

APPLICATION FOR REVIEW

Filed pursuant to Section 61 of the *Environmental Bill of Rights*

**RE: *Fish and Wildlife Conservation Act, 1997 and Ontario Regulation 668/98
and Less Red Tape, Stronger Economy Act, 2023***

1. Applicants

1(c) Corporate Applicant

Name of Corporation: Animal Justice Canada Legislative Fund

Name and Position of Corporate Officer: Camille Labchuk, Executive Director

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Declaration of Incorporation in Ontario

Animal Justice Canada Legislative Fund is a Canadian Federal Corporation, carrying on business with its head office in Ontario established by articles of incorporation in February 2012.

November 19, 2024

Camille Labchuk, Executive Director

Date

Name of Officer and Position

806661-2

Corporate Number



Signature

1(c) Corporate Applicant

Name of Corporation: Coyote Watch Canada

Name and Position of Corporate Officer: Lesley Sampson, Executive Director

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Declaration of Incorporation in Ontario

Coyote Watch Canada is a Canadian Federal Corporation, carrying on business with its head office in Ontario established by articles of incorporation in June 2016.

November 19, 2024

Lesley Sampson, Executive Director

Date

Name of Officer and Position

888615-6



Corporate Number

Signature

2. Subject Matter of Requested Review

The Applicants hereby request a review of an existing Act, namely:

- Section 35 of the *Fish and Wildlife Conservation Act, 1997*, SO 1997, c 41 (the “**Act**”).¹
- Ontario Regulation 371/24: Wildlife in Captivity made under the Act that recently amended Ontario Regulation 668/98: Wildlife in Captivity (the “**Regulations**”), as well as Part IV of the Regulations.²

Subsection 61(1) of the *Environmental Bill of Rights* (“**EBR**”) provides that an Application for Review may be filed where the Applicants believe that a provincial Act or regulation “should be amended, repealed or revoked in order to protect the environment.”

The Acts and regulations administered by the Ministry of Natural Resources and Forestry (“**MNRF**”) are prescribed by regulation as capable of being reviewed under Part IV of the EBR.³ This specifically includes the Act.

¹ Train and trial area

35 (1) A person shall not own or operate a train and trial area except under the authority of a licence and in accordance with the regulations. 2023, c. 9, Sched. 14, s. 3.

Licence issuance

(2) A licence may only be issued under subsection (1) in the following circumstances:

1. A licence may be issued to a person who owned or operated a train and trial area pursuant to a licence issued under the regulations in 2023.
2. A licence may be issued to a person who, during the application period described in subsection (3), submits an application to establish a new train and trial area.
3. A licence may be issued to any person to operate a train and trial area, if the area was previously subject to a licence issued under paragraph 1 or 2. 2023, c. 9, Sched. 14, s. 3.

Application period

(3) For the purposes of paragraph 2 of subsection (2), there shall be a one-time application period, only in 2024, lasting a maximum of 90 days to be prescribed in the regulations. 2023, c. 9, Sched. 14, s. 3.

² The Applicants previously submitted an Application under the *Environmental Bill of Rights, 1993*, SO 1993, c 28 (“**the EBR**”) on March 20, 2024 concerning the Act and its predecessor Regulation 668/98. The Ministry of Natural Resources and Forestry determined that the application did not warrant a review under Part IV of the EBR because “any regulations that may be promulgated (put into law) under the recent amendments to the [Act] are beyond the scope of the application as they are not yet existing.” See enclosed Notice of Decision, File No. MNRF-R2024001. Now that the regulations have been put into law, the Applicants hereby submit their renewed and amended Application.

³ See O.Reg.73/94, sections 2, 3(1), 5, 6(1), and 7(1).

For the reasons set out below, the Applicants submit that it is in the public interest to review and revoke the “train and trial” regime set out in the Act and the Regulations, which allows for the expansion and operation of penned dog hunting in Ontario. These facilities are harmful to the environment, which includes Ontario’s wildlife, and pose a significant risk to public health. The Applicants urge the Minister to review the above-noted provisions and make all necessary legislative and regulatory changes to revoke the recent amendments made to the Act via Bill 91, the *Less Red Tape, Stronger Economy Act, 2023* that enable permitting of new “train and trial” areas. They also ask that following the review, the Minister cancel or promptly phase out all existing licences for “train and trial” facilities in the province, prohibit the transfer of all existing licenses, and prohibit the issuance of any new licences given the risks to Ontario’s wildlife and public health which they pose.

3. Reasons Why the Requested Review Should be Undertaken

I. Description of the Applicants

The Applicants are both not-for-profit animal protection organizations. Animal Justice Canada Legislative Fund (“**Animal Justice**”) is Canada’s leading animal law organization. Its lawyers and other staff have been actively involved in casework, advocacy, legislative reform and public legal education relating to animal welfare, public health, and environmental safeguarding as it relates to animal-human interaction. A key area of concern for Animal Justice is the wellbeing of wildlife kept in captivity and *Fish and Wildlife Conservation Act* enforcement and reform.

