In re: the Professional Hunters Association of South Africa (PHASA)

OPINION

1. **THE BRIEF**

1.1 I am briefed by PHASA to answer the following questions, namely:

(a) "If a registered outfitter in one province is not registered in another, is he allowed to still sell/market or present a hunt in that province and then have the hunt conducted by a registered Outfitter and PH in that province? For example, Outfitter A registered only in Natal sends his client to a registered Limpopo outfitter & PH to hunt a crocodile is Outfitter A at fault or not?

(b) If an Outfitter A in another province is not registered in let's say Limpopo, is he allowed to send his client to another Outfitter B in another province, where he himself is not registered, since he does not have the animals, his client is interested in, everything then goes through the registered outfitter's books? Does it make a difference that Outfitter A gets some form of commission from Outfitter B or not?

(c) Can a South African citizen be a booking agent and market hunts to an international hunter on behalf of a registered South African Outfitter or does he have to be an outfitter as well?"

1.2 I am asked to consider this in the light of a specific request concerning Mpumalanga though the opinion that is sought requires that I deal with the other provinces as well.

2. **THE FACTS**

2.1 The facts emerge from a series of emails that were sent to me under cover of the email in terms of which I was briefed. In essence:

(a) PHASA members believe that it is not necessary for a hunting-outfitter who presents or organises a hunt in one of these provinces to have a permit to do so in that province if the job is subcontracted to a hunting-outfitter who does have the necessary permit.

(b) The officials take the opposite view. They say it does not matter if the job is subcontracted to a permitted hunting-outfitter. In the words of the Mpumalanga Tourism and Park's Agency Riaan de Lange:

If you are not registered in Mpumalanga you are not allowed to market, for example a crocodile, in Mpumalanga and then send your hunting client to a hunting-outfitter in registered in Mpumalanga just to hunt the crocodile. The unregistered hunting-outfitter have then marketed this crocodile which is in province of Mpumalanga while not registered in Mpumalanga, to his hunting client.[1]

2.2 This information was not in my original brief but it is important, for reasons that will shortly become evident, that:

(a) Most hunting-outfitters are owned and operated by juristic entities rather than human beings.

(b) These businesses routinely contract human beings who are registered as hunting-outfitters to provide the services of a hunting-outfitter to their hunting clients.

(c) In line with international practice, many have outfitters operating in other countries as clients who ask them to organise a hunt on behalf of their clients.

(d) The practice of requiring foreigners to employ the services of a hunting-outfitter and a professional hunter is an international one that is broadly aimed at ensuring that someone who is a stranger to a country's animals, conservation laws and trophy export laws, not to mention its firearm legislation, is guided through both when hunting and when making arrangements for the hunt and the export of trophies by suitably qualified expert.

3. THE LAW: DESCRIBED

3.1 Nature conservation was the preserve of the old provinces before 1994. Each province developed their own nature conservation ordinances which while similar were by no means the same.

3.2 This was complicated by the fact that many provinces lost land to the "independent" homelands who developed their own conservation laws. The homelands were all reincorporated into South Africa in 1994.

3.3 The provincial and homeland conservation laws were delegated to the nine new provinces at the same time. This meant that different conservation laws applied in the same province in most cases.

3.4 This could have been complicated by the National Environmental Management Biodiversity Act, 2004 (NEMBA) and the 2007 listing of certain species as protected under the threatened

[1] Email to the President of PHASA dated 26 August 2021.

and protected species or TOPS regulations. However, while NEMBA list hunting as a restricted activity that requires a permit, neither NEMBA nor TOPS regulate the business of hunting outfitters other than requiring the identity of the hunting outfitter to be disclosed in applications for permits.

3.5 A further complication has arisen in that some of the provinces have been slower to rationalize their conservation laws than others. For example, the pre 1994 conservation ordinances continue to apply despite being incompatible the anthropocentric principle based constitutional law-making regime required in terms of the Constitution and the National Environmental Management Act 1998 (NEMA). Then there are those cases where the law is fragmented within the province because the old homeland laws still apply.

3.6 This all makes a country wide analysis very complicated. I have sought to simplify this by using the four provinces that were the former Transvaal as my testbed I then look to the other provinces which I deal with briefly on a comparative basis.

3.7 This is possible because the laws are, for the most part, not that dissimilar. I have also ignored, for the sake of simplicity replacement laws sch as the North West Biodiversity Management Act, 2016 which has still to be brought into law and proposed laws such as the Free State Nature Conservation Bill or the Western Cape Biodiversity Act.

