

Appeal Number: **1201-0014AC**

Trial Court Number: **1101-14786**

IN THE COURT OF APPEAL OF ALBERTA

Between: **Daniel W. Onischuk** Appellant (Applicant)

-and-

Her Majesty the Queen in Right of Alberta, Respondent (Respondent)

Town of Canmore

Appeal from the decision of the Hon. Judge G.C. Hawco

Dated 14 November 2011 -and- 07 December 2011

Final Decision Filed: 15 December 2011

Appeal Record – Volume 1 of 2

Daniel W. Onischuk, Appellant (Applicant)

9628-100A St. Edmonton, AB. T5K0V8

Tel. (780) 426 - 7676

Her Majesty the Queen in Right of Alberta, Respondent (Respondent)

Attn: Nancy McCurdy / Cynthia Hykaway

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Town of Canmore, Respondent (Respondent)

Attn: Michael Aasen / Kirk Mason

Bryan & Co. LLP #1200, 645-7th Ave. Calgary, AB. T2P 4G8

Tel. 403-269-7220 Fax: 403-269-9304

Appeal Book prepared by Daniel W. Onischuk, Appellant (Applicant)

This Document prepared for filing in: Paper format

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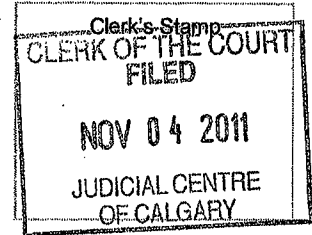
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COURT FILE NUMBER **1101-14786**
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 APPLICANT(S) DANIEL W. ONISCHUK
 RESPONDENT(S) HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA (HMQRA), TOWN OF CANMORE



DOCUMENT **ORIGINATING APPLICATION**

ADDRESS FOR SERVICE AND HMQRA: Alberta Justice - 9th floor, 10011-109 St, Edmonton, AB. T5J3S8
 Town of Canmore: 902-7th Ave, Canmore, AB. T1W3K1

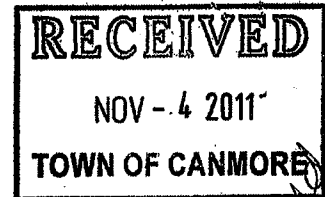
CONTACT INFORMATION OF APPLICANT: 9628-100A ST. EDMONTON, AB. T5K0V8 Tel.780-426-7676

NOTICE TO THE RESPONDENT(S)

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: MONDAY, 14 November 2011
 Time: 9:30 AM or shortly thereafter
 Where: Calgary Courts Centre, 601 - 5 Street SW, Calgary, AB. T2P 5P7
 Before: Judge in Motions Court



Handwritten signature

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

Basis for this claim:

1. Pursuant to section 7(1) of the Wildlife Act RSA 2000, c. w-10 it is statutory law that Her Majesty the Queen in Right of Alberta (HMQRA) is the legal owner of feral rabbits that are located in the Town of Canmore, in the Province of Alberta, and so HMQRA has a moral responsibility and legal duty of humane care for these animals.
2. It has been reported by the news media, and I have personal knowledge that the Town of Canmore intends to employ civilian contractor(s) to hunt or trap feral rabbit with the express purpose and intent to kill them, in and around the Town of Canmore, commencing on or about the 14th of November 2011 and so intends to act in contravention of s.1(6) of the Wildlife Act.
3. Pursuant to section 11.1 of the Wildlife Act, the Town of Canmore and HMQRA have failed to comply with the mandatory processes of substantial public and scientific consultation required by the Wildlife Act s.6 and Alberta Land Stewardship Act (ALSA) SA 2009, c. A-26.8.
 Both Respondents have failed to grant the requisite or additional time to properly evaluate :
 - a) humane methods of capture, sterilization, care and release to an Alberta sanctuary;
 - b) responsibility of HMQRA to provide Crown land and costs of point (a) above and whether Canmore has any legal obligation to pay any costs whatsoever;
 - c) failure of Town of Canmore to temporarily suspend Trapping & Hunting bylaw 1991-33, to enable the humane capture and relocation option of item (a) above;