Coyote Watch Canada is a community-based wildlife organization that advocates positive human-wildlife coexistence with a focus on *canids*.

The Applicants have a long-standing, genuine, and continuing concern with ensuring that animals are protected from harm, suffering, and killing to the maximum extent possible under Canadian law, including under the Act in particular. To this end, Animal Justice and Coyote Watch Canada participate in a variety of activities designed to, *inter alia*, publicize animal protection concerns, enforce animal protection laws, educate members of the public on safe and respectful co-existence with wild animals such as canids, and advocate for new, stronger laws and policies to protect animals and the environment in which they live.

With respect to the subject matter of this Application, the Applicants, along with the Humane Society International/Canada, made ERO submissions to MNRF and communicated concerns with legislators throughout when Bill 91 was proceeding through the legislative process. They, along with Wolf Awareness, The Fur-Bearers, Zoocheck, and Animal Alliance of Canada, submitted comments to the Standing Committee on Justice Policy during its study of the Bill.⁴ The Committee’s study of Bill 91 concluded before the public comment deadline on the ERO, rendering all public comments received virtually useless as they had no reasonable chance of informing legislators’ deliberations regarding the provisions of the Bill related to penned dog hunting.

⁴ Both of these sets of comments, as well as the letters referenced below, are enclosed.

Along with a coalition of groups, the Applicants wrote directly to the Minister outlining concerns about the Ministry's plans to expand penned dog hunting on August 21, 2023. The following day, Animal Justice released an investigation into the penned dog hunting industry in Ontario, demonstrating that dogs frequently attack, maim, and kill captive wildlife and that the dogs themselves are at risk of mistreatment and injury.⁵ Animal Justice shared this investigation with the Ministry.

The Applicants submitted an Application for Review under the EBR of the new train and trial permitting provisions set out under the Act on March 20, 2024. The Ministry's June 10, 2024 response indicated that because the new Regulations had not yet been passed into law, they could not be the subject of such an Application. Alarmingly, the response also indicated that "[t]he Ministry is not aware of evidence to suggest that wildlife being kept in train and trial areas, present a risk to human health."

Following receipt of this decision letter, the Applicants, along with a coalition of organizations, wrote to Health Minister Sylvia Jones on July 24, 2024 to express concern about the public health risks associated with the expansion and continued operation of penned dog hunting facilities in Ontario, particularly noting that the Ministry claimed to be "unaware" of these risks. The following day, infectious disease specialist Dr. Jan Hajek wrote to Minister Jones highlighting these public health risks. Following the publication of the amended Regulations on September 26, 2024, the Applicants, along with the Ottawa Humane Society and a coalition of groups, wrote to the Minister again on October 16, 2024.

As demonstrated above, Animal Justice and Coyote Watch Canada each have a genuine concern about the impact of section 35 of the Act and its Regulations on wildlife in Ontario, as well as on public health.

II. Train and Trial Operations

(i) Overview

"Train and trial" operations are fenced-in outdoor areas on private land where wild animals (red foxes, coyotes, varying hare and cottontail)⁶ are kept in a fenced-in compound for the sole purpose of being tracked and chased (and often ultimately captured and killed) by hunting dogs. Not surprisingly, train and trial operations are widely regarded as cruel and inhumane.⁷ They are illegal in all other Canadian provinces and most U.S. states. These operations subject captive animals to horrific physical and psychological distress, and also create an unsafe environment for the dogs who are trained to chase these animals being used as live bait.

⁵ See: <https://animaljustice.ca/exposes/undercover-dog-hunting-pen>

⁶ *Wildlife in Captivity*, O Reg 668/98 at s 30.

⁷ See November 4, 2009 joint submission from 60+ scientists, wildlife biologists, veterinarians, and attorneys in opposition to the practice of "penning" sent to the Indiana Natural Resources Commission (the "**Project Coyote Joint Submission**"), available online: http://www.projectcoyote.org/action/IN_coyote_fox_penning_sign_on_letter_PC_AWI.pdf. Ontario's proposal to allow new "train and trial" areas has been condemned by all major animal protection groups, including World Animal Protection, the Ontario SPCA, Humane Canada, Zoocheck, and the Fur-Bearers.

The wild animals that are kept and used as bait are acquired in several ways. Coyotes and foxes in particular are often trapped by third parties and sold to these facilities for the sole purpose of being released into these enclosed areas to be repeatedly chased and hunted, and often ultimately wounded and even killed. In some cases, wild animals are even bred so that their offspring can be used for captive hunting for the entirety of their short, miserable lives.

