The thermometer at the entrance read 3-4 degrees Celsius. The reefer was dark inside, so they used flashlights to inspect it.

[30] There were hanging quarters in the reefer that were not seized. The focus became six plastic totes that were sealed and contained cut up meat. All three conservation officers described the meat in similar terms. It was dull, pale, with a strong sour odour and some slime. Parts were yellow-green. CO Thurmer described it as the worst meat he had seen in his eight-year career. CO Vandecamp testified that he saw white mold spots on some of the meat though CO Koss-Young did not see any mold.

[31] Dr. Michelle Thompson is a veterinarian who was employed in 2022 in the Animal Health Unit of the Yukon Department of Environment as the Program Veterinarian. She was qualified as an expert in animal health and slaughter, edible tissue handling and preservation, and abattoir sanitation and operations to minimize food safety risks.

[32] Dr. Thompson testified to a recoil reaction when the bins were brought into the Conservation office back bay area. CO Vandecamp testified that both he and CO Koss-Young had the same reaction when they opened the totes after removing them from the reefer unit. Dr. Thompson also testified to small white foci spots and the slime.

[33] I find as a fact that the meat did emit a strong, sour, “off” odour when the totes were opened. I also accept as fact that there was some discolouration, some small spots of mold, and some slime on the meat. I find, however, that the most striking feature was the unpleasant, sour odour.

[34] Mr. Florian also testified to slime on the meat though he felt it could be dealt with by way of a diluted vinegar bath and trimming. He testified that he felt bad upon seeing the meat in the totes once they were removed by the officers, and that it was not in the condition that he would have liked. He said he would not have donated the meat in that condition but, crucially in my view, he testified that he would have kept it so that he, his friends and family could eat it.

[35] I was shown photographs of the totes containing the seized meat. Some were taken from a distance to capture all of the totes in a single image, and others were taken close up to show details of the meat. Much was made of these photos during the course of the trial, particularly on the part of the defence. There was a great deal of focus on what was or was not obvious in the photos in terms of slime, liquid, foci/mold and discolouration.

[36] I did not find the photos particularly useful. The photographs were not good quality. Photographs often do not accurately reflect colours of objects. In a case such

as this, in which we are speaking of gradations of colour, I do not draw much from the presence or absence of certain colours. It was difficult to tell from the photographs if slime was present and the nature of the white spots were difficult to discern. The officers and Dr. Thompson testified to mold or foci but at least two of the witnesses, including one of the conservation officers, agreed that certain white spots on the meat could have been moose hair. I find as a fact that it is impossible to tell from the photos what was portrayed as the zoom-in quality of the photographs was too poor. The photographs did reflect meat that appeared wet or moist.

[37] The photographs, however, did illustrate the amount of meat that was seized, how it was stacked in the totes, and the size of the cut portions.

[38] Dr. Thompson testified to the role of freezing, cooling and the impact of humidity in the preservation of meat. She explained that spoilage occurs along a continuum, resulting from three main mechanisms: bacterial growth, oxidation, and tissue breakdown that progresses over time. She noted that spoilage begins as soon as an animal is killed.

[39] She also testified to the pseudomonas bacterial count present in the sample that was sent to a laboratory. The pseudomonas levels were beyond the upper detection limit of the tests.

[40] Mr. Larochelle submits that Dr. Thompson's evidence presented "significant and critical credibility concerns". He contends that the doctor was both biased and lacked impartiality. I totally disagree with these submissions.

[41] Instead, I found Dr. Thompson to be thorough and appropriately careful in her answers. She often paused to both consider the question and formulate her answer. Semantics can be extremely important in court proceedings and even more so in the area of expert evidence. There were a number of occasions during which her evidence was repeated back to her in cross-examination that deviated subtly from her original wording. She testified over a three-day period. The nature of the cross-examination would have demanded intense concentration on her part and must have been exhausting. Her caution was understandable.

[42] I found Dr. Thompson's evidence very useful on the overall issue of meat storage and spoilage. Her testimony regarding the biological mechanics of spoilage was detailed and clear.

[43] Her evidence on the meaning of the specific pseudomonas bacterial counts was less helpful but Dr. Thompson never put herself forth as an expert in microbiology. She was clear when she felt that questions were outside her realm of expertise. Her inability to answer questions regarding the microbiological details and ramifications of the pseudomonas counts do not undermine her credibility nor her expertise. Instead, her willingness to admit her lack of detailed knowledge in that area reflects that she conducted herself appropriately by not overstating her expertise.

[44] Mr. Florian obtained a court order for the release of roughly 35 to 40 pounds of the meat seized. The returned meat was in one frozen portion that was sawed from the frozen meat in the Conservation office freezer. CO Vandecamp testified that the total seized meat including the totes weighed 501 pounds.

