IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Association for The Protection of Fur-Bearing Animals v. Gunvaldsen,* 2022 BCSC 1367

Date: 20220811
Docket: S216225
Registry: Vancouver

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

Chief Veterinarian and Earl Donald Giles

Respondents

Before: The Honourable Madam Justice Tucker

On judicial review from: An order of the Chief Veterinarian, dated April 6, 2021 (Fur Farm Licence #31556)

Reasons for Judgment

In Chambers

Counsel for Petitioner (via videoconference):	V. Shroff C. Kanigan
Counsel for Respondent, Chief Veterinarian (via videoconference):	D. Cowie
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. March 9, 2022
Place and Date of Judgment:	Vancouver, B.C. August 11, 2022

Table of Contents

I. Introduction

[1] The petitioner seeks review under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, in respect of an April 6, 2020 fur farm licence ("Licence").

[2] The Licence was granted by the respondent Chief Veterinarian under the *Animal Health Act*, S.B.C. 2014, c. 16 ("*Act*") and *Fur Farm Regulation*, B.C. Reg. 8/2015 ("*Regulation*") (collectively, the "Regime"). It was granted to E and S Chinchilla Enterprises ("E&S"), a farm operated by the respondent Earl Giles.

[3] The petitioner seeks public interest standing. Under the petition, it seeks to have the Licence set aside. In the alternative, it seeks a declaration that E&S is in breach of the Regime.

II. The Parties

[4] The petitioner is the Association for the Protection of Fur-Bearing Animals ("APFA"). The APFA is a registered charity incorporated under the *Societies Act*, S.B.C. 2015, c. 18.

[5] The Chief Veterinarian is an appointee under s. 68 of the *Act* and serves as the Province's senior animal health official. The Chief Veterinarian is required to be both a veterinarian and an employee of the Ministry of Agriculture, Food and Fisheries ("Ministry"). Rayna Gunvaldsen is the current Chief Veterinarian.

[6] The APFA concedes that the Chief Veterinarian ought to have been named by office. The style of cause is hereby amended to substitute "The Chief Veterinarian" in place of "Rayna Gunvaldsen".

[7] Mr. Giles was served with the petition. No petition response was filed on behalf of E&S or Mr. Giles.

III. Background

[8] The *Act* empowers the Chief Veterinarian to grant fur farm licences under the *Regulation*.

A. Legislative Framework

[9] Subsections 11(1) and (2) of the *Act* read:

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 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.

[10] The *Regulation* includes the following provisions:

Fur farming is regulated activity that must be licensed

2 (1) Fur farming is prescribed as a regulated activity for the purposes of the Act.

(2) A person must not engage in fur farming unless the person

(a) is a licensed fur farmer, or

(b) is an employee, within the meaning of section 10 of the Act, of a licensed fur farmer.

(3) Except as authorized under the *Wildlife Act*, a person must not possess live fur bearing animals unless the person is a person described in subsection (2).

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:

(a) $12, if no more than 25 fur bearing animals are intended to be kept on the fur farm;

(b) $24, in any other case.

(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:

(a) if subsection (2) (a) or (b) applies, plans relevant to the construction of the fur farm, including accommodation, isolation and euthanasia facilities;

(b) a copy of the health management plan;

(c) a statement of the number and species of fur bearing animals intended to be kept on the fur farm, divided according to sex;

(d) a written statement from the council of the municipality or the board of the regional district in which the proposed fur farm is to be located indicating that the proposed fur farm complies with all relevant local government land use regulations.

(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:

(a) the species of fur bearing animals that may be kept on the fur farm;

(b) the maximum number of fur bearing animals that may be kept on the fur farm;

(c) that the health management plan

(i) submitted under section 3 (3) (b), with any modifications required by the chief veterinarian, is the health management plan that must be implemented under section 7, 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.

(2) The chief veterinarian must not issue a licence permitting more than one species of fur bearing animals to be kept on a fur farm.

(3) A licensed fur farmer must not enlarge or otherwise make significant changes to structures on the fur farm unless the licensed fur farmer first applies for, and is issued, a new licence.

…

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).

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

[11] In this decision, I will refer to a health management plan as an "HMP" and to an HMP that the Chief Veterinarian has accepted as fully according with s. 7 of the *Regulation* as an "established HMP".