3.8 On this basis one is left with the following applicable laws in the provinces that make up the former Transvaal, namely::

(a) Gauteng and the North West still use the old Transvaal Nature Conservation Ordinance of 1983[2].

(b) Limpopo's[3] and Mpumalanga's[4] replacement laws are still very similar to Transvaal Nature Conservation Ordinance:

3.9 Thus,

(a) In Gauteng North West and Mpumalanga, the term "hunting-outfitter" is defined as a:

> *any person who presents or organises the hunting of a wild animal or an exotic animal for reward…unless the context otherwise indicates."*.

(b) In Limpopo the definition has been modified in to restrict the definition of a hunting-outfitter to someone who acts as such but who also has a permit to do so. Its definition of Hunting Outfitter reads as follows:

[2] This was all done done in terms of Proclamation No. 22 of 31 March, 1995
[3] Limpopo Environmental Management Act, 2003
[4] Mpumalanga Nature Conservation Act, 1998

a person who — (a) presents or organises the hunt of a wild or alien animal for a client; and — (b) is the holder of a permit in terms of section 49 (1) (b)… unless the context otherwise indicates.

(c) The Gauteng North West and Mpumalanga laws state that

- *No person shall act as—(b) a hunting-outfitter unless he or she is the holder of a permit which authorizes him or her to do so.*[5]
- *The requirements to be complied with by a professional hunter, hunting-outfitter or director of a hunting-outfitter shall be as the Responsible Member*[6] *may determine or prescribe.*[7]

(d) However, the Limpopo law drops the reference to he or she in its equivalent prohibition and the proviso that the qualifications of the hunting outfitter must be as the responsible member directs. Instead, it states. It states:

- *No person may without a permit act as— (b) a hunting-outfitter*.[8]
- *A hunting-outfitter may not present, advertise, organise or conduct the hunting of a wild or alien animal for a client, unless the hunting-outfitter— (b) is authorised by the MEC in writing, to present a hunt of specific wild or alien animals*.[9]

(e) The law is the same in all four provinces in that:

- A client[10] shall not hunt a wild animal or an exotic animal, unless—(a) the hunt has been organised by a hunting-outfitter.[11]
- *a hunting-outfitter shall not present or organise the hunting of a wild animal or an exotic animal for a client and a professional hunter shall not escort a client, unless the hunting-outfitter is the holder of hunting-rights in respect of the land on which such hunting is presented or organised.*[12]

[5]Section 51 of the Gauteng and Northwest Nature Conservation Ordinances. Section 41 of the Mpumalanga Nature Conservation Act

[6] The term "Responsible Member" is defined as the member of the executive council responsible for the environment or nature conservation, i.e., the MEC.

[7] Section 51(3) of the Gauteng and North West Nature Conservation Ordinances. Section 41(3) of the Mpumalanga Nature Conservation Act

[8] Section 49(1)(b) of the Limpopo Environmental Management Act.

[9] Section 51(1)(b) of the Limpopo Environmental Management Act

[10] A client is defined in all three cases as means "any person not normally resident in the Republic and who pays or rewards any other person for or in connection with the hunting of a wild animal or an exotic animal."

[11]Section 52 of the Gauteng Nature Conservation Ordinance, 1983.Section 50(1)(a) of the Limpopo Environmental Management Act,2003 and Section 43 of the Mpumalanga Nature Conservation Act

[12] Section 53 of the Gauteng Nature Conservation Ordinance, 1983 Section 51(1) of the Limpopo Environmental Management Act,2003 and Section 41(3) of the Mpumalanga Nature Conservation Act

- *Makes it a criminal offence to contrive the above sections.*[13]

3.10 The regulations promulgated under the old ordinance still apply. So, in all four provinces:

> *The Board may issue a permit referred to in—*
> *(a) subregulation (1)(a)*[14] *if it is of the opinion that the applicant:*
> *(i) possesses the necessary knowledge, ability, skill and experience;*
> *(ii) is of or above the age of 21 years;*
> *(iii) is a South African citizen;*
> *(iv) has successfully completed a prescribed course at an authorised professional hunting school;*
> *(b) subregulation (1) (b) if it is of the opinion that the applicant:*
> *(i) complies with the requirements referred to in paragraph (a) (i), (ii), (iii) and (iv);*
> *(ii) can provide the services and conveniences referred to in regulation 17 and that those services and conveniences comply with the requirements as determined by the Board;*

4. THE LAW: RULES OF INTERPRETATION.

4.1 The old purposive approach to interpretation that is summarised in statements like:

> *A court must interpret the words in issue according to their ordinary meaning in the context of the Regulations as a whole, as well as background material, which reveals the purpose of the Regulation, in order to arrive at the true intention of the draftsman of the Rules*[15]

has developed into a more nuanced approach that requires one to interpret laws purposively both in regard to the words themselves but also in the context of the broader legal environment in which that law operates.