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- d) whether Canmore has legal right to enact bylaws or grant permits to kill feral rabbits which would be contrary to the Wildlife Act;
- e) whether Town of Canmore has substantially acted to comply with s.180-191 of the Municipal Government Act, RSA 2000, c M-26 - and whether they are aware of all no-kill solutions.
- f) the impact on endangered species as alternative prey due to wildlife predators;
- g) increased risk of predator-human or pets encounters due to reduced feral rabbits numbers;

4. The Town of Canmore RFP may have not separated native rabbits species from the feral, non-native rabbits, which would further upset the natural balance of wildlife in this eco-sensitive area, and would be contrary to the intent of the protections granted by the Wildlife Act and ALSA.
5. There are no bylaw provisions existing for trapping without permission upon no-kill advocate land owners property that is consistent with the rights and protections of the ALSA and Wildlife Act.
6. The Town of Canmore RFP created a discriminatory grounds to unfairly deny any proponents of a non-kill humane solution any fair and equal opportunity for equal or similar funding to achieve the same goal of removing all non-native feral rabbits from Canmore. This effectively discriminated against pro-life, no-kill advocates in a manner contrary to s.173 (b)(ii) of the Municipal Government Act, RSA 2000, c M-26 - as the bidding was effectively non-competitive and discriminatory by the aforesaid RFP wording and restrictions that unfairly limited the use of and denied funding to the advocates of no-kill solutions.

Furthermore, the aforesaid discrimination was an infringement upon my and other no-kill parties legal rights "to a fair hearing" and a "fair trial" of the quasi-judicial powers applied by the Town of Canmore Mayor, Town Council representatives, and Town of Canmore employees whom have acted outside their jurisdiction and/or limits of ownership. In perspective I submit this has all been caused by HMQRA whose long term (over 10 years) of negligence of ownership and problem resolution has caused the Town of Canmore to take radical steps to deal with this issue.

The aforementioned discriminations are contrary to the protections granted by the Canadian Charter of Rights and Freedoms, the Canadian Bill of Rights, the Alberta Bill of Rights.

Remedy sought:

7. An Order for an Injunction to prohibit or suspend Town of Canmore -and- Her Majesty the Queen in Right of Alberta -and- any agencies, contractors or employees thereof, from trapping and killing the Canmore feral rabbits until completion of:
 - (a) full public consultation that includes publication of no-kill proposals, Town of Canmore and HMQRA detailed written responses to the humane no-kill proposals; Respondents public promotion of opportunities to register volunteers that are also to be recorded by no-kill advocates;
 - (b) a revision to the Canmore RFP to allow fair consideration and equal funding opportunities to the advocates of no-kill solutions;
 - (c) a detailed report from HMQRA of any and all Crown land South of Red Deer as potential habitat for a no-kill fenced sanctuary or free range release site sufficiently far away from any people;
 - (d) any third party documents supporting a humane no-kill solution or viable relocation alternatives;
 - (e) at least two independent scientific reviews;
 - (f) additional input from nearby communities, and from Parks Canada which operates Banff National Park from which endangered and other wildlife extend their feeding range into Canmore;
 - (g) at least two assessments from both local veterinarians and medical doctors of any verifiable diseases treated from feral rabbits of Canmore and any risks and precautions required in handling;
8. An Order directing HMQRA to share costs regarding the final resolution of Canmore area rabbits,
9. An Order directing HMQRA to pay any and all related legal costs, including this application.

9A. *A bridgement of time for service. DD*

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

10. Affidavit of Daniel W. Onischuk
11. any such further materials or testimony that the Court may permit

Applicable Acts and regulations:

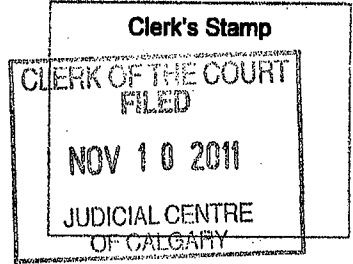
12. (a) (Alberta) Wildlife Act RSA 2000, c. w-10,
(b) Canada Wildlife Act (R.S., 1985, c.W-9),
(c) Alberta Land Stewardship Act (ALSA) SA 2009, c. A-26.8,
(d) (Alberta) Municipal Government Act, RSA 2000, c M-26,
(e) (Alberta) Interpretation Act, R.S.A. 2000, c. I-8;
(f) (Alberta) Occupiers' Liability Act, R.S.A. 2000, c. O-4 ;
(f) (Alberta) Tort-feasors Act, R.S.A. 2000, c. T-5
(g) (Alberta) Contributory Negligence Act, R.S.A. 2000, c. C-27
(h) The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 also known as the "CANADIAN CHARTER OF RIGHTS AND FREEDOMS" (a.k.a. "The Charter")
s.1, 2, 7, 8, 12, 15(1), 24(1), 32(1),
(i) Canadian Bill of Rights - c. 44 – Part I, s.1(b,d), 2(b,e)
(j) Alberta Bill of Rights, R.S.A. 2000, c. A-14, s.1(a,b,d), 2, 3(1)

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).