[45] Stacey's Butcher Shop processed the meat and returned it to Mr. Florian in five packages which included a package of trimmings. Mr. Florian then turned this meat into various dishes which he and his friends consumed. Photos of the finished products were filed in evidence. There were photos of a pot roast, tourtière, sausages, tacos, and carpaccio. The meat was prepared and eaten on various occasions, including a final occasion with six guests present. It is an agreed fact that no one became ill from eating the meat. One of the diners, Mr. Warren Holland, testified that the meat tasted fine. Mr. Florian testified that the meat tasted great.

Was the Meat Spoiled and thus Deemed Wasted?

[46] There is surprisingly little legal precedent or guidance on the subject of spoilage under the *Act*. Further, the *Act* does not define spoilage.

[47] It is not my role to put forth a comprehensive definition of spoilage nor will I attempt to do so. I simply assess whether it has been proven that the meat in this case is spoiled.

[48] The question of whether it was spoiled is much more difficult than it would appear at first blush. The evidence presented at trial makes it clear that there is no definitive line separating spoiled meat from unspoiled meat. Further, as noted by Dr. Thompson, spoilage is a process that occurs on a continuum. In fact, she testified that the spoilage process begins as soon as an animal is killed yet no one is contending that the meat of an animal that has just been killed is spoiled as that word is used in s. 32 of the *Act*.

[49] It is clear to me that whether meat is “spoiled” under the *Act* requires a contextual analysis, to use a phrase much favoured by the appellate courts of late. This assessment must be made in the context of both the purpose of the *Act* and the harm that s. 32 is intended to prevent.

[50] Judge Faulkner in *R. v. Koser*³ noted at page 3 that a very high standard is imposed upon outfitters and guides because “they have been given a very considerable privilege to use wildlife resource”. Wildlife conservation and management objectives also dictate a high standard. Wildlife must be treated with a great deal of respect. Section 32 is directed towards those ends. Wastage is the violation; meat spoilage is merely one way in which wastage can occur.

[51] I appreciate that s. 32(3)(b) is a deeming section; however, I find it impossible to determine if the meat was spoiled to the degree required to meet the objectives of the section without assessing spoilage within the context of wastage. Put another way, if meat in less than perfect condition is consumed by humans without any negative consequences, can it be considered spoiled as intended by the *Act*, given that it was not wasted in the ordinary sense of the word? In my view, the answer must be “no”.

[52] In the caselaw, there is some support for making the link between spoilage and consumption. The *R. v. Marsters*⁴ decision dealt with a previous version of s. 32. The issue in that case involved abandonment. The Crown needed to prove that the meat was “reasonably fit for human consumption” yet was abandoned. Mr. Marsters argued

³ [1992] Y.J. No. 101

⁴ [1994] Y.J. No. 83

that the animal was diseased when killed and thus couldn't be consumed. Part of the evidence led by the prosecution was that a portion of the meat seized was later cooked, eaten, and "found to be palatable". The *R. v. Tom Tom*⁵ case draws a similar link at para. 10.

[53] There are limitations in using these cases to draw analogies with this case, however, given that the predecessor section differed from the current s. 32 in certain material aspects.

[54] Ms. McGill in her submissions concedes that the prosecution is not arguing that the portion of meat released to Mr. Florian was spoiled. She also quite rightly argues that the prosecution needn't prove that the entire 500 lbs seized was spoiled.

[55] The difficulty, however, is that there is nothing in evidence to distinguish this particular 35-to-40-pound chunk from the rest of the meat in the totes. It appears to be a random chunk that was sawn from the frozen slab. There is nothing in evidence to suggest that the meat on the top of piles was in different condition than the meat laying beneath. Even if there was such evidence, it would still be impossible to determine where the released chunk had been located in the stacks of meat.

[56] The only reasonable inference I am able to draw in this case is that the remainder of the meat was similar to the piece that was released to Mr. Florian.

[57] Mr. Florian claims that his intention is to consume the remaining meat if it is returned to him. Consumed meat is not wasted meat. The conservation officers saw

⁵ 1976 Carswell Yukon 2

tables and equipment consistent with meat processing set up outside the reefer unit which supports Mr. Florian's intention to process and eat the meat.

[58] Ms. McGill argues that the test for spoilage should be objective and that spoilage has been objectively established. She also argues that some people, specifically Mr. Florian and his dinner guests, chose to eat a portion of the meat but that does not mean that it was not spoiled. I understand the argument. The difficulty in this case is that a substantial amount of the meat was eaten, though Mr. Larochelle overstates the quantity when he puts it at 10%. Further, it was eaten by a large number of people with no ill effects.

[59] I find that the meat was not spoiled as required by the *Act*, especially bearing in mind the very high standard of proof that rests on the prosecution.