Notably, train and trial operations also serve an entertainment purpose. These areas are used to conduct contests or “trialing”, where dogs are scored by a panel of judges based on their ability to track captive animals. Prizes are awarded to participants based on their dogs’ success.

(ii) Risks to Wildlife

Trapping and transporting live coyotes, foxes, and other wildlife causes severe distress to those animals. It also presents risks of disease spread. Trapping and transporting live wildlife is illegal, with the Act creating the exception for providing live bait to train and trial facilities. Although proponents of train and trial areas – wherein what is commonly known as “penning”, “penned hunting”, or “canned hunting” occurs – assert that the purpose of these areas is to train, test, and exercise hunting dogs, and that no wildlife or dogs are injured or killed during events, these claims are provably false. In fact, when the proposed amendments to the Act were being studied, proponents of penning advised members of the Standing Committee that no wildlife or dogs are injured or killed during these activities. It is clear from public statements from Minister Graydon Smith and other MPPs that this misleading narrative formed the basis of the government’s decision to permit new facilities.⁸

Dogs can and do catch, attack, and kill the captive animals in these facilities, often by ripping them apart. In one account of a contest held in Florida, a witness recounted seeing “seven frenzied hunting dogs...[cornering] a coyote and...ripping [their] fur off as [they] laid on [their] back.”⁹ Accounts from participants in “train and trial” pens in Ontario are similar and include descriptions and photos of dogs mauling coyotes as participants watch or in some cases stand on the body of the animal being mauled and ripped apart. Examples are enclosed within this Application and are cited by penned hunting participants themselves in the footage contained in the above-noted investigation by Animal Justice.

For instance, in Animal Justice’s recent undercover exposé into train and trial areas in Ontario,¹⁰ a participant at a train and trial event states that “dogs catch [coyotes] all through the year” and often “smoke” them. This same participant claims that penned hunts are held “every week” throughout the year.

⁸ See enclosed examples of statements from MPPs alleging that the basis for the decision to expand penned dog hunting is the government’s understanding that dogs do not injure, fight, or kill confined wild animals.

⁹ See:

<https://archive.naplesnews.com/community/videos-florida-may-shut-down-pens-used-to-train-dogs-to-capture-foxes-coyotes-ep-394034172-332211352.html/>

¹⁰ See: https://www.youtube.com/watch?v=Am1S3Znut2E&ab_channel=AnimalJustice

In a recent Canadian Press story,¹¹ two former MNRF conservation officers (Rick Maw and Wayne Lintack) confirmed that dogs and coyotes often fight in these pens in Ontario (sometimes resulting in injuries or death). They further stated that, while the logbooks of the facilities often "look good", the Ministry's oversight of them is based on an "honour system". These officers expressed significant concern with penned hunting in Ontario in light of these serious and inherent risks to wildlife.

In addition to the obvious physical distress, injuries, and death to wildlife caused by penned dog hunting operations, repeated use of captive wildlife as bait also causes significant psychological distress to animals who survive a hunt. Animals used for penned hunting can be exposed to repeated, prolonged, and unavoidable pursuit, putting them at risk of chronic physiological stress and death, as has been documented in wildlife who are subjected to consistent hunting.¹² Moreover, on account of the general lack of oversight of these operations, as well as the large numbers of "bait" animals that may be kept, animals used in these operations may be subjected to inhumane conditions without access to adequate veterinary care, water or food.¹³

As for the number of individual wild animals used at these facilities across Ontario, the new regime establishes no limits on the number of new permits to be issued. There is no evidence to suggest that oversight of these facilities will be improved under the new regime, leaving penned hunting operators to capture and confine wild animals with virtually no public oversight of the overall numbers trapped and confined. When a wild animal dies or is killed, they will be replaced, and there are no time limits established for the new permits. This represents a significant, ongoing, and reprehensible risk to wild coyotes, foxes, hares, and cottontails across the province.

(iii) Risks to Public Health

Penned hunting operations not only cause extreme and unnecessary stress, suffering, and death to wild animals and the hunting dogs themselves, but also present significant public health and safety risks. The breeding, trade and transportation of wildlife is a primary contributor to disease transmission, and has led to the spread of rabies and other zoonotic diseases that are dangerous to wildlife, domestic animals, and humans.¹⁴ For example, transporting captive wildlife such as

¹¹ See:

<https://toronto.ctvnews.ca/a-sport-of-cruelty-ex-conservation-officers-against-ontario-hunting-dog-expansion-1.6420618>

¹² See e.g.: Vilela et al., "Physiological Stress Reactions in Red Deer Induced by Hunting Activities" *Animals* 2020, 10(6), 1003, available online: <https://www.mdpi.com/2076-2615/10/6/1003>; Bryan et al., "Heavily hunted wolves have higher stress and reproductive steroids than wolves with lower hunting pressure", *Functional Ecology* 2015, 29, 347 - 356, available online: <https://besjournals.onlinelibrary.wiley.com/doi/pdfdirect/10.1111/1365-2435.12354>; Project Coyote Joint Submission, available online:

http://www.projectcoyote.org/action/IN_coyote_fox_penning_sign_on_letter_PC_AWI.pdf.