4.2 Thus, in Natal Joint Municipal Pension Fund v Endumeni Municipality the Supreme Court of Appeal held that:

> *The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed*

[13] Sections 51(6), 52(4) and 53(2) and (3) of the Gauteng Nature Conservation Ordinance, 1983section 112 of the Limpopo Environmental Management Act,2003 and Section 541(6), 42(4) and 43(2) and (3) of the Mpumalanga Nature Conservation Act

[14] Professional Hunter's Permit

[15] Quoted at paragraph 17 of the judgement of the Supreme Court of Appeal in Natal Joint Municipal Pension Fund v Endumeni Municipality (920/2010) [2012] ZASCA 13; [2012] 2 All SA 262 (SCA)

in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.[16]

4.3 This common law purposive approach to interpretation has been further modified in that all laws must now be interpreted constitutionally.

(a) Section 2 of the Constitution states that:

This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

(b) Section 7 of the Constitution proclaims the Bill of Rights as:

a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

(c) Section 39 of the Constitution requires that:

- *When interpreting the Bill of Rights, a court, tribunal or forum—must promote the values that underlie an open and democratic society based on human dignity, equality and freedom.*
- *When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.*

4.4 The Constitutional Court affirmed this constitutional approach to the interpretation of laws in the case of Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd In re: Hyundai Motor Distributors (Pty) Ltd v Smit N.O[17] (Hyundai) in these terms:

Section 39(2) of the Constitution provides a guide to statutory interpretation under this constitutional order. It states:

"When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights."

This means that all statutes must be interpreted through the prism of the Bill of Rights. All law-making authority must be exercised in accordance with the Constitution. The

[16] Paragraph 18

[17] 1.1 [2000] ZACC 12; 2001 (1) SA 545 (CC); 2000 (10) BCLR 1079

Constitution is located in a history which involves a transition from a society based on division, injustice and exclusion from the democratic process to one which respects the dignity of all citizens, and includes all in the process of governance. As such, the process of interpreting the Constitution must recognise the context in which we find ourselves and the Constitution's goal of a society based on democratic values, social justice and fundamental human rights. This spirit of transition and transformation characterises the constitutional enterprise as a whole.

The purport and objects of the Constitution find expression in section 1 which lays out the fundamental values which the Constitution is designed to achieve. The Constitution requires that judicial officers read legislation, where possible, in ways which give effect to its fundamental values. Consistently with this, when the constitutionality of legislation is in issue, they are under a duty to examine the objects and purport of an Act and to read the provisions of the legislation, so far as is possible, in conformity with the Constitution.

Accordingly, judicial officers must prefer interpretations of legislation that fall within constitutional bounds over those that do not, provided that such an interpretation can be reasonably ascribed to the section.

Limits must, however, be placed on the application of this principle. On the one hand, it is the duty of a judicial officer to interpret legislation in conformity with the Constitution so far as this is reasonably possible. On the other hand, the legislature is under a duty to pass legislation that is reasonably clear and precise, enabling citizens and officials to understand what is expected of them. A balance will often have to be struck as to how this tension is to be resolved when considering the constitutionality of legislation. There will be occasions when a judicial officer will find that the legislation, though open to a meaning which would be unconstitutional, is reasonably capable of being read "in conformity with the Constitution". Such an interpretation should not, however, be unduly strained.[18]

4.5 It follows therefore that while one must have regard to the words used, these words must be interpreted in accordance with the purpose of the law. As it is assumed that all laws are meant to be constitutionally defensible, this interpretation must favour one that is constitutionally defensible over an interpretation that is not. Moreover, one must do so even if this requires a departure from the exact language. However, such departures must not unduly strain the language of the law.