[12] The *Act* came into effect on January 19, 2015 (B.C. Reg. 7/2015). The Regime replaced an earlier regime: *Animal Disease Control Act*, R.S.B.C. 1996, c. 14; *Fur Farm Act*, R.S.B.C. 1996, c. 167; *Fur Farm Regulation*, B.C. Reg. 310/59 [*Former Regulation*]. The *Former Regulation* obliged a licence holder "to take all proper measures for the maintenance of his animals in good general health and free from disease", but had no provision comparable to *Regulation*, s.7.

B. E&S and the Licence

[13] E&S has operated a licenced fur farm since at least 2000. E&S is British Columbia's only chinchilla fur farm.

[14] Under the *Regulation*, fur farm licences are valid for a maximum period of one year and expire at the end of every March.

[15] On March 28, 2021, E&S applied for a renewal licence using the Ministry's renewal form. The renewal application disclosed that E&S had relocated to a new address.

[16] On March 30, 2021, Julia Hughes, a Ministry compliance officer, advised Mr. Giles that as a consequence of the relocation an inspection was being required and that it would be conducted as soon as possible in light of pandemic-related travel restrictions. The inspection was carried out on May 20, 2021.

[17] On April 6, 2021, the Chief Veterinarian granted the Licence. Ms. Hughes attests that the granting decision was made considering E&S's lengthy experience as a licenced operator.

[18] On April 12, 2021, the APFA made a *Freedom of Information and Protection of Privacy Act,* R.S.B.C. 1996 c. 165 [*FIPPA*], request for "the most recent Health Management Plan for all chinchilla farms in British Columbia".

[19] On May 11, 2021, an FOI analyst from the Ministry of Citizens' Services responded:

> Although a thorough search was conducted, no records were located in response to your request. The farm would fall under the provisions of the *Animal Health Act*. The Ministry did not locate records as a Health Management Plan for this farm is not held by the ministry. The ministry will carry out an inspection on the farm this month and a Health Management Plan will be requested as a part of the inspection.

[20] The Ministry employees performing the inspection completed a "Fur Farm Inspection Check List" ("Check List"). The Check List requires inspectors to check for an HMP. As of the May 20, 2021 inspection, E&S did not have an HMP.

[21] On May 28, 2021, the Ministry sent Mr. Giles a follow-up letter. It closed with the following statement:

> Overall the farm and facilities meet the applicable federal, provincial and municipal land regulations.
>
> As discussed, please submit details of your Herd Health Management Plan by June 30, 2021.

[22] On June 2, 2021, the APFA made a further *FIPPA* request, this time seeking copies of chinchilla farm permits for the period between January 1, 2016 and June 2, 2021.

[23] On June 23, 2021, the AFPA was provided with copies of E&S's permits – including the Licence – in response to its request.

[24] On June 30, 2021, E&S submitted an HMP to the Ministry. Following review, the Chief Veterinarian asked E&S to provide a revision with a more detailed euthanasia protocol.

[25] The APFA filed its petition on July 6, 2021.

[26] On August 3, 2021, E&S provided a revised HMP to the Chief Veterinarian.

[27] The Chief Veterinarian's response to petition, filed August 10, 2021, states: "As of the date of this Response, the Health Management Plan is near finalization."

[28] In October 2021, the Chief Veterinarian arranged for a local veterinarian to observe E&S's euthanasia protocol in practice. On October 26, 2021, the veterinarian reported that E&S's facilities were clean, the herd appeared comfortable and the observed euthanasia was humane.

IV. Issues

[29] The following issues arise under the petition:

a) Whether the judicial review is moot;

b) Whether the APFA should be granted public interest standing;

c) Whether the Chief Veterinarian's decision to grant the Licence was unreasonable.

V. Mootness

[30] The Chief Veterinarian argues the judicial review is moot given that E&S now has an established HMP and given the Licence's March 31, 2022 expiry date.

[31] The fact that a positive report was sent to the Chief Veterinarian by the local veterinarian is not evidence that the Chief Veterinarian has approved the version E&S provided on August 3, 2021. Thus, there is no evidence that E&S now has an established HMP.

[32] With regard to the Licence expiry date, even if the post-hearing expiry rendered review of the Licence moot, I would nonetheless conclude it was appropriate to determine the issue raised.