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COURT FILE NUMBER 1101-14786
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT TOWN OF CANMORE
RESPONDENTS DANIEL W. ONISCHUK
DOCUMENT APPLICATION



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 Bryan & Company Calgary LLP
 1200, 645 - 7 Avenue SW
 Calgary AB T2P 4G8
 Attention: MICHAEL D. AASEN
 phone: (403) 269-7220
 Fax: (403) 269-9304
 File No. 48377-009 MDA

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: November 14, 2011

Time: 10:00 o'clock in the forenoon

Where: Calgary Courts Centre

Before: Presiding Justice in Chambers

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

Remedy sought:

1. Abridging time for service of this Originating Application and accompanying materials;
2. That Calgary Court of Queen's Bench Action No. 1101-14786 be struck;
3. Costs of this application on a solicitor and client basis or, in the alternative, costs on a party and party basis; and
4. Such further and other relief as this Honourable Court may deem just.

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Grounds for making this application:

5. The Respondent, Daniel W. Onischuk ("Onischuk") filed an Originating Application, dated November 4, 2011 (the "Onischuk Application"), wherein he named both the Town of Canmore and Her Majesty the Queen in Right of Alberta (HMQR) as Respondents.
6. Onischuk is a layperson in the City of Edmonton, in the Province of Alberta.
7. Onischuk's private rights have not been interfered with by reason of the decisions made by the Town of Canmore which form the subject matter of the Onischuk Application.
8. Onischuk has not suffered any damage peculiar to himself by reason of the decisions made by the Town of Canmore which form the subject matter of the Onischuk Application.
9. Onischuk lacks standing to bring the Onischuk Application.
10. The allegations made in the Onischuk Application, are more appropriately handled through the enforcement provisions and or the regimes established by the legislation as compared to civil litigation.
11. To allow the Onischuk Application to proceed would enable Onischuk to circumvent procedure which would cause an abuse of process that would deny the Town of Canmore the procedural protections it would otherwise be entitled to if the alleged offences were prosecuted pursuant to the provisions of the legislation as compared to civil litigation.

Material or evidence to be relied on:

12. Affidavit of Daniel W. Onischuk, filed November 4, 2011;
13. Such further and other Affidavits and materials as counsel may advise and this Honourable Court may permit.

Applicable Acts, rules and regulations:

14. *Wildlife Act*, R.S.A. 2000, c. W-10;
15. *Alberta Land Stewardship Act* S.A. 2009, c. A-26.8;
16. *Municipal Government Act* R.S.A. 2000, c. M-26;
17. *Animal Protection Act*, R.S.A. 2000, c. A-41;
18. *Provincial Offences Procedure Act*, R.S.A. 2000, c. P-34.
19. *Alberta Rules of Court*, Alta Reg. 124/2010; and
20. Such further and other Acts, rules and regulations as counsel may advise and this Honourable Court may permit.

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A. Amendments to Application

1. To add Relief - "For the Court to Order or direct the Town of Canmore to: (a) stop trapping and euthanasia of the feral rabbits ; (b) re-open the "Feral Rabbit Control" RFP bidding an selection process ; (c) declare the prior "Feral Rabbit" RFP bidding process to be null and void or to be amended by further applications; (d) provide a new RFP to be rewritten and reworded to allow SaveCanmoreRabbits proposals to more fairly compete, which may also be previewed by this Court before tendering; (e) to allow more time for any interested parties to (re)apply to the Feral Rabbit RFP - and prior to selection, to provide the best bids from the proKill and ProLife ideologies to this Court ;

(f) to repeal all bylaws enabling public or private contract hunting, killing, injury or harassment of feral rabbits or any other animals or birds or wildlife or domestic animals; (g) to pass bylaws to de-weaponize youths and children of Canmore and to hold parents legally accountable for any such transgressions;

2. To add Relief - "To pass bylaw to allow ProLife, SaveCanmoreRabbit volunteers (ages of 16 and older) to be allowed to use non-toxic bait and to trap the Canmore feral rabbits on public and private land (with landowner written permission), and to thereafter to hand-in feral rabbits for spaying-neutering by a qualified veterinarian(s), whereafter the sterilized rabbits shall be fed & safely held for later relocation." This will reduce overall costs and project time, will set a positive example to young people, and encourage community harmony.

