



COURT FILE NUMBER ~~1601-1603-~~15508
COURT QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
APPLICANTS ZOOCHECK CANADA INC., VOICE FOR ANIMALS HUMANE SOCIETY and TOVE REECE
RESPONDENTS HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA (THE MINISTER OF AGRICULTURE AND FORESTRY and THE MINISTER OF ENVIRONMENT AND PARKS)
DOCUMENT **ORIGINATING APPLICATION FOR JUDICIAL REVIEW**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MACHIDA JAMES MCCALL
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Attention: G. Stephen Panunto
FILE: 6569GSP

NOTICE TO THE RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: Friday, 7 October 2016
Time: 10:00 AM
Where: Law Courts in Edmonton, Alberta
Before: The Honorable Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

1. This is an application seeking judicial review of decisions made by on or about April 1, 2017 to grant or renew a zoo permit to the Edmonton Valley Zoo (the "Zoo") notwithstanding the lack of compliance by the Zoo with the requirements of the Government of Alberta Standards for Zoos in Alberta (the "Zoo Standards") and all

requirements of the governing legislation and regulations with regard to an Asian Elephant, known as Lucy (“Lucy”).

2. The enforcement of the Zoo Standards falls upon the Minister of Agriculture and Forestry (the “Agriculture Minister”) generally and upon the Minister of Environment and Parks (the “Environment Minister”) for specific portions.
3. The Applicants bring this application on the basis of public interest standing as follows:
 - (a) There are serious issues raised about the manner in which statutory and/or regulatory authority was exercised by each of the Ministers in this case;
 - (b) The applicants have a genuine interest in the issues; and
 - (c) There is no other more reasonable or effective way to bring the issues before the court.
4. The Applicants seek an order setting aside the decision of the Agriculture Minister (the “Agriculture Decision”), on the basis that the Agriculture Minister has exceeded his jurisdiction in making the Agriculture Decision without taking into account all proper and relevant considerations. In particular:
 - (a) The Zoo has failed to meet the requirements of the *Animal Protection Act*, RSA 2000, c. A-41, and its regulations;
 - (b) Further, with respect to the care and conditions in which Lucy is kept, the Zoo has been for a number of years, and continues to be, non-compliant with significant portions of the Zoo Standards, including but not limited to the Animal Exhibit Standards, the Animal Behavioural Husbandry Standards and the Animal Health Care Standards;
 - (c) Further, the Zoo does not have the capacity or the space to develop any sufficient plan to address its breaches of the Zoo Standards with respect to the care and keeping of Lucy; and
 - (d) The Zoo has failed to meet such further and other requirements of the Zoo Standards, and the *Animal Protection Act* and its regulations, as will be shown at the hearing of this Application.
5. Further or in the alternative, the Applicants seek an order setting aside the Agriculture Decision, on the basis that it has been made on the basis of improper or irrelevant considerations. In particular, the Zoo’s financial well-being.
6. The Applicants seek an order setting aside the decision of the Environment Minister (the “Environment Decision”), on the basis that that the Environment Minister has exceeded her jurisdiction in making the Environment Decision without taking into account all proper and relevant considerations. In particular:

- (a) The Zoo has failed to meet the requirements of the *Wildlife Act*, RSA 2000, c. W-10, and its regulations;
 - (b) Further, with respect to issues of public safety and the conditions in which Lucy is kept, the Zoo has been for a number of years, and continues to be, non-compliant with significant portions of the Zoo Standards, including but not limited to the Wildlife and Controlled Animal Containment Standards, the Public and Staff Safety Standards and the Animal Health Care Standards;
 - (c) Further, the Zoo does not have the capacity or the space to develop any sufficient plan to address its breaches of the Zoo Standards with respect to public safety associated with the care and keeping of Lucy; and
 - (d) The Zoo has failed to meet such further and other requirements of the Zoo Standards, and the *Wildlife Act* and its regulations, as will be shown at the hearing of this Application.
7. Further or in the alternative, the Applicants seek an order setting aside the Environment Decision, on the basis that it has been made on the basis of improper or irrelevant considerations. In particular, the Zoo's financial well-being.
8. The particular matters of concern to the Applicants related to Lucy's care and issues of public safety are set out in more detail in the Affidavits on which the Applicants will rely. These concerns may be broadly summarized as follows:
- (a) Lucy is in poor health as a result of a number of aspects of her care, including the insufficient size of her enclosure, the cold climate of Edmonton compared to her natural habitat of Sri Lanka, and the lack of appropriate socialization.
 - (b) The Zoo purports to exercise Lucy in areas of the Zoo where Lucy comes into direct contact with visitors and staff, which is a practice inherently and unacceptably dangerous to the public and employees of the Zoo given the size and unpredictability of elephants.
 - (c) Lucy has been alone, in the sense of having no companion of her own species at the Zoo, for several years now, which is harmful to Lucy's overall health and well-being given the social nature of Asian Elephants in the wild, continuing throughout their entire lives.
 - (d) Lucy would be significantly better off if she were moved to another facility in a warmer climate where she could live in a more normal social group with other Asian Elephants.
 - (e) Lucy would be able to travel by trailer to a new facility without jeopardizing her health provided that a program was put in place, immediately, to accustom her to being in a customized trailer.

- (f) The Applicants have the resources and the capacity to ensure that Lucy is prepared for travel by trailer and is ultimately moved to an appropriate facility without the Zoo or any other party incurring undue expense.
9. The Applicants, as non-profit entities and an individual seeking public interest standing to protect the interests of Lucy, do not seek costs for this application and request that costs not be awarded against them.

Remedy sought:

10. The Applicant seeks the following:
- (a) A declaration that they have standing to bring this application;
 - (b) An order in the nature of certiorari, setting aside the Agriculture Decision and the Environment Decision, or either of them;
 - (c) An order in the nature of mandamus, directing the Zoo to release its ownership of Lucy and to cooperate with the Applicants in implementing an appropriate program to move Lucy to an appropriate facility;
 - (d) An order permitting the Applicants to rely on affidavit evidence; and
 - (e) An order that there be no costs of this application.

Affidavit or other evidence to be used in support of this application:

- 11. Affidavit of J. Woodyer, sworn on 29 August 2016, filed herein.
- 12. Affidavit of T. Reece, sworn 30 August 2016, filed herein.
- 13. Affidavit of Dr. P. Ensley, sworn 9 August 2016, filed herein.
- 14. Affidavit of Dr. W.K. Lindsay, sworn 5 August 2016, filed herein.
- 15. Affidavit of M. Whittaker, to be filed.

Applicable Acts and regulations:

- 16. *Alberta Rules of Court*, rules 3.8, 3.14, 3.15-3.24.
- 17. *Government of Alberta Standards for Zoos in Alberta*
- 18. *Wildlife Act*, RSA 2000, c W-10
- 19. *Wildlife Regulation*, Alta Reg 143/1997
- 20. *Animal Protection Act*, RSA 2000, c A-41
- 21. *Animal Protection Regulation*, Alta Reg 203/2005

22. *Government Organization Act, RSA 2000, c G-10*

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).