[33] An overview of the relevant law is found in *Zucchiatti v. The College of Dental Surgeons of British Columbia*, 2013 BCSC 1736:

> **Doctrine of Mootness**
>
> [14] The doctrine of mootness was described by Sopinka J. for a unanimous Court in *Borowski v. Canada (Attorney General),* [1989] 1 S.C.R. 342 at 353 as follows:
>
> > The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a

> hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision.
>
> [15] Speculation on the potential for future events is not enough to create an ongoing adversarial dispute between the parties. The possibility that the present issue may arise again between the parties in the future is considered too remote to render the present question a live controversy *(Lockhart v. Provincial Planning Appeal Board*, 1990 CanLII 3896 (N.B. CA); *International Assn. of Bridge, Structural, Ornamental and Reinforcing Iron Workers v. Labourers' International Union of North America,* 2001 NBCA 64).
>
> [16] Under special circumstances, a court may exercise its discretion to hear a moot case. In *Borowski*, the Court identified the following factors to consider in deciding whether to hear a moot case (at 358-363):
>
> 1. The need for a full adversarial context between the parties;
>
> 2. The concern for judicial economy, having regard to any practical effects on the rights of the parties, the importance of addressing issues that are of a recurring nature but brief duration, and any issues of public importance of which a resolution is in the public interest; and
>
> 3. The need for courts to be sensitive to their adjudicative role and avoid intrusions into the legislative role by pronouncing judgments in the absence of a dispute affecting the rights of the parties.
>
> [17] The party seeking to have a moot question decided bears the onus of convincing the court to make an exception (*Payne v. Wilson*, 2002 CanLII 45002 ONCA at para. 18).

[34] I am satisfied the issue raised is one that may recur, but which will always be of brief duration. By *Regulation*, a fur farm licence cannot have a term exceeding one year. This review is one that no licensee would ever bring, and it will inevitably be challenging for any third party to ascertain the facts, file a petition, and obtain a hearing without running up against the expiry date.

[35] The AFPA acted with expedition in the circumstances The Licence was still in effect at the time of the hearing. The litigation was conducted in a full adversarial context. If the issue is one of public importance, I am satisfied that it is appropriate to determine the petition.

VI. Public Interest Standing

A. Legal Framework

[36] The analytical framework for determining whether public interest standing should be granted was established in *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 [*Downtown Eastside*]. In *Downtown Eastside*, the Court articulated three factors for consideration:

a) the existence of a serious justiciable issue;

b) whether the person seeking standing has a genuine interest; and

c) whether the proceeding is a reasonable and effective means of bringing a court challenge.

[37] The decision in *Downtown Eastside* emphasizes that the factors are not intended for use as a checklist:

> 20. My view is that the three elements … are interrelated factors that must be weighed in exercising judicial discretion to grant or deny standing. These factors, and especially the third one, should not be treated as hard and fast requirements or free-standing, independently operating tests. Rather, they should be assessed and weighed cumulatively, in light of the underlying purposes of limiting standing and applied in a flexible and generous manner that best serves those underlying purposes.

[38] The *Downtown Eastside* framework was affirmed in *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27 [*CCD*], a decision released following the hearing in this matter. Further submissions were unnecessary, given that *CCD* did not alter the framework. *CCD* did, however, helpfully elaborate on the relationship between the factors and the framework's underlying purposes: paras. 28-31.

[39] The *Downtown Eastside* framework has been consistently applied in the judicial review context: see, for example, *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union v. BC (Chief Inspector of Mines)*, 2014 BCSC 1403 at paras. 28-33.

B. The Petitioner

[40] APFA describes itself as a wildlife protection organization working to protect fur-bearing animals in the wild and captivity through education, advocacy, campaigns, legislative initiatives, and partnerships with like-minded businesses and organizations.

[41] Under its constitution, APFA's stated purposes are:

> 1 to protect the environment by preserving urban and rural ecosystems and the wildlife therein;
>
> 2. to advance education by:
>
> (a) developing and delivering training, courses, seminars, workshops and conferences that promote the welfare of animals; and
>
> (b) conduction, commissioning and disseminating research related to the welfare of animals;
>
> 3. to uphold the administration and enforcement of animal welfare laws by:
>
> (a) monitoring the practices of commercial fur farms and other commercial operations using fur-bearing animals to determine compliance with relevant laws; and
>
> (b) identifying infractions by monitoring and reviewing publicly accessible Information and through tips from the public; and
>
> 4. to do all such other things as are incidental and ancillary to the attainment of the foregoing purposes and the exercise of power of the Society.

