

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

BETWEEN:



**ANIMAL JUSTICE, THE FUR-BEARERS,
AND COYOTE WATCH CANADA**

APPLICANTS

-and-

**MINISTER OF NORTHERN DEVELOPMENT, MINES,
NATURAL RESOURCES, AND FORESTRY (ONTARIO)**

RESPONDENT

NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the applicant, unless the court orders otherwise. The applicant requests that this application be heard in person at the following location:

Divisional Court
Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N5

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a

lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for hearing or terminated by any means within five years after the notice of application was filed with the court, unless otherwise ordered by the court.

Date: February 23, 2022

Issued by: _____



Local Registrar

Divisional Court
Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N5

TO: MINISTER OF NORTHERN DEVELOPMENT, MINES,
NATURAL RESOURCES, AND FORESTRY
Ministry of Northern Development, Mines, Natural Resources,
and Forestry
Minister's Office
Whitney Block, 99 Wellesley St W
Toronto, ON M7A 1W3

AND TO: ATTORNEY GENERAL OF ONTARIO
Crown Law Office – Civil
720 Bay Street
8th Floor
Toronto, Ontario M7A 2S9

APPLICATION

1. This is an application for judicial review challenging the ongoing decision of the Minister of Northern Development, Mines, Natural Resources, and Forestry (“**the Minister**”) to allow a coyote hunting contest to proceed without the issuance of written Ministerial authorizations as required under sections 11 and 65 of the *Fish and Wildlife Conservation Act, 1997* SO 1997 c. 41 (“**the Act**”).

2. The hunting contest at issue is being held by Chesher’s Outdoor Store (“**the Store**”), and includes a total of \$2,500 in cash and prizes that will be awarded to participants for killing coyotes. It is an offence under section 11 of the Act to hunt for “gain or the expectation of gain”, to “induce another person to hunt for gain”, or to “pay or accept a bounty”, except with written authorization from the Minister. Yet the Minister is aware of this contest, and has decided to allow it to proceed without the statutorily required authorization.

3. No written Ministerial authorization has been issued to the Store or to contest participants.

RELIEF SOUGHT

4. The applicants make application for:

- (a) a declaration that the Minister’s ongoing decision – a purported exercise of his power under section 11 of the Act – to allow the hunting contest to proceed in the absence of written authorizations under sections 11 and 65 of the Act is void and of no force or effect;

- (b) additionally, or in the alternative, a declaration that the Minister erred in law or acted without jurisdiction when he purported to exercise his power under section 11 of the Act to allow the coyote hunting contest to proceed without issuing written authorizations to the Store and contest participants as required under sections 11 and 65 of the Act;
- (c) additionally, or in the alternative, a declaration that the Minister was under a legal duty pursuant to sections 11 and 65 of the Act to issue written authorizations to the Store and contest participants when he purported to exercise his power under section 11 of the Act to allow the coyote hunting contest to proceed;
- (d) costs of this application or, in the alternative, an order that the parties bear their own costs; and
- (e) such further and other relief as counsel may advise and this Honourable Court may deem just.

GROUND

5. The grounds for the application are that:

- (a) The Minister has decided to allow Chesher's Outdoor Store to hold a coyote hunting contest involving thousands of dollars in cash and prizes from February 1-28, 2022. This decision has ongoing implications and is ongoing in nature – the Minister continues to allow the contest to take place.

- (b) Though the Minister has decided to allow the hunt to proceed, he has not issued written authorizations to the Store or contest participants.

- (c) This decision is contrary to the clear and mandatory wording of section 11 of the Act, which states that except with authorization from the Minister, it is an offence to hunt for gain or with the expectation of gain; induce others to so hunt; or pay or receive a bounty. The Minister has a statutory duty to issue an authorization if he allows a person to engage in conduct that runs afoul of section 11 of the Act.

The Parties

6. Animal Justice is a national animal law organization based in Toronto, Ontario. Animal Justice's objects include using the law to protect animals, working to strengthen laws relating to animals, and raising public awareness regarding the treatment of animals used in a number of industries, including hunting, agriculture, fashion, and scientific research.