¹³ Project Coyote Joint Submission, available online:

http://www.projectcoyote.org/action/IN_coyote_fox_penning_sign_on_letter_PC_AWI.pdf

¹⁴ See e.g.: Wikramanayake et al., "Evaluating wildlife markets for pandemic disease risk", *The Lancet* 2021, 5(7), available online: [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(21\)00143-1/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(21)00143-1/fulltext);

<https://www.nature.org/en-us/newsroom/tnc-wildlife-trade-pandemics-analysis/>; Can et al., "Dealing in deadly pathogens: Taking stock of the legal trade in wildlife and potential risks to human health", *Global Ecology and Conservation* 2019, 17, available online: <https://www.sciencedirect.com/science/article/pii/S2351989418302312>;

foxes and coyotes has been “linked to the introduction of the northern hydatid tapeworm, *Echinococcus multilocularis*, into places far removed from its natural habitat.”¹⁵ This tapeworm, which is nearly undetectable to the naked eye, is well adapted to canids, wild and domestic, and has been linked to the spread of disease in humans and animals alike.

In humans, the parasite can cause alveolar echinococcosis (AE) — a potentially fatal disease. Unfortunately, many years can pass before the symptoms of this disease present themselves in humans. The damage is often already done by the time AE is diagnosed.

Dr. Jan Hajek, an infectious disease specialist and a member of the Canadian Association of Medical Microbiology and Infectious Disease (AMMI) One Health Working Group recently submitted a letter to the Minister of Health, Minister of Agriculture, Food, and Agribusiness, and the Chief Veterinarian for Ontario further outlined the serious and unnecessary infectious disease risks to the public and to other animals posed by penned hunting.¹⁶ With reference specifically to the MNRF’s June 10, 2024 Notice of Decision, File No. MNRF-R2024001, Dr. Hajek writes:

I am concerned that in rejecting the application on June 10, 2024 the Ministry dismissed these concerns, stating that: “[t]he Ministry is not aware of evidence to suggest that wildlife being kept in train and trial areas, present a risk to human health.”

I have discussed these concerns with other infectious diseases doctors, veterinarians, and experts in zoonotic infections who were also concerned that penned dog hunting presented a potential route of transmission of *E. multilocularis* and other pathogens, including canine distemper and rabies, of concern for both animal and human health.

In light of these infectious disease risks, on top of animal cruelty concerns and evolving public expectations in terms of protections for animal and human health (One Health), I think that penned dog hunting should be prohibited. I urge you to review these concerns with other infectious disease specialists and public health officials and seriously reconsider the plan to allow these facilities to operate.

Dr. Hajek and two other leading experts with expertise related to the *Echinococcus multilocularis* tapeworm similarly published an op-ed in the Ottawa Citizen, raising the alarm about public health risks associated with Ontario’s plans to expand penned hunting.¹⁷ According to these experts:

and Project Coyote Joint Submission, available online:

http://www.projectcoyote.org/action/IN_coyote_fox_penning_sign_on_letter_PC_AWI.pdf.

¹⁵ *Ibid*, Project Coyote Submission; “Nationwide tracking sought for rare disease that is spread by canines, fatal if untreated”, CBC News Online, September 19, 2023, at:

<https://www.cbc.ca/news/canada/edmonton/coyotes-echinococcus-multilocularis-alberta-1.6970627>

¹⁶ See Dr. Hajek Letter to Ministries, “Re: Infectious disease risks and penned dog hunting in Ontario”, dated July 24, 2024, enclosed.

¹⁷

<https://ottawacitizen.com/opinion/opinion-penned-dog-hunting-is-back-in-ontario-and-its-dangerous-for-animals-and-people>

Until recently, in Canada, *E. multilocularis* was found almost exclusively in the Arctic and parts of the prairies, where coyotes and foxes carry the tiny tapeworm asymptotically in their intestines, and only rodents such as mice and voles developed severe disease. However, likely related to the introduction of a more aggressive European strain, the parasite has now been found in coyotes in many other provinces where it was previously absent — including Ontario.

More than 20 per cent of coyotes in Canada now carry the parasite in their stool. And dogs can also carry the tapeworm in their intestines, shedding eggs asymptotically in their feces.