5. **INTERPRETING THE LAW IMPORTANT QUESTIONS**

5.1 When interpreting a law one must ask:

[18] Paragraphs 21 to 24 of Hyundai

(a) What is the purpose of this law?

(b) What does the law mean in the context of this purpose?

(c) Is the meaning constitutionally defensible?

(d) If not, can the law be interpreted in some other way that is constitutionally defensible which does not unduly strain the language of the law itself?

5.2 It follows that if the law has a constitutionally defensible purpose, then it must be interpreted in that way. But, if not, the law:

(a) should be repealed by the legislature and replaced with one that is constitutionally defensible

(b) is liable to be declared unconstitutional by a court.

6. WHAT IS THE PURPOSE OF THIS LAW?

6.1 It should be noted that South African residents are under no legal obligation to employ a hunting-outfitter to hunt in Gauteng, Limpopo, or Mpumalanga. The law discriminates against nonresident hunters (as in hunters not ordinarily resident in South Africa) by requiring them to employ a hunting-outfitter before they can lawfully hunt any animal in the provinces concerned.

6.2 Everyone, including nonresidents, has a constitutional right to equality under the law. Laws may only discriminate insofar this is justifiable in terms of section 36 of the Constitution, and then only, in respect of a law of general application that is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom.

6.3 So, what is the constitutionally justifiable reason for discriminating against nonresident hunters in this way? The law does not say, but my client has provided the reason. The authorities assume they need to take special measures to ensure that what are taken to be largely ignorant nonresident hunters are assisted in the complex process of animal recognition and complying with the countries laws. Thus the hunt must be organized by a hunting-outfitter and the nonresident hunter must be accompanied by professional hunter when he or she is hunting.

6.4 It follows, therefore that the law has done its constitutionally justifiable job, once this specific purpose is achieved. A law that goes beyond this, say by discriminating against nonresidents just because they are, falls foul of the equality clause in our Constitution and is liable to be set aside as unconstitutional.

6.5 I shall assume, for the purpose of this opinion, that this deprivation of the right to equal treatment is legally defensible for the purposes of this opinion.

7. WHAT DOES THE LAW MEAN IN THE CONTEXT OF THIS PURPOSE?

7.1 The officials, with respect, make the mistake of trying to interpret this law as:

(a) Mpumalanga's Mr. de Lange's one eyed literal approach that:

> *I do not care what the opinions are of hunting-outfitters in the Eastern Cape or any other province for that matter. We do not deal with opinions, we only deal with the Act and the Relevant Regulations. The law is clear and is not negotiable or debatable. If they do not register in Mpumalanga as hunting-outfitters and professional hunters they will not act as such in this province*.[19] or

(b) Limpopo's Chris Nghenabo analogistic line of reasoning that:

> *It is highly impossible an Outfitter cannot market the hunt of an animal in another Province. It is like giving somebody your licence to drive the vehicle on your behalf, what will happen when he gets traffic police on the road. In terms of the IPPHC Policy document, it states clearly that if PH or Outfitter is registered in another Province and he wants to market the hunt for another Province as a requirement he must first do and pass the Law test of that particular Province and apply for a permit to be able to market the hunts on that specific Province. In other words the PH or HO must be registered with that specific Province where the hunt is going to be marketed and conducted.*

7.2 If one adopted Mr. de Lange's one-eyed literal approach consistently then, a hunting-outfitter is not a hunting outfitter unless he or she has a permit to be a hunting outfitter. This is because the definition of a hunting outfitter in the Limpopo law says that a hunting-outfitter is only someone who has a permit and because the applicable regulation only allows permits to be given to suitably qualified human beings. This is clearly ludicrous. While one can wonder at the process that permitted the inclusion of the permit requirement into the definition, one must ignore it if one is to make any sense of the law.

7.3 With that little bit of drafting lunacy out of the way, one is left with an interpretation promoted by the officials that means that:

(a) No one may engage in the very wide range of activities that are involved when one "presents" or "organises" a hunt unless that person has a permit to carry on the business of a hunting-outfitter in the province concerned.

(b) It does not matter if one is concerned with a non-resident or a resident. If the officials are correct, then the restriction applies to the carrying on of the business of a hunting-outfitter rather than a restriction of a nonresident's right to hunt.

[19] Email to the President of PHASA dated 26 August 2021

(c) It also means that juristic entities cannot lawfully engage in the broad range of activities contemplated in the definition of hunting-outfitter. Such activities will all be unlawful even if the juristic entity employs a human being who is permitted to act as a hunting-outfitter.