3. To add Relief - "To direct Canmore, HMQRA to pay for the distribution of information provided by all SaveCanmoreRabbits proposals and to also publish ProKill contractors overall TOTAL project time & cost estimates as legally binding type-B contract obligations."

4. To add Relief - "To direct Canmore, HMQRA to pay costs of educating the public of the advantages of the ProLife, SaveCanmoreRabbits proposals, and to thereafter put both methods of rabbit control to a full Canmore public vote - to determine if 10% of the *eligible* Canmore voters do support ProLife & Relocate scenario."

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5. To add or note a future Respondent - the Ministry of Sustainable Resource Development as a Respondent to any future briefings on this matter as the SRD is responsible for administration of the Alberta Wildlife Act, and the Alberta Land Stewardship Act.

Yet, ultimately, HMQRA is supervisory and responsible for the SRD, and Alberta Justice provides legal representation for all Alberta Government Ministries and Agencies, including the SRD, and so adding this Respondent may not be necessary for today's deliberation, which may find that the SRD should in fact be a future Respondent to add;

6. Any further reliefs that this Court may grant me and other SaveCanmoreRabbits advocates.

B. Grounds for this Application

1) Pursuant (in part) to Section 32(1) and Section 24(1) of *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 also known as "The Canadian Charter of Rights and Freedoms" (hereafter referred to as "*The Charter*"), whereby section 24(1) of *The Charter* states :

"Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances."

The Alberta Court of Queen's Bench is such a Court.

The Charter states :

2. *Everyone has the following fundamental freedoms:*

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

7. *Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*

8. *Everyone has the right to be secure against unreasonable search or seizure.*

12. ***Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.***

15.(1) ***Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.***

Canadian Bill of Rights, S.C. 1960, c. 44 – Part I, s.1(a,b,d), 2(b,e):

“(1) It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law;

(d) freedom of speech; { I note: which is linked to a fair hearing as per 2(e) - }

(2) Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to:

(b) impose or authorize the imposition of cruel and unusual treatment or punishment;

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

Alberta Bill of Rights, R.S.A. 2000, c. A-14, s.1(a,b,d), 2, 3(1):

(1) It is hereby recognized and declared that in Alberta there exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely:

(a) the right of the individual to liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law; (d) freedom of speech;

(2) Every law of Alberta shall, unless it is expressly declared by an Act of the Legislature that it operates notwithstanding the Alberta Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared.

3(1) Nothing in this Act shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated herein that may have existed in Alberta at the commencement of this Act.

**2) Municipal Govt Act - Challenging Bylaws and Resolutions
Application to the Court of Queen's Bench**

536(1) A person may apply to the Court of Queen's Bench for

(a) a declaration that a bylaw or resolution is invalid, or

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(b) an order requiring a council to amend or repeal a bylaw as a result of a vote by the electors on the amendment or repeal.

537 A person who wishes to have a bylaw or resolution declared invalid on the basis that (a) the proceedings prior to the passing of the bylaw or resolution, or

(b) the manner of passing the bylaw or resolution does not comply with this or any other enactment must make an application within 60 days after the bylaw or resolution is passed. 1994 cM-26.1 s537

3) Frustrated Contracts Act, RSA 2000, c F-27

5(1) If, before the parties were discharged, any of them has, by reason of anything done by another party in connection with the performance of the contract, obtained a valuable benefit other than a payment of money, the court, if it considers it just to do so having regard to all the circumstances, may allow the other party to recover from the party benefited the whole or a part of the value of the benefit.

In this case, the valuable benefits are the right to decide and implement what is humane treatment and the future destiny for the lives of Feral Rabbits and other living non-humans within the Town of Canmore. and the impact upon the surrounding Municipalities, Provincial Parks, Natural Areas, Ecological Reserves, and upon Banff National Park.

4) Alberta Rules of Court (2009)

- Rule 30(a) the whole subject matter is land situated in the Province of Alberta;
- Rule 30(b) any act, deed, contract, obligation or liability affecting land situated within Alberta is sought to be construed, rectified, set aside or enforced,
- 30(f) to recover damages or obtain any other relief in respect of the breach of a contract
- 30(g) the action is in respect of a breach committed within Alberta of a contract made within or out of Alberta...
- 30(h) the action is founded on a tort committed within Alberta.
- 30(q) the proceedings relates to the breach of an equitable duty within Alberta.

And any such further laws and grounds that are given in the originating application, affidavit(s), the pages of this briefing and supplementary materials, and in Court.

C. Case Law

According to many cases, *Hunt v. Carey Canada inc.*, [1990] 2 SCR 959 (see also *Decock v Alberta - 200 AB.C.A. 122*) it is well established procedure that all I have to do is to provide some valid, arguable legal grounds and evidence and a trial should be granted 'no matter how difficult or complex the case, or faint the chance of success' - *Hunt v Carey* (*Hunt v T&N plc* [1990] 2 SCR 959)

Aram Systems Ltd. v. Novatel Inc., 2007 ABCA 100 (CanLII)

The test for summary judgment

[19] Rule 159(2) of the *Alberta Rules of Court* allows a defendant to apply for summary judgment where there is no genuine issue to be tried. This Court has repeatedly stated that an applicant for summary judgment must pass a high threshold. The test to be applied is whether it is "plain and obvious" or "beyond a doubt" the action will not succeed: *Murphy Oil Co. v. Predator Corp.* at para. 24. If a chambers judge must assess and weigh the evidence to arrive at a summary judgment, the "plain and obvious" or "beyond a doubt" test has not been met: *Saxton v. Credit Union Deposit Guarantee Cor.*, 2006 ABCA 175 (CanLII), 2006 ABCA 175, 384 A.R. 309 at para. 18, citing *Liu v. Tangirala*, 2004 ABCA 171 (CanLII), 2004 ABCA 171 at para. 2. (...)

D. Case Issues - Unfair RFP Bidding & Contract Award

1. The Town of Canmore document of August 8, 2011 RFP titled "Feral Rabbit Control" was received from Canmore Bylaw on 4 Nov 2011 and thereafter served upon HMQRA and is enclosed as Exhibit "A".

Rabbits are **lagomorphs** and members of the taxonomic order **Lagomorpha**, of which there are two families - Leporidae (hares, rabbits), and Ochotonidae (pikas). The name of the order is derived from the Greek *lagos* (λαγος, "hare") and *morphē* (μορφή, "form").

Next to pikas, rabbits next nearest taxonomic relatives are horses. Rabbits are **not** rodents.

a) Town of Canmore, Mayor, Town Council, employees (hereafter referred to as Canmore) failed to provide adequate notice and time to respond. Additional time consideration should have been granted given the obvious involvement of unsophisticated first time participants in the process. The fact that Canmore received or knew of a Save-Canmore-Rabbits **petition** that was circulated prior to the formation of the RFP should have considered by Canmore when setting requirements and reply deadlines. Mor etime is needed to obtain a copy.

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In the Court of Queen's Bench of Calgary, Alberta
Daniel W. Onischuk v HMQRA, Town of Canmore
Applicant Brief - 14 Nov 2011

1101-14786

b) Living in Edmonton, I did not become aware of any notice of the situation until I was in Banff and read a local newspaper in late September - early October, which was not enough time to respond with a formal document. The RFP notice was not consistently advertised, nor broadly enough advertised in Alberta to be fair notice and fair competition.

How was it that the winning bidder in Edmonton was so well informed of the Canmore RFP. Was a pre-meditated proKill collusion already a factor before the RFP bid was closed ?

2. a) Canmore discriminated against my type-A contract (proposal for RFP tender) to ProLife, Save-Canmore-Rabbits, that was first submitted to Canmore verbally 28 Oct 2001 via Bylaw Manager Greg Bert, at the Bylaw office from about 3:20-3:50 PM. While verbally giving my proposal to Canmore bylaw Manager