The introduction of new penning operations in Ontario will increase the demand for wild animals being trapped, transported, and kept in captivity for the purpose of hunting. This increase in demand will very likely bring with it significant disease risks which are not justifiable—especially in the post-Covid era—as we are just now beginning to understand the risks of zoonotic diseases to animal and human health.

III. The Public Interest Rationale for Phasing Out Train and Trial Operations

(i) Overview

The Applicants’ overall position is that the MNRF should undertake the requested review and revoke the amendments to section 35 of the Act as well as Part IV of the Regulations. The Applicants also believe the MNRF should phase out the existing “train and trial” regime set out in the Regulations in order to better protect the environment, safeguard public health and safety, and bring Ontario’s legislation into consistency with every other Canadian province.

“Environment” per section 1(1) of the EBR, “means the air, land, water, plant life, animal life and ecological systems of Ontario” (emphasis added). The risks to animal life in trial and train operations are clear, and include mauling, injury, and death as well as disease risks. Put simply, the amendments made to section 35 of the Act pose significant risks to Ontario’s natural environment.

Due to public opposition, “train and trial areas” were prohibited in Ontario in 1997, though existing facilities were grandfathered in and were permitted to continue to operate. Ontario Regulation 668/98: *Wildlife in Captivity* previously stated that only individuals who had a licence to operate a “train and trial area” prior to June 9, 1997 were permitted to run these operations. The intention of the 1997 changes was to phase-out train and trial areas over time. At one time, there were over 50-60 facilities in Ontario and today there are 24.

As shown in the enclosed “Table of Provincial Laws”, training and trialing with dogs is not allowed in any other Canadian province. For instance, Manitoba prohibits the confinement of animals together where there is a high risk that they will injure or cause distress to each other.¹⁸ The province also prohibits hunting wildlife in captivity. When that prohibition came into force,

¹⁸ Animal Care Regulation, Man Reg 126/98 s 5.

persons who previously owned or kept wildlife in captivity and allowed them to be hunted were given one year to wind down their facilities.¹⁹ Manitoba has a licencing regime for training hunting dogs using live game birds in the wild, but persons are prohibited from allowing dogs in training to hunt or harass any other wildlife.²⁰ It is an offence in that province to allow a dog to run after, pursue or molest a fur bearing animal under any other circumstances.²¹

Fox and coyote penning is also broadly prohibited in most U.S. states, including Arizona, Colorado, Connecticut, Idaho, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, Wyoming, and Utah. In June, 2010, Florida's Fish and Wildlife Conservation Commission voted unanimously to enact a ban on coyote and fox penning for dog hunting.²² In April, 2014, the government of Virginia similarly enacted a ban on fox penning.²³

Now, here in Ontario, instead of phasing out the train and trial areas as originally intended, the Act and Regulations *expand* the licensing scheme and offer licensees the opportunity to transfer their existing licenses and allow for new individuals or corporations to apply for new licenses.²⁴ In fact, according to the MNRF's *Application for a Licence to Own and Operate a New Train and Trial Area*, both individuals and corporations from the United States are eligible to apply. This only heightens the public health and biosecurity concerns raised by transporting captive wildlife, and permits some American participants to come to Canada to participate in activities prohibited in their own jurisdictions, making Ontario a bastion for those who want to take part in outdated, cruel, and unsafe practices.²⁵

Here, the Applicants submit that the MNRF should arrive at the same conclusions as other jurisdictions and phase out the train and trial regimes once and for all including by revoking the recent amendments to the Act and Regulations.

(ii) MNRF Statement of Environmental Values

Section 67(2) of the EBR directs the Minister to certain considerations in determining whether the public interest warrants the review. The Applicants submit that these considerations support the conclusion that a review is warranted.

First, in determining whether the public interest warrants the requested review, subsection 67(2)(a) of the EBR directs the Minister to consider the relevant Statement of Environmental Values (the "SEV").

In this case, the Ministry's mission is to, *inter alia*, promote the responsible use of Ontario's natural resources, including its wildlife. In developing laws, the Ministry must take into account

¹⁹ Captive Hunting Regulation, Man Reg 176/2001 ss 2, 4.

²⁰ Hunting Dogs Regulation, Man Reg 79/95.

²¹ *The Wildlife Act*, CCSM c W130 s 35.

²² See: <https://awionline.org/awi-quarterly/2010-summer/victory-florida-bans-coyote-and-fox-penning>

²³ See:

https://www.washingtonpost.com/local/virginia-politics/fox-penning-will-be-phased-out-ultimately-banned-in-virginia/2014/04/08/a2528aea-bf5f-11e3-b574-f8748871856a_story.html

²⁴ O. Reg. 371/24, s. 29.