[60] Dr. Thompson was called to explain the processes of meat degradation but also to provide an opinion on spoilage. Her opinion is that the meat was spoiled.

[61] My finding does not constitute a rejection of Dr. Thompson's expertise or her opinion. Dr. Thompson's opinion is also contextual, and she reached her conclusion against the backdrop of her experience in food safety. It is clear that the meat in the totes was not in the condition to be sold in any of Whitehorse's major grocery store chains.

[62] As Dr. Thompson explained, spoilage occurs on a continuum and begins immediately upon death. She also acknowledged that different people can hold very

different opinions regarding whether a particular piece of meat is spoiled. It is an imprecise term.

[63] I turn back to the evidence of the conservation officers and of Mr. Florian. It is hard to assess whether the meat was really the worst seen in their careers, as testified to by at least one of the officers. I am not clear on the specifics of other meat they have examined though I note they deal with roadkill.

[64] On the other hand, I suspect Mr. Florian underplayed the condition of the meat as his testimony unfolded. Initially he said that it was not in the condition that he would have liked, and that he felt bad yet later in his testimony he seemed to downplay this observation, stating that the sour smell was “slight” and described the slime and foci as normal. I find that the condition of the meat fell somewhere in between the description given by the officers and that given by Mr. Florian.

[65] I also note the testimony of Mr. Holland and Ms. Stehelin-Holland. They, like Mr. Florian, viewed a sour odour, slime and foci as factors they could deal with prior to consuming the meat. Vinegar baths and trimming were the main methods. Their approach highlighted Dr. Thompson’s view that spoilage is viewed in different ways by different people.

[66] My task is to determine if the meat was spoiled as that term is used in the Act. I find that it was not spoiled for the reasons outlined above.

Due Diligence

[67] It is not necessary to deal with the due diligence issue given my finding on lack of spoilage as per the *Act*. I will, however, touch on the issue briefly.

[68] Ordinarily concession owners and outfitters remove dead game animals from the bush and distribute the meat to others, often First Nations communities, as quickly as possible. I won't review how the animal is prepped for removal, nor the logistics of getting the meat out as neither topic is relevant to this case. It is clear, however, that there are a mind-boggling myriad of challenges which outfitters face in fulfilling the timely removal requirement.

[69] There are strong public policy reasons to put this onus on the outfitters and owners, no matter the challenges. Further, they are viewed as professionals who should have the expertise to deal with the challenges if they want the "considerable privilege" referenced by Judge Falconer. The standard on outfitters and concession owners is high.

[70] Due diligence requires that the defendant prove that he took "all reasonable care" to prevent the offence from occurring. According to the foundational Supreme Court of Canada case, *R. v. Sault Ste. Marie (City)*⁶ this requires the defendant to prove that he did "what a reasonable man would do in the circumstances". The reasonable man in this case would be one in the outfitting business, not your average person on the street with no knowledge of the business. See *R. v. Placer Developments Ltd.*⁷ at para. 25.

⁶ 2 S.C.R. 1299

⁷ 1983 CarswellYukon 14

[71] The standard is one of balance of probabilities, not beyond a reasonable doubt. The Crown must prove the elements of the offence beyond a reasonable doubt, but the defendant only needs to prove on balance of probabilities that he took all reasonable care.

[72] Mr. Florian was embarking on a new way of storing meat until it can be distributed. The volume of meat that a single moose yields is very high. There are individuals or groups prepared to take it, and every outfitter appears to have a list of possibilities. Both Mr. Florian and Mr. Cosco explained that the meat is often wanted but not on the day that the outfitter needs to distribute it.

[73] Mr. Florian intended to store the game in the reefer unit to buy him time on distribution. These charges arose when he was having issues with the reefer at the outset. Those issues have been resolved and he now successfully stores meat in the reefer until it can be distributed.

[74] Initially Mr. Florian had problems with electrical breakers tripping but that issue was resolved in early September 2022. He contacted an electrician, Mr. Stillar, who had done the original electrical hook-up of the reefer. Mr. Stillar troubleshooted with Mr. Florian at Mr. Florian's request once Mr. Florian contacted him about issues with the reefer.

[75] A second issue arose around September 24th, 2022, nine days before the conservation officers inspected the reefer. In brief, the reefer was cooling but not freezing. He ultimately learned that the reefer unit itself was defective. Unbeknownst to

him, or presumably to the seller, it was malfunctioning. Ultimately Mr. Florian was told that the control panel had been wired incorrectly which caused it to short.