[42] APFA states its core beliefs as follows: (a) fur should not be a commodity; (b) fur-bearing animals deserve protection; (c) non-lethal solutions to human-wildlife contacts are possible and effective; (d) fur-bearing animals "are part of a healthy Canada" and the public should perceive that; and (e) education and positive interactions will bring about sustainable change in resolving human-wildlife conflicts.

C. The Question Proposed for Review

[43] In its argument, APFA describes the legal issue it seeks to bring before the court as follows:

> 52. 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 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'."
>
> 53. As discussed, the *Regulation* requires all fur farm licensees to have Health Management Plans. The *Regulation* in addition requires these Health Management Plans to be developed prior to the issuance of a fur farm licence. The Health Management Plan is included with a new license application, which is then reviewed and approved by the Chief Veterinarian with the issuance of a license, and any change to a Health Management Plan must be approved by the Chief Veterinarian.
>
> 54 These Health Management Plans are integral to the purposes of the *Act* and the *Regulation*, which the Fur-Bearers say is meant to not only to protect the welfare of animals, but as well as to prevent transmissible diseases and to protect human health. Further, the legislative intent signaled by statutory scheme is that Health Management Plans are to subject to strict oversight by the Chief Veterinarian.
>
> …
>
> 57. For these reasons, 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, and in fact, had been operating without one for years.
>
> [APFA's underlining]

[44] As I understand it, AFPA's contention is that – in light of the role HMPs play in the Regime, the policy rationale for imposing the HMP requirement, and the legislative intent to create a system of strict oversight – the grant of a licence in the absence of an established HMP is necessarily extraordinary. Thus, it is unreasonable to grant a licence, new or renewal, in the absence of an established HMP.

D. Conclusion

[45] The Chief Veterinarian raises two objections to AFPA's application for standing. Both centre on the specific issue sought to be raised. First, she says the issue is not one of public importance. Second, that the issue does not align the AFPA's central mission.

1. An Important Issue

[46] The Chief Veterinarian says the issue raised does not transcend the interests of the parties. She argues that the reasoning in *J.N. v. British Columbia Commissioner for Teacher Regulation*, 2019 BCSC 2 [*JN*], applies here.

[47] In *JN*, two complaints were filed with the Commissioner. After investigation, he deferred one to consent resolution and declined to take further action on the other. J.N. sought public interest standing to judicially review the Commissioner's decisions.

[48] In denying J.N. standing, the court stated:

> [103] To be a serious justiciable issue, the issue must be a "substantial constitutional issue" or an "important one", such as the issue in [*Downtown Eastside*], which raised issues of public importance that transcended the parties' immediate interests (paras. 42, 73).
>
> [104] Although the treatment of children by their teachers is of utmost importance, especially in the context of the treatment of Indigenous children, this petition involves disciplinary action against two particular persons and involves fact-specific determinations, not legal issues of broad significance or systemic issues in teacher disciplinary proceedings. Accordingly, I find the petitioner has failed to satisfy the first factor of the public interest standing test as articulated in [*Downtown Eastside*].

[49] Without implying that the *Downtown Eastside* factors are watertight compartments, I note that in *CCD* the Court expressly included public importance in a list of matters of assistance with the third factor:

> [55] The following non-exhaustive list outlines certain "interrelated matters" a court may find useful when assessing the third factor (*Downtown Eastside*, at para. 51):
>
> > 1. The plaintiff's capacity to bring the claim forward: What resources and expertise can the plaintiff provide? Will the issue be presented in a sufficiently concrete and well-developed factual setting?
> >
> > 2. Whether the case is of public interest: Does the case transcend the interests of those most directly affected by the challenged law or action? Courts should take into account that one of the ideas animating public interest litigation is that it may provide access to justice for disadvantaged persons whose legal rights are affected.
> >
> > ...
> >
> > [Emphasis added]

[50] In any event, the Chief Veterinarian's argument here is not framed in manner that is factor-specific. She says the grant of the Licence was a discretionary

decision grounded in the specific facts and circumstances of the case. She argues a decision on the issue raised will not impact anyone aside from the parties.

[51] I do not agree. The AFPA contends that on any reasonable interpretation of the relevant provisions of the Regime, the Chief Veterinarian's discretion to grant a licence in the absence of an established HMP is at least restricted to exceptional circumstances. So framed, the issue raised does have systemic implications and could impact the issuance of licences in the future.