²⁵ See the enclosed *Application for a Licence to Own and Operate a New Train and Trial Area*.

environmental and social risks and seek to avoid or minimize harm to the environment. “Environment”, as defined in the *Environmental Bill of Rights, 1993*, includes animal life in Ontario.

To achieve this vision, and as it develops acts, regulations, policies, and instruments, the SEV commits the MNRF to a number of important principles, such as:

- The ministry strives to identify and manage healthy, resilient and diverse ecosystems to provide for sustainable natural resource use.
- The ministry recognizes the finite capacity of ecosystems and takes into account environmental, social and economic values, impacts and risks.
- The ministry relies on the best available knowledge, including science, Traditional Ecological Knowledge, and other information to improve natural resource management and responsible use.
- The ministry exercises caution in the face of uncertainty and seeks to avoid, minimize or mitigate harm to the environment.
- The ministry provides for open and accessible engagement opportunities that promote awareness and understanding of natural resource management and use.
- The ministry seeks to make natural resource management and use decisions through consideration of input from the public, Indigenous peoples, stakeholders, and partners.

The SEV are to be applied in accordance with the purposes of the EBR, which consistently recognize the importance of protecting animal life:

- The protection and conservation of biological, ecological and genetic diversity.
- The protection and conservation of natural resources, including plant life, animal life and ecological systems.
- The encouragement of the wise management of our natural resources, including plant life, animal life and ecological systems.

These and other SEV commitments represent a provincial promise to Ontarians that the MNRF will take all necessary steps to safeguard the environment and public health and safety.

As described at length above, Ontario’s newly expanded train and trial regime exacerbates the significant risks to wildlife and public health already posed by the existing regime. The regime will cause completely unnecessary harm to wild animals and the decision to expand panned hunting was made based on consultations with dog hunting proponents alone – no animal protection groups were consulted, we are aware of no consultation that took place with Indigenous leaders and First Nations, and the public at large was shut out of the decision-making process with the one consultation opportunity taking place *after* the Bill had already been studied and passed by the Standing Committee.

Section 35 and the Regulations of the Act allowing for new train and trial licenses should be reviewed and revoked, alongside the provisions enabling existing facilities to operate and existing licenses to be transferred. The requested review of the Act and Regulations is consistent with—if not mandated by—the principles and provisions of the MNRF’s SEV.

(iii) Absence of Periodic Review

In determining whether the public interest warrants the requested review, subsection 67(2)(c) of the EBR directs the Minister to consider whether “the matters sought to be reviewed are otherwise subject to periodic review”. At the present time, aside from using Part IV of the EBR, there is no statutory mechanism for the formal public review of the train and trial regimes.

(iv) Resources Required for the Requested Review

Subsection 67(2)(f) of the EBR lists “resources required to conduct the review” as another factor to be considered by the Minister when determining if the public interest warrants a review. To the Applicants’ knowledge, the requested review of the train and trial regime can be carried out by MNRF personnel, in consultation with public health officials and infectious disease experts, without the allocation of any new resources or staff. On the other hand, if such a review is not undertaken now, and new permits and licenses are granted under section 35, it will be much more difficult—if not impossible—to reign in these train and trial operations and more resources will be required to review once those new licenses are issued. The time for review is now.

(v) Application of EBR Sections 67(3) and 68

Additionally, the Ministry is directed by section 67(3) of the EBR to consider the extent to which members of the public had an opportunity to participate in the development of the Act of which a review is sought, especially when that decision was made during the five years preceding the date of the application for review. The Ministry’s own SEV requires that decisions about the development of laws and regulations be made through consideration of input from the public, Indigenous peoples, and stakeholders. Here, it is unclear whether Indigenous peoples were consulted on these amendments to the Act, though their consultation and engagement in the development of laws and policies impacting Ontario’s wildlife is undoubtedly of fundamental importance. The only consultation the Applicants are aware of, besides the brief ERO period (which was effectively meaningless given that it closed after the Bill’s study had already been completed), was between the province and proponents of training and trialing in the sport hunting community. The Minister’s consultation was limited to the industry set to gain from the introduction of the Act—and informed by industry representatives’ false representations outlined above—which runs contrary to the very purpose of the EBR.

The Applicants further submit that the five year waiting period found in section 68(1) does not apply to the Act under review as it is excluded by the exceptions found in section 68(2)(a) and (b) of the EBR.²⁶

²⁶Section 68(1) states that: “For the purposes of subsection 67 (1), a minister shall not determine that the public interest warrants a review of a decision made during the five years preceding the date of the application for review if the decision was made in a manner that the minister considers consistent with the intent and purpose of Part II.” The exceptions to this section are found in subsection (2), which provide: “Subsection (1) does not apply where it appears to the minister that, (a) there is social, economic, scientific or other evidence that failure to review the decision could result in significant harm to the environment; and (b) the evidence was not taken into account when the decision sought to be reviewed was made.”