7.4 This interpretation will make the law clearly unconstitutional because it constitutes an unreasonable limitation of the equality clause.

7.5 It would also make the law unreasonable having regard to the purposive approach that is inherent in the environmental rights that are set out in section 24 of the Constitution. Section 24 limits the extent to which the legislature and government may infringe our rights to what is reasonably necessary to protect the environment. There is nothing reasonable in the interpretation that the officials contend for. It is unreasonable.

7.6 The provincial official's interpretation of the law would have to be rejected as unconstitutional if this interpretation was what the law clearly means. On would have to then try and find another constitutionally defensible meaning that does not unduly stretch the language of the law. If this could not be done one would be left with a challenge against the legality of the law itself.

7.7 Happily, this is not the case. The law is clear enough in its wording to prefer an ordinary meaning very different from that adopted by the provincial officials. One does not have to engage in a constitutional exercise in stretching the law to make it fit.

7.8 The trouble does not lie with the law so much as the provincial officials misreading the law. In this sense, one finds oneself in a similar but not identical space to the constitutional court in the recent matter of Education (Pty) Limited v Kwazulu-Natal Law Society and Others[20] where the majority of the court found an ordinary interpretation that was constitutionally defensible rather than the indefensible one contended for by the Kwazulu-Natal Law Society.

7.9 But the argument against the interpretation adopted by provincial officials is stronger in this case in that one does not have to ignore the special meaning of words contained in other laws. All that is required is to interpret those words in the light of the context and purpose of the law.

7.10 This is where the provincial officials go wrong. They incorrectly assume that this law is all about the hunting-outfitter and have consequently interpreted the law through the prism of this perception rather than purposively as is required.

7.11 The focus of this law is in fact on the nonresident hunter. It is obvious that this is so given that the law would be robbed of its purpose is the restriction that no nonresident shall:

[2019] ZACC 47.

hunt a wild animal or an exotic animal, unless the hunt has been organised by a hunting-outfitter;

did not exist.

7.12 A far more reasonable interpretation of the law emerges if you approach the interpretation of the law in the light of the focus of the law that is that a nonresident shall not:

hunt a wild animal or an exotic animal, unless the hunt has been organised by a hunting-outfitter.

7.13 It is easy to justify why this must be so.

7.14 It should be immediately noticeable, for example, that the scope of this restriction is narrower than the definition of a hunting-outfitter. Thus, while the definition refers to a hunting-outfitter as someone who "presents or organises" the hunting of an animal, the prohibition only applies in respect of a hunting-outfitter who organises the hunting of an animal.

7.15 It should also be apparent that the terms of this prohibition are very specific.

(a) A nonresident hunter only contravenes this section if the hunt is not organised by a hunting-outfitter.

(i) The hunt is the actual hunt that takes place in the province. If a human being who has the necessary permit has the requisite hunting rights on the property where the hunt is to take place, he or she by definition is the organiser of the hunt.

(ii) After all, no one else can lawfully do this. Anyone who tries would be poaching.

(b) The section is not contravened, for example, if people other than that hunting-outfitter are involved in the organisation of the hunt provided that a hunting-outfitter with the requisite permit has the requisite hunting rights.

(i) It would be absurd if this were otherwise given that the organisation of a hunt naturally requires organisation by a wide range of people other than the hunting-outfitters.

(ii) It makes no sense to outlaw these activities as criminal merely on account of the very wide definition of a hunting-outfitter.

7.16 This is the correct context that determines how one must approach the interpretation of both:

(a) the requirement that:

No person shall act as a hunting-outfitter unless he or she is the holder of a permit which authorizes him or her to do so;

(b) as well as the definition of a hunting-outfitter in the very broad terms used as:
any person who presents or organises the hunting of a wild animal or an exotic animal for reward unless the context otherwise indicates

7.17 The reference to "no person" is limited to a reference to a human being. That this must be so is confirmed by the regulations that have been promulgated by the Responsible Member. These prohibit juristic entities from being licensed as hunting-outfitters. The prohibition would be ridiculously broad were it not for this limitation.

7.18 It follows that:

(a) There is nothing stopping anyone from carrying on business as a hunting-outfitter in the provinces concerned provided that, when a hunt is being arranged for a nonresident hunter, that one of the people involved in organizing the hunt is a human being who has the necessary hunting rights and who is also in possession of a valid hunting-outfitter permit from the province concerned.

