

JUL 06 2021

No. _____
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*, R.S.B.C.
1996, C. 241

BETWEEN:

THE ASSOCIATION FOR THE PROTECTION OF FUR-BEARING ANIMALS

PETITIONER

AND:

RAYNA GUNVALDSEN (CHIEF VETERINARIAN) and EARL DONALD GILES

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

Rayna Gunvaldsen (Chief Veterinarian)
1767 Angus Campbell Road
Abbotsford, BC V3G 2M3

Earl Donald Giles
6144 Lund Road
PO Box 29
Buffalo Creek, BC V0K 1G0

Ministry of Agriculture, Food and Fisheries
PO Box 9120 Stn Prov Govt
Victoria, BC V8W 9B4

Attorney General of British Columbia
1001 Douglas Street
Victoria, BC V8W 2C5

This proceeding is brought for the relief set out in Part 1 below by the person named as petitioner in the style of proceedings above.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner

- (i) 2 copies of the filed response to petition, and
- (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:	800 Smithe Street Vancouver BC V6Z 2E1															
(2)	The ADDRESS FOR SERVICE of the petitioner is:	<p>c/o Arvay Finlay LLP 1512 – 808 Nelson Street Box 12149, Nelson Square Vancouver BC V6Z 2H2</p> <p>Fax number for service (if any) of the petitioner: 1.888.575.3281</p> <p>E-mail address for service (if any) of the petitioner: dwu@arvayfinlay.ca</p>															
(3)	The name and office address of the petitioner’s lawyer is:	<table><tr><td>David W. Wu</td><td>-and-</td><td>V. Victoria Shroff</td></tr><tr><td>Arvay Finlay LLP</td><td></td><td>Shroff & Associates</td></tr><tr><td>1512 – 808 Nelson Street</td><td></td><td>1700 – 808 Nelson St.</td></tr><tr><td>Box 12149, Nelson Square</td><td></td><td>Vancouver, BC V6Z 2H2</td></tr><tr><td>Vancouver BC V6Z 2H2</td><td></td><td></td></tr></table>	David W. Wu	-and-	V. Victoria Shroff	Arvay Finlay LLP		Shroff & Associates	1512 – 808 Nelson Street		1700 – 808 Nelson St.	Box 12149, Nelson Square		Vancouver, BC V6Z 2H2	Vancouver BC V6Z 2H2		
David W. Wu	-and-	V. Victoria Shroff															
Arvay Finlay LLP		Shroff & Associates															
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Box 12149, Nelson Square		Vancouver, BC V6Z 2H2															
Vancouver BC V6Z 2H2																	

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

- 1. An order in the nature of *certiorari* pursuant to s. 2(2)(a) of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 (“*JRPA*”) quashing the decision of Rayna Gunvaldsen (Chief Veterinarian) to issue Fur Farm Licence #31556 dated April 6, 2021 (the “Decision”), and remitting it back for reconsideration.

2. Further, or in the alternative, a declaration that pursuant to s. 2(2)(b) of the *JRPA* that the holder of Fur Farm Licence #31556 is in non-compliance with s. 7 of the *Fur Farm Regulation*, B.C. Reg. 8/2015.
3. An order for costs.
4. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

A. The Parties

1. The Petitioner, The Association for the Protection of Fur-Bearing Animals (the “Fur-Bearers”) is a registered charity and incorporated under the *Societies Act*, S.B.C. 2015, c. 18.
2. The Respondent, Rayna Gunvaldsen, is the Chief Veterinarian appointed under s. 68 of the *Animal Health Act*, S.B.C. 2014, c. 16, and is the senior animal health official for British Columbia.
3. The Respondent, Earl Donald Giles, is the holder of Fur Farm Licence #31556 and operates a Chinchilla fur farm on his property at 6144 Lund Road, Buffalo Creek BC V0K 1G0 (the “Licensee”).

B. The Fur-Bearers

4. Established in 1953, the Fur-Bearers is a wildlife protection organization that works to protect fur-bearing animals in the wild and confinement.
5. The Fur-Bearers has over 60,000 supporters, two full-time staff members, one part-time staff member, two part-time contractors, and a volunteer board of directors comprised of professionals.
6. The Fur-Bearers’ objects include:

to uphold the administration and enforcement of animal welfare laws by:

- (i) monitoring the practices of commercial fur farms and other commercial operations using fur-bearing animals to determine compliance with relevant laws; and
 - (ii) identifying infractions by monitoring and reviewing publicly accessible information and through tips from the public;
- 7. The Fur-Bearers has been active for over 60 years in protecting the interests of fur-bearing animals through education, advocacy, campaigns, legislative initiatives, and partnerships with like-minded businesses and organizations.
- 8. Further, the Fur-Bearers has a particular interest in raising awareness and monitoring the practices of commercial fur-farming and ensuring government accountability. Recent activities in this regard include, *inter alia*:
 - (a) In 2017, working with MLA Lana Popham (now the Minister of Agriculture) to create Bill M237 which would have ensured a Code of Practice for the Care and Handling of Mink.
 - (b) Publishing a number of op-eds, including with infectious disease specialists Dr. Jan Hajek, about the negative health impacts of fur farming for both humans and animals.
 - (c) Publication of a comprehensive report about BC's fur farming industry in January of 2021, and distribution of copies to all MLAs and executive staff within the BC Ministry of Agriculture, Foods and Fisheries.
 - (d) Meeting with BC Minister of Agriculture, Foods and Fisheries to raise concerns related to the negative impact on animal welfare and human health as it relates to fur farming.
 - (e) Initiating a petition in January of 2021 to ban fur farming across Canada.
 - (f) Participating in the National Farm Animal Care Code public consultation review process related to the Codes of Practice for the Care and Handling of Mink