With respect to the exception found in section 68(2)(a), these facilities operate with little to no oversight so it's impossible to clearly consider the number of animals killed. However, the psychological distress, severe injuries, and even killing, that animals in these facilities are often subjected to is the most significant harm an animal can experience. If these facilities are permitted to continue, let alone expand, more and more animals will experience such harm for years or even decades to come. It is therefore the Applicants' position that the failure to review section 35 of the Act and associated Regulations would result in significant harm to the environment. This evidence was definitely not taken into account when the decision to expand panned hunting was made, given that the decision was based on industry input only and that input included false information suggesting that animals are not attacked or killed at penned hunting facilities. Government officials continue to cite these false claims as the justification for the decision to proceed with issuing new licences. The Ministry has clearly admitted that the public health risks above were given no consideration at all as they are completely unaware of those risks.

With respect to the exception found in section 68(2)(b) of the EBR, this is also satisfied. Though the public more generally was consulted through an Environmental Registry of Ontario posting, the value of this particular comment period was questionable at best. First, the proposal seemed to have been developed solely based on the input of the penned hunting industry lobbyists and with no input from animal protection groups. Second, the amendments to the Act were included in Bill 91, the *Less Red Tape, Stronger Economy Act, 2023* and although the Registry comment period was open from April 3, 2023 until May 18, 2023, the Bill proceeded swiftly through the legislative process, with second reading taking place on April 6, 2023, and consideration of the Bill by the Standing Committee on Justice Policy on May 3rd and 11th.²⁷ Clause by clause had been completed prior to the ERO comment period closing, making comments submitted through that process superfluous and irrelevant to the legislators' review and consideration of the provisions at issue.

It is contrary to principles of procedural fairness and meaningful public engagement for the Bill to have proceeded through the legislative process before public comment closed. The public was not provided with an opportunity to actually contribute to the decision-making process.²⁸ This consultation was not—and did not appear to be—meaningful as required by sections 67(3) and 68(2) of the EBR. Indeed, section 35 of the EBR explicitly requires that the Ministry take every reasonable step to ensure relevant comments provided through the Registry are considered when decisions about proposed laws are made. In this case, comments were submitted after the legislative amendments had already been considered by the legislature.

(iv) Additional Considerations Under Section 67(2)(g)

Pursuant to section 67(2)(g) of the EBR, the Minister may also consider any other matter that the Minister considers relevant. Clear conflict of the impugned law with other existing laws is certainly relevant, as are the public health risks outlined above. The Applicants have significant legal concerns regarding the amendments made to section 35 and penned hunting more broadly.

²⁷ See "Proposal to allow the issuance of licences for new dog train and trial areas and the transfer of licences", ERO number 019-3685, found at: <https://ero.ontario.ca/notice/019-3685>

²⁸ *Greenpeace et al v Ontario*, 2021 ONSC 4521 at para 70.

First, penning appears to be inconsistent with the federal *Criminal Code*, making the proposed legislative amendments vulnerable to a legal challenge, based on federal paramountcy. A main purpose of the facilities is for dogs to track, maim, and kill the kept animals, who fight back when attacked. Section 445.1(1)(b)(ii) of the *Criminal Code* prohibits encouraging, aiding, promoting, arranging, assisting at, receiving money for, or taking part in animal fighting. Section 445.1(1)(b)(ii) makes it an offence to train, transport, or breed animals for the purposes of such fights. Under section 445.1(4) of the *Code*, evidence that someone attended an animal fight is, in the absence of evidence to the contrary, proof that they encouraged, aided or assisted the fighting. Under section 447 it is an offence to make or maintain an arena for animal fighting on one's property.

Second, Section 206 of the *Criminal Code* prohibits contests of chance or mixed chance and skill in which contestants pay money to participate.²⁹ As noted above, individuals pay money to the operators of train and trial areas in order for their dogs to enter the pen to “train” to hunt the wild animals enclosed therein. Contests in which prizes are awarded for dogs’ hunting should not be allowed to continue.

Furthermore, at present, the facilities’ operations appear to contravene the *Provincial Animal Welfare Services Act, 2019* (“**PAWS Act**”) (sections 13, 15 and 16), the Act (section 11), and *Criminal Code* (section 206):