[52] In addition, HMPs are intended to address serious animal and human health concerns. The proper enforcement of the Regime's HMP-related provisions is matter of import extending beyond Regime participants.

[53] I am satisfied the issue raised is an important one in the relevant sense.

2. Alignment with the AFPA's Interests

[54] The Chief Veterinarian says the AFPA's central position is that fur farming should be stopped altogether. She argues that core interest does not align with the issue the AFPA seeks to raise, which deals with the proper administration of the permissive Regime.

[55] The Chief Veterinarian raised this objection in relation to the first factor.

[56] In *CCD*, the Court stated:

> [51] The second factor, being whether the plaintiff has a genuine interest in the issues, also reflects the concern for conserving scarce judicial resources and the need to screen out the mere busybody. This factor asks "whether the plaintiff has a real stake in the proceedings or is engaged with the issues they raise" (*Downtown Eastside*, at para. 43). To determine whether a genuine interest exists, a court may refer, among other things, to the plaintiff's reputation and to whether the plaintiff has a continuing interest in and link to the claim (see, e.g., *Canadian Council of Churches*, at p. 254).

[57] While the Court has said that the screening out of busybodies is relevant to all three factors (*CCD*, paras. 28-29), in my view, the objection articulated here is a better fit under the second. As I understand it, the Chief Veterinarian's objection is

that the AFPA is not genuinely engaged with the issue it seeks to raise, but rather engaged with an issue adjacent to it.

[58] The Chief Veterinarian cites *Voters Taking Action on Climate Change v. British Columbia (Energy and Mines)*, 2015 BCSC 471 [*Voters*]. In *Voters*, the petitioner sought to review two administrative decisions. The decisions would enable a coal company, TQL, to expand its handling and storage operations. The petitioner's proposed challenge to both decisions was based on the division of constitutional powers.

[59] The petitioner's central mission was to urge governments to prevent climate change, including through a reduced use of carbon fuels. The petitioner argued that the planned expansion would increase coal exports, and the subsequent burning of that exported coal would drive climate change.

[60] The connection between the issues sought to be raised and the petitioner's central mission was found to be too attenuated to ground public interest standing:

> [58] The issue that is at the centre of VTACC's advocacy efforts concerning whether the province ought to be authorizing coal projects at all, is not an issue raised by the *Mines Act* application or the request for exemption under the [*Environmental Management Act*], even though VTACC perceives a link between the decision of the Chief Inspector and its broader climate change concerns. Furthermore, TQL has been permitted to store coal at its mine site since 1990.
>
> [59] Applying my discretion in the manner directed by the Supreme Court of Canada, I find that the defined issue does not raise a sustainable constitutional issue or one of such public importance that it transcends the interests of those directly affected. It does not address the area of advocacy that VTACC says it represents: urging governments to take meaningful action to address climate change, including through reduced reliance on carbon intensive fuels such as coal or its position that TQL's facility will significantly increase thermal coal exports from British Columbia, which, in turn, will cause a significant increase in greenhouse gas emissions when coal is burned, contributing to greenhouse gas emissions that drive climate change.
>
> [Emphasis added]

[61] The situation here is unlike that in *Voters*. In *Voters*, the petitioner had no interest in the division of powers issues it sought to raise, but saw the setting aside of the decisions, on any grounds, as a way to instrumentally advance its goals.

[62] The AFPA's central mission is to protect the lives of fur-bearing animals. Its constitution speaks directly to monitoring fur farm practices. Although the AFPA does wish to see fur farms abolished, its central mission includes improving the quality of life and death experienced by animals while fur farms continue to exist. The treatment and euthanasia protocols required in an established HMP relate directly to that quality of life and death, and the issue sought to be raised involves enforcement of the Regime's HMP-related provisions. The AFPA's central mission does squarely align with the issue raised.

[63] The AFPA has a genuine interest in the issue it seeks to raise.

[64] Overall, the *Downtown Eastside* factors favour a grant of standing.

VII. Merits

[65] The applicable standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*]. A reasonable decision is one that has an internally coherent and rational chain of analysis and is justified in relation to the facts and law constraining the decision maker: *Vavilov* at para. 85.