[76] Mr. Florian did take steps to rectify the problem once he realized the reefer was not operating as intended. He was in the midst of taking those steps on the day the conservation officers arrived to do their inspection. He testified to the following and I accept his evidence:

- He contacted various refrigeration specialists as he realized he needed professional assistance. He lost track of the number of places he called but finally connected with All Yukon Refrigeration (AYR). Mr. Duffill from AYR first inspected the reefer on September 26th;
- He instituted a temporary recommended fix by defrosting the coils with heat guns which he then purchased for this purpose. This process lowered the temperature to just above freezing;
- He cleared other meat out of his chest freezers so that he could move some of the reefer unit meat into the freezers;
- He distributed some meat to Teslin;
- He stopped bringing new meat into the reefer unit though I am unclear regarding the specific date;
- He called friends and retailers in order to obtain chest freezers but had limited success given a lack of inventory;

- On October 2nd, he obtained a large chest freezer from his base camp;
- He made inquiries of various butcher shops about cold storage. He learned that one shop was no longer operating, one doesn't take wild game, and another didn't have the capacity;
- He continued the coil defrosting until AYR obtained the necessary replacements parts. Those parts were obtained on October 7th, four days after the conservation officers visited Mr. Florian's property and seized the meat. The problem was fixed as of that date.

[77] The Crown argues that Mr. Florian did not take sufficient steps to distribute the meat once he realized that there was a problem with the reefer unit. Specifically, he did not contact the conservation officers to assist him, and he did not take Mr. Cosco up on his offer to help deal with the meat.

[78] Further, it is argued that Mr. Florian should have had a backup plan in case the reefer unit failed to work as intended.

[79] I do not think that a reasonable person in Mr. Florian's shoes would be expected to have a backup plan in case the reefer failed to work. The issue was not with Mr. Florian's new meat storage system plan; I have heard that the meat is being stored and is freezing as intended now that the reefer is fixed. The issue was that the unit itself was malfunctioning. In my view, it was reasonable for Mr. Florian to expect that the unit would run properly upon purchase, especially given that the actual cooling unit was new.

[80] Further, I find it reasonable that Mr. Florian did not contact the conservation officers for assistance. Both he and the officers testified to a tense history. That is hardly surprising given that the officers are tasked with policing his business. Mr. Florian clearly did not trust the officers to help him and that lack of trust is understandable given the prior history.

[81] Finally, I make no finding regarding whether Mr. Florian should have taken Mr. Cosco up on his offer to help. I found it hard to assess the nature of the dynamic between Mr. Cosco and Mr. Florian. Presumably, they were business competitors at one time as they owned adjoining concessions until Mr. Florian purchased Mr. Cosco's concession. I also found Mr. Cosco, who was called by the Crown, not particularly forthcoming in his evidence. He answered questions, but only volunteered as much information as was necessary and seemed cautious with his answers. He left unanswered certain questions put to him by the conservation officers during the investigation. My impression was that there were unspoken issues between him and Mr. Florian. I find it impossible to assess whether a reasonable person, in Mr. Florian's shoes, would have taken up Mr. Cosco's offer to assist.

[82] Finally, there is the issue of Mr. Florian's failure to open the totes to check the condition of the meat. In hindsight, it is clear that he should have examined them. I find it reasonable, however, that he assumed the meat was freezing or was close to freezing given that it was stored toward the front of the shipping container, closest to the actual cooling unit, and given that the meat on racks near the totes was near or at freezing.

[83] As I said at the outset, it is not necessary for me to make a definitive finding regarding due diligence. However, if it had been necessary to make such a finding, I would be inclined to conclude that Mr. Florian exercised sufficient diligence, especially since this only needed to be proven on a balance of probabilities.

Inflammatory Aspects to Defence Submissions

[84] Mr. Larochelle made several remarks at the outset of his submissions that I considered unnecessarily inflammatory.

[85] He stated, “[i]f anything has been wasted in this matter, it is taxpayers’ dollars in the prosecution of Mr. Florian”. He continued, “[t]he government then subjected Mr. Florian and the taxpayer wallet to a lengthy and needless trial”, and then spoke of the “absurdity” of the prosecution. He called upon the Court to provide the conservation officers “with much needed guidance” to ensure that similar cases do not occur.

[86] I strongly disagree with this characterization of the prosecution. I have found that wastage has not been proven beyond a reasonable doubt.

[87] The requirements to both lay and proceed with charges are vastly different than what is required for conviction, however. Also, my findings do not negate the observations of the meat made by the officers and Dr. Thompson.

[88] A specific set of facts led to this prosecution, and they appear unique when examined in light of the limited s. 32 case law. There is no guidance that the Court can provide to the conservation officers regarding future prosecutions.

[89] There was a basis to lay the charges and there was a basis to proceed with the prosecution. This is a case that needed to be tried, and it is for that reason that courts exist.

Conclusion

[90] I find Mr. Florian not guilty of the charge.

CALDWELL T.C.J.