- Section 15 of the PAWS Act prohibits persons from causing an animal to be in distress or exposing animals to an undue risk of distress. Notably, activities permitted under the *Fish and Wildlife Conservation Act* are only exempt in relation to wildlife in the wild. The animals kept at train and trial facilities are evidently kept in captivity.
 - During penned dog hunting, distress is not just a risk, but is an inevitability. Animal Justice’s video shows that, even where bait animals are not killed, injured or maimed, they are subject to abject terror as they are repeatedly pursued at length by dogs, often in packs. Animals repeatedly subject to hunts are at risk for chronic physiological stress and death.
- Section 16 of the PAWS Act prohibits individuals from encouraging, promoting, arranging, or participating in any meeting, competition, exhibition, pastime, display or event at or in the course of which an animal fights another animal;
- A licensee under the FWCA to keep a train and trial area (as well as participants of the activity) cannot conform to section 13(1) of the PAWS Act which requires that every person who owns or has custody or care of an animal shall comply with the standards of care and administrative requirements of that animal.
 - Those standards are stipulated in Standards of Care and Administrative Requirements O Reg 44/19 (“Standards of Care Regulation”). Section 3 of the

²⁹<https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/publications/promotional-contests-enforcement-guidelines>

Standards of Care Regulation provides for certain requirements for the keeping of all animals. Sections 5 and 6 provide for additional requirements in the case of captive wild animals (which includes the bait animals in a train and trial area). Among those requirements, the regulation provides that all animals must be provided with the care necessary for their general welfare and that an animal who is to be killed must be killed in a manner that is humane and minimizes their pain and distress.

- Section 5(3) of the Standards of Care Regulation states that a keeper of captive wildlife must ensure that each wild animal is not at risk of injury or undue stress from dominant animals of the same or a different species. Section 6(1)(b) requires that animals have sufficient space to keep adequate and appropriate distance from other animals and people so that they are not psychologically stressed. Additionally, section 3(7)(c) requires that any animal kept in a pen or enclosed area must not be contained with other animals who may pose a danger to that animal. Penned dog hunting necessitates the exact opposite. It relies on animals being kept in enclosed areas with other animals who are not only inherently dangerous to them but are encouraged to hunt them. This unsurprisingly causes undue stress and often injury and worse.
- Section 11 of the Act makes it an offence to hunt for gain or the expectation of gain, or to induce another person to hunt for gain in Ontario. As noted, “train and trial” facilities hold contests at which prizes are awarded to dogs for tracking and potentially killing captive animals; and

At its simplest, training and trialing is a bloodsport which puts prey animals and dogs in a pen specifically so that they will engage in tracking and, inevitably fighting (often for prizes). Across Canada, research has shown that more than four-in-five Canadians are against hunting animals for sport.³⁰ Though we have not conducted research on public opinion about dogs tracking and killing animals in pens for “training” and entertainment purposes, public opposition to this and other forms of animal fighting for sport is undoubtedly even higher.

With all of this in mind, it is in the public interest for the Minister to review and revoke section 35 of the Act and associated regulations. Permitting new licences and allowing for the transfer of licences for train and trial areas marks a significant step backwards for environmental and wildlife conservation in the province and poses serious public health risks. The Applicants submit that it would be in the public interest to phase out any existing train and trial licenses by 2026, to bring Ontario in conformance with each and every other province in Canada.

³⁰ <https://researchco.ca/2022/04/08/animals-canada-2/>

4. Summary of Evidence

Item #	Document or material, including description	Copy included
1	Table of provincial laws (Animal Justice et al. submission to ERO dated May 18, 2023)	See attached PDF with enclosed photos
2	Footage from penned hunt that took place at Mallen's pen (April 1, 2023)	https://drive.google.com/file/d/1VTGA5_FwZh_vunSGI3bHVC_YKGA74uPITB/view?usp=drive_link
3	Images contained in Facebook Group "screenshots"	https://drive.google.com/drive/folders/1hLWdLjITTWwL1B1E6c7G2TeKd5ff4DD2?usp=drive_link
4	Animal Justice Exposé Video	https://www.youtube.com/watch?v=Am1S3Znut2E&embeds_referring_uri=https%3A%2F%2Fanimaljustice.ca%2F&source_ve_path=MjM4NTE&feature=emb_title&ab_channel=AnimalJustice
5	Correspondence between Applicants, other animal protection organizations, and the Ministry	https://drive.google.com/file/d/19kExDvSFA0Avt1YITJVfirdsZdX3Jzc4/view?

		usp=drive_link https://drive.google.com/file/d/19q1yqH48XSCHvLGp_L_s2idMJNJ15IxF/view?usp=drive_link See also attached PDF correspondence from July and October of 2024
6	Dr. Hajek Letter to Ministries, “Re: Infectious disease risks and penned dog hunting in Ontario”, dated July 24, 2024	See attached PDF
7	ERO Comments and Comments Submitted to Standing Committee on Justice Policy	See attached PDF
8	June 10, 2024 Notice of Decision re: Application for EBR	See attached PDF
9	MNRF’s <i>Application for a Licence to Own and Operate a New Train and Trial Area</i>	See attached PDF
10	Examples of statements from MPPs re decision to expand penned hunting in Ontario	See attached PDF