7. One of Animal Justice's areas of focus is protecting wild animals from threats posed by sport hunting and other potentially harmful activities. Animal Justice has regularly engaged in matters related to the development of laws to protect wild animals, including coyotes in particular, and has advocated for the enforcement of such laws to protect wild animals.

8. The Fur-Bearers (The Association for the Protection of Fur-Bearing Animals) is a national, non-partisan charitable organization that has been working to protect Canadian wildlife since 1953. It works to protect fur-bearing animals through conservation, advocacy, research and education focused on coexistence with wildlife and ending the commercial fur trade.

9. Coyote Watch Canada is a Canada-based non-profit organization that works to protect canids such as coyotes by developing and implementing non-lethal, sustainable human-wildlife conflict solutions and promoting peaceful coexistence between people and canids. Coyote Watch Canada engages in education, research, intervention, and conflict resolution.

10. The applicants have worked to inform their supporters and the public about the coyote hunting contest at issue in this application, and to urge the Minister not to allow the contest to proceed.

11. The applicants bring this application because they are concerned that the coyote hunting contest violates the Act; poses risks to threatened Algonquin wolves; and glorifies and rewards the killing of coyotes for sport and gain, contrary to the spirit and intent of the Act.

12. The Minister is responsible for enforcing the Act and for issuing authorizations for activities that would otherwise violate section 11 of the Act. The Minister must issue such authorizations in writing (s 65).

The Act prohibits unauthorized hunting for gain and bounty hunting

13. The Act regulates hunting, trapping, and fishing practices in Ontario. Its purposes include wildlife conservation and protection of species at risk (ss 2, 5(1), 6(1)) in addition to promoting public safety and protection of property.

14. The Act is administered by the Ministry of Northern Development, Mines, Natural Resources, and Forestry (“**the Ministry**”).

15. With respect to hunting in Ontario, the Act sets out a licencing regime and establishes restrictions on the hunting of certain species, and on hunting in certain locations.

16. In contrast to many other species of wildlife in Ontario, coyote hunting in much of Southern Ontario is open all year round, and there is no limit on the number of coyotes that can be killed cumulatively or by individual hunters. There are no reporting requirements for hunters who kill coyotes in this area.

17. While licenced individuals can lawfully engage in hunting in Ontario, section 11 sets out a number of important prohibitions related to hunting for gain. That section states that “except with the authorization of the Minister,” a person shall not, *inter alia*:

- (a) hunt for “gain or the expectation of gain;”
- (b) “induce another person to hunt for gain;” or
- (c) “pay or accept a bounty.”

18. “Bounty” is not defined in the Act or the regulations made thereunder. The word is commonly defined as a sum paid for killing or capturing an animal.

19. “Gain” is not defined in the Act or the regulations made thereunder. The word is commonly defined as involving an increase in wealth or resources.

20. The only exceptions to the prohibitions in section 11 relate to guides and black bear hunting services, activities of certain individuals who hold trapping licences, and circumstances prescribed by regulation (ss 11(2)-(5)). None of these exemptions apply to the coyote hunting contest at issue in this application.

21. Section 65 of the Act requires that “[e]very authorization given under this Act...be in writing.”

22. Section 62 provides that the Minister may impose written conditions on an authorization that he gives under the Act, and that the holder of the authorization must comply with any such conditions.

23. While the Minister has discretion regarding whether or not to issue an authorization, and what conditions to include in such an authorization, the Act does not confer on the Minister any discretion to allow persons to engage in acts that would otherwise contravene section 11 without issuing a written authorization. The wording of section 11 is mandatory.

The coyote hunting contest

24. Cheshier's Outdoor Store has two locations in Ontario. The Store that holds the coyote hunting contest at issue in this application is located near Belleville, Ontario.

25. On or about January 5, 2022, the Store announced it would be holding a coyote hunting contest from February 1-28, 2022. Through the contest, the Store said it will award approximately \$2,500 in cash and merchandise prizes to participants for killing coyotes.