(b) The law is satisfied once this purpose is achieved It does not matter how many people are involved in organizing the hunt or if those people have permits or indeed are human beings.

(c) This is the only interpretation of the law that achieves its purpose while still being lawful. This is because the above interpretation is not only the only one that fits the words of the law, it is also sensible businesslike, and constitutionally defensible.

(d) This is not the case with the interpretation that the officials want to apply.

8. THE OTHER PROVINCES

8.1 The Free State ordinance does not discriminate against nonresident hunters, and it contains no special provisions dealing with hunting-outfitters. It has an Environment Conservation Act[21] but this Act only did away with the homeland laws. It left the ordinance intact. The Free State published a Nature Conservation Bill for consultation in 2007 but this was never taken any further.

8.2 The Northern Cape replaced the old Cape Nature Conservation Ordinance with its own Nature Conservation Act 2009,[22] it replaced the term hunting-outfitter with hunting contractor. But it does not discriminate against nonresident hunters. It purports to outlaw the business of

[21] No 73 of 1989
[22] It came into law on 1 January 2012.

assisting offering or presenting the hunting of a wild animal to anyone who does not have a permit. But only human beings who are South African citizens may obtain such a certificate which is plainly unconstitutional for the reasons I have already advanced. The Northern Cape is the opposite side of the coin that are Gauteng, Limpopo Mpumalanga, and Northwest. That is to say that the language of the law does not lend itself easily to the interpretation I advance above. This is not surprising. The Northern Cape law is horrifically draconian and was clearly designed to give conservation authorities maximum permitting authority over everything. That it still exists as a law is a legal travesty and a blight on South Africa's claim to operate as a constitutional democracy under law. Someone needs to apply to court to have the law, or large chunk, of it declared unconstitutional.

8.3 The Western Cape has recently published its own Biodiversity Management Bill, but this has not yet been enacted. Its law is still that set out in the Nature Conservation Ordinance of 1974 as amended by subsequent acts[23]. Nonetheless the Western Cape law is very similar in substance to that which applies in Mpumalanga save that the need for a hunting outfitter to have hunting rights is not regulated. The interpretation I advance above should therefor apply.

8.4 The Eastern Cape did not amend the old Cape Nature Conservation ordinance after 1994. It is thus the truest extant rendition of that old provincial law. It prefers the term contractor to outfitter but is otherwise very similar to the situation that pertains in the Western Cape. The interpretation I advance above should therefor apply.

8.5 KwaZulu Natal also kept its old ordinance which also applies in most of the former Kwa Zulu. The relevant terms of the KwaZulu natal ordinance are almost identical to those that apply in Mpumalanga. The interpretation I advance above should therefor apply

9. QUESTIONS ANSWERED

9.1 I have been asked specific questions that require specific answers. I do so in the light of the opinion set out above.

9.2 Question:
If a registered outfitter in one province is not registered in another, is he allowed to still sell/market or present a hunt in that province and then have the hunt conducted by a registered Outfitter and PH in that province? For example, Outfitter A registered only in Natal sends his client to a registered Limpopo outfitter & PH to hunt a crocodile is Outfitter A at fault or not?

9.3 Answer:
Yes, Outfitter A may do so anywhere outside the Northern Cape.

9.4 Question:

[23] This is why it is slightly different to the ordinance that applies in the Eastern Cape.

If an Outfitter A in another province is not registered in let's say Limpopo, is he allowed to send his client to another Outfitter B in another province, where he himself is not registered, since he does not have the animals, his client is interested in, everything then goes through the registered outfitter's books? Does it make a difference that Outfitter A gets some form of commission from Outfitter B or not?

9.5 Answer:

Yes, Outfitter A may get a commission but will be committing an offence in the Northern Cape.

9.6 Question:

Can a South African citizen be a booking agent and market hunts to an international hunter on behalf of a registered South African Outfitter or does he have to be an outfitter as well?"

9.7 Answer:

Outside the Northern Cape anybody, or any entity, can be a booking agent for hunting-outfitters, both in general and for those hunting-outfitters who have the requisite permits and hunting rights to act as such in a particular province. Not so within the Northern Cape. This is because the services of a hunting outfitter fit within the broad definition of a hunting outfitter.

Dated at Westville this 16 day of September 2021

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