[66] The proper approach to review here is that set out in *Vavilov* regarding decisions made without formal reasons:

> [137] Admittedly, applying an approach to judicial review that prioritizes the decision maker's justification for its decisions can be challenging in cases in which formal reasons have not been provided. ... However, even in such circumstances, the reasoning process that underlies the decision will not usually be opaque. It is important to recall that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision: *Baker*, at para. 44. For example, as McLachlin C.J. noted in *Catalyst*, "[t]he reasons for a municipal bylaw are traditionally deduced from the debate, deliberations and the statements of policy that give rise to the bylaw": para. 29. In that case, not only were "the reasons [in the sense of rationale] for the bylaw . . . clear to

> everyone", they had also been laid out in a five-year plan: para. 33. Conversely, even without reasons, it is possible for the record and the context to reveal that a decision was made on the basis of an improper motive or for another impermissible reason, as, for example, in *Roncarelli*.
>
> [138] There will nonetheless be situations in which no reasons have been provided and neither the record nor the larger context sheds light on the basis for the decision. In such a case, the reviewing court must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable. But it is perhaps inevitable that without reasons, the analysis will then focus on the outcome rather than on the decision maker's reasoning process. This does not mean that reasonableness review is less robust in such circumstances, only that it takes a different shape.

[67] Given the circumstances, the review here will primarily focus on outcome and legal constraints.

[68] In my view, neither the Regime as whole nor the relevant provisions support AFPA's contention that HMPs are so central to the Regime that is it is presumptively unreasonable to grant a licence without an established HMP in place.

[69] I start with the proposition set in s. 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238:

> Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[70] I also take guidance from modern approach to statutory interpretation set out *Re Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21, 154 D.L.R. (4th) 193, citing Elmer Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[71] Looking at the Regime as a whole, I conclude that it is generally designed to bring everyone in possession of fur bearing animals into the system and under the

Chief Veterinarian's aegis. The Chief Veterinarian is primarily a shepherd of the licensed, not a gatekeeper for licences.

[72] This is reflected in the *Regulation*'s flat prohibition against possessing fur bearing animals without a licence (s. 2), and in the Chief Veterinarian's extensive oversight powers with respect to licensees. Under the *Act*, those oversight powers include: to suspend, cancel or vary a licence (s. 14), to inspect (s. 24), to seize (ss. 29 and 30), and to enter and take action if an order is disregarded (s. 54).

[73] Further, the Regime does include express prohibition against the issue of licences in some circumstances. For example, *Regulation*, s. 4(3) reads:

> (2) The chief veterinarian must not issue a licence permitting more than one species of fur bearing animals to be kept on a fur farm.

[74] It is notable that there is no comparable provision regarding HMPs.

[75] More specifically, the Regime contemplates the Chief Veterinarian granting a licence and then working with the licensee to establish an HMP.

[76] Under *Act*, s. 11(2)(d) and (e), the Chief Veterinarian is broadly empowered to issue a temporary licence or a licence with conditions. The *Regulation* expressly (but without limitation) permits temporary and conditional new licences to be issued on the basis that the HMP provided in the support of application be modified (*Regulation*, s. 4(1)(c)(i)). Similarly, temporary and conditional renewal licences can be issued on the basis that a current HMP be modified (*Regulation*, s. 4(1)(c)(ii)). Thus, the *Regulation* specifically contemplates the grant of a licence while the work of establishing an HMP remains a work in progress.

[77] The AFPA relies on the fact that s. 3(3)(b) of the *Regulation* requires an applicant for a new licence to include "a copy of the heath management plan" as part of their application. In my view, s.3(3)(b) should be interpreted as requiring an application to submit a <u>proposed</u> HMP, not an <u>established</u> HMP. This interpretation dovetails the *Regulation*, ss. 3(3)(b) and 7(1).

[78] The language of s. 7(1) of the *Regulation* is quite deliberate:

> 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.

[79] Section 7(1) does not state that a licensed fur farmer must at all time have an established HMP, but provides that one must be established. This wording does not support AFPA's contention.

[80] The Regime does not support the AFPA's argument that granting a licence in the absence of an established HMP is unreasonable.

[81] The Chief Veterinarian's decision to issue the Licence was reasonable.

[82] Given the conclusion above, it is unnecessary to address the alternative relief sought by the AFPA.

[83] As a final point, I note that s. 15 of the *Act* establishes a reconsideration process for some licences in some circumstances. This decision should not be read as making any implied findings regarding the applicability of that provision or any requirement to exhaust internal remedies before seeking judicial review.

VIII. Disposition

[84] The petition is dismissed.

[85] As the Chief Veterinarian does not seek her costs, none are awarded.

"Tucker J."