26. Cash and prizes are to be awarded to those who kill the five heaviest coyotes. There are to be five additional "hidden weight prizes" and a random draw at the end of the contest for a \$100 gift card.

27. A "hidden weight prize" involves specific, random weights being chosen but kept "hidden" from contestants. At the end of the contest, the weights are announced and individuals who killed animals with one of the selected weights wins a prize. The more coyotes an individual kills, the greater their chances of winning such a prize.

28. The Store's January 5, 2022 contest announcement set out certain contest rules. Contest rules include paying a \$20.00 entry fee; weighing in all coyotes killed at the Store's

Belleville location; requiring that where individuals are hunting in teams, all members must have entries in the contest; and that a maximum of one prize will be awarded per entrant. The contest announcement also states that all applicable hunting laws and regulations apply to contest participants.

29. The Store has not established any geographical boundaries for the coyote hunting contest.

30. Though the within application challenges the Minister's ongoing decision to allow this 2022 contest to proceed, the coyote hunting contest is an annual event held by the Store.

31. The applicants and their supporters have advocated against the contest in 2021 and 2022 in an effort to convince the Minister to comply with the Act and either prohibit the contest from taking place or issue the required statutorily prescribed authorizations to the Store and contest participants.

32. In both 2021 and 2022, the Minister and Ministry officials received thousands of calls and emails from members of the public concerned about the hunting contest, its apparent violation of section 11 of the Act, and risks to Algonquin wolves.

33. Algonquin wolves are extremely similar in appearance to large coyotes. Their range overlaps with coyote habitat, including in areas where coyote hunting is currently permissible under the Act and known to occur.

34. The Algonquin wolf is categorized as a "threatened species" under Ontario's *Endangered Species Act, 2007*, SO 2007 c 6 and Ontario Regulation 230/08 made thereunder.

The Minister decided to allow the contest to go ahead without authorizations

35. After the contest was brought to the Ministry's attention by concerned individuals and groups in January 2021, staff communicated to the Store on approximately January 26, 2021 that it could proceed with the 2021 contest so long as it removed certain prizes, including those for the most coyotes killed.

36. These communications were not made public and are known to the applicants only due to records released under the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31.

37. Though the Minister has not responded to inquiries about this matter from the applicants, Ministry officials stated publicly on February 4, 2022 that they are aware of the coyote hunting contest, have "reviewed the matter", and have not laid charges. In other words, on or before February 4, 2022, Ministry officials decided to allow the Store to proceed with the contest.

38. Therefore, a decision has been made by the Minister to allow the contest to proceed. That decision is continuing in nature, as the contest is still taking place absent required written authorizations.

39. In their public statements, and in statements in response to inquiries from the applicants and other concerned groups and individuals, Ministry officials have noted that individuals hunting coyotes must have a licence and follow applicable rules and regulations.

40. In their public statements, and in statements in response to inquiries from the applicants and other concerned groups and individuals, neither the Store nor the Ministry have suggested

that written authorizations have been issued to the Store or to contest participants as required by sections 11 and 65 of the Act.

STATUTORY INSTRUMENTS RELIED UPON

41. *Fish and Wildlife Conservation Act, 1997 SO 1997 c. 41.*
42. Open Seasons – Wildlife, Ontario Regulation 670/98.
43. *Judicial Review Procedure Act, RSO 1990, c J.1.*
44. *Courts of Justice Act, RSO 1990, c C.43.*
45. *Rules of Civil Procedure, RRO 1990, Reg 194.*
46. Such further and other grounds as counsel may advise and this Honourable Court may deem just.

DOCUMENTARY EVIDENCE

47. The following documentary evidence will be used at the hearing of the application:
 - (a) The affidavit of Camille Labchuk, to be sworn.
 - (b) The affidavit of Lesley Fox, to be sworn.
 - (c) The affidavit of Lesley Sampson, to be sworn.

- (d) Such other affidavit material and evidence as counsel may advise and this Honourable Court may deem proper.

February 23, 2022

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