- (g) Making a number of freedom of information (“FOI”) requests related to fur farms in British Columbia, and raising issues from these FOI requests with Members of the Legislative Assembly, Ministers, and the public through letters, petitions, phone calls, personal meetings, social media posts, open letters, and media.

C. Facts related to the fur farm licence

9. On April 12, 2021, the Fur-Bearers made a freedom of information (“FOI”) request to the Ministry of Agriculture, Food and Fisheries (the “Ministry”) for, *inter alia*, “a copy of the most recent Health Management Plan for all chinchilla farms in British Columbia and all records regarding standards and generally accepted practices for chinchilla farming in BC, including accepted forms of euthanasia. (Jan 1, 2016 - April 12, 2021).”
10. There exists only one chinchilla farm in British Columbia.
11. On May 11, 2021, the Ministry responded that there were no records located in response to the FOI request, and that the Ministry did not have a Health Management Plan for the farm in question. The Ministry further noted that it would carry out an inspection and request a Health Management Plan as part of that inspection.
12. On June 23, 2021, in response to another FOI request, the Fur-Bearers discovered that Fur Farm Licence #31556 was most recently issued by the Chief Veterinarian to the chinchilla fur farm at 6144 Lund Road, Buffalo Creek, BC, on April 6, 2021, and expiring on March 31, 2022.
13. It is evident that this licence has been renewed every year since at least 2015, despite the farm apparently having no Health Management Plan in place, and despite the Minister of Agriculture, Food and Fisheries stating that all fur farms are subject to annual inspections which include requiring Health Management Plans.

Part 3: LEGAL BASIS

A. Public Interest Standing

1. The test for whether the Fur-Bearers ought to be granted public interest standing considers three factors:
 - (a) Whether there is a serious issue raised;
 - (b) Whether the Fur-Bearers are directly affected by the issue or has a genuine interest in it; and
 - (c) Whether the within Petition is a reasonable and effective means of bringing the issue before the court.

Downtown Eastside Sex Workers United Against Violence Society v. Canada
(Attorney General), 2012 SCC 45

2. The Fur-Bearers have sufficient interest to be granted public interest standing, in that:
 - (a) The claim raises a serious issue relating to the compliance of both fur-farmers and provincial officials to animal welfare legislation;
 - (b) The Fur-Bearers have demonstrated a serious and genuine interest in the subject matter of this judicial review;
 - (c) The Fur-Bearers have expertise in the factual and legal issues raised in this claim;
 - (d) The resources and expertise of the Fur-Bearers confirm its capacity to bring forward this judicial review and to ensure that the issues will be presented in a concrete and well-developed factual and legal setting;
 - (e) The claim raises matters of public interest that transcend the interests of the respondents, in that it raises broader concerns over animal welfare as well as ensuring Provincial officials are accountable to the law and that the rule of law remains respected;
 - (f) The claim is a reasonable and effective means to bring the matter before the court.

3. The Fur-Bearers has been granted public interest standing in a prior judicial review in this Court.

The Association for the Protection of Fur-Bearing Animals v British Columbia (Minister of Environment and Climate Change Strategy), 2017 BCSC 2296, para. 12

B. Legislation

4. The licencing powers of the Chief Veterinarian are found in Part 2 of the *Animal Health Act* (the “*Act*”):

Licences and permits

11 (1) If a person is required by regulation to have a licence or permit to engage in a regulated activity, the person may apply for the licence or permit by submitting to the chief veterinarian, in the form and manner required by the chief veterinarian,

- (a) an application, and
- (b) the prescribed records and fees, if any.

(2) On receiving an application for a licence or permit under subsection (1), the chief veterinarian may do one or more of the following:

- (a) request, in writing, from the applicant or from a person referred to by the applicant further information, samples, proof of a fact, records or any other thing necessary to evaluate the application;
- (b) conduct an inspection under Division 1 [*Inspections*] of Part 4;
- (c) refer the application for review and comment to a veterinarian, a public officer, an employee of a local government or a person having special expertise;
- (d) issue a temporary licence or permit with or without terms or conditions, valid for a period of no more than 3 months;
- (e) issue the licence or permit with or without terms or conditions;
- (f) reject the application, providing to the applicant, in writing, the reason for the rejection.

5. Fur farming is a regulated activity under the *Act*. Fur farming is specifically regulated under the *Fur Farm Regulation* (the “*Regulation*”).

6. Section 2 of the *Regulation* prescribes fur farming as a regulated activity under the *Act*, and prohibits a person from engaging in fur farming unless the person is a licensed fur farmer or an employee of a licenced fur farmer.
7. “Fur farm” is defined in the *Regulation* “a place where 2 or more fur bearing animals are kept in captivity with the intention of breeding the animals, or producing pelts, for commercial purposes”.
8. “Fur bearing animal” is defined in the *Regulation* to include chinchilla.
9. Sections 3 and 4 of the *Regulation* sets out the licencing provisions for fur farms.

How to apply for licence

3 (1) For the purposes of section 11 (1) of the Act, an applicant for a licence, including an applicant to renew a licence, must include with the application a fee as follows:

...

(2) An applicant must apply for a new licence if any of the following apply:

(a) the application is in respect of a proposed fur farm that has not yet been constructed;

(b) the application is in respect of a fur farm that has previously been the subject of a licence, but the applicant intends to enlarge or otherwise make significant changes to structures on the fur farm;

(c) the application is in respect of a fur farm that has previously been the subject of a licence, but the licence was not renewed before its expiry.

(3) In addition to any other information required by the chief veterinarian, an applicant for a new licence must include with the application the following:

...

(b) a copy of the health management plan;

....

(4) In addition to any other information required by the chief veterinarian, an applicant to renew a licence must include with the application a statement of the number and species of fur bearing animals intended to be kept on the fur farm, divided according to sex.

Issuance of licence

4 (1) If the chief veterinarian issues a licence under section 11 (2) (d) or (e) of the Act, the chief veterinarian may include, without limiting those paragraphs, the following as conditions of the licence:

...

(c) that the health management plan

- (i) submitted under section 3 (3) (b) [*how to apply for licence*], with any modifications required by the chief veterinarian, is the health management plan that must be implemented under section 7 [*health management plan*], or
- (ii) most recently in place under section 7, with any modifications required by the chief veterinarian, must continue to be implemented under that section.

10. Health Management Plans are required under s. 7 of the *Regulation*:

Health management plan

7 (1) A licensed fur farmer must

- (a) establish a health management plan in accordance with subsection (2) for the fur bearing animals kept on the fur farm, and
- (b) ensure that all operators on the fur farm implement all protocols and procedures contained in the plan.

(2) A health management plan must include the following:

- (a) the name and contact information of the veterinarian or other person who will be advising on the health of fur bearing animals kept on the fur farm;
- (b) a description of the procedures to be used to identify individual fur bearing animals kept on the fur farm, and the type of identification to be used;
- (c) vaccination and treatment protocols;
- (d) a description of the procedures to be used to track mortality rates;
- (e) a description of the procedures to be used to isolate and segregate any fur bearing animal on the fur farm showing signs of illness;
- (f) the euthanasia protocols established under section 10 (1) [*death of animals*].

(3) A licensed fur farmer must not change a health management plan except with the prior written approval of the chief veterinarian.

11. Section 19 of the *Regulation* provides that a person who contravenes s. 7(1)(a) or (b) of the *Regulation* commits an offence.

C. Standard of Review

12. The standard of review to be applied on this judicial review is reasonableness. The Fur-Bearers bear the onus to demonstrate that the Decision is unreasonable. The Court must ask “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”.

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 [*Vavilov*],
para. 100

D. The Decision is Unreasonable

13. A decision is unreasonable where it is untenable in light of the relevant factual and legal constraints that bear on it. The legal context of a decision therefore operates to constrain a decision maker’s powers.

Vavilov, para. 101, 105

14. The key governing statutory scheme, in this case, the *Act* and the *Regulation*, is the most salient aspect of this legal context. While the Chief Veterinarian may have considerable discretion to issue or renew a fur farm licence, “that decision must ultimately comply ‘with the rationale and purview of the statutory scheme under which it is adopted’.”

Vavilov, para. 108

15. The *Regulation* requires all fur farm licensees to have Health Management Plans. The *Regulation* in addition requires these Health Management Plans to be in place prior to the issuance of a fur farm licence. The *Regulation* also provide the Chief Veterinarian the ability to modify the Health Management Plans as a condition of the licence. These Health Management Plans are integral to the purposes of the *Act* and the *Regulation*, which the

petitioner says is meant to not only to protect the welfare of animals, but as well as to prevent transmissible diseases and to protect human health.

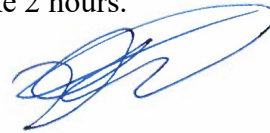
- 16. Therefore it was unreasonable for the Chief Veterinarian to issue or renew a fur farm licence to the Licensee who did not have a Health Management Plan.

Part 4: MATERIALS TO BE RELIED UPON

- 1. Affidavit #1 of Lesley Fox, made July 5, 2021; and
- 2. Such further and other materials as counsel may advise and this Honourable Court permit.

The petitioner estimates that the hearing of the petition will take 2 hours.

Dated: 06 Jul 2021



Signature of lawyer for petitioner
David W. Wu and Victoria Shroff

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this petition

with the following variations and additional terms:

.....
.....
.....

Date:

Signature of Judge Master

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*,
R.S.B.C., 1996, C. 241

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RESPONDENTS

PETITION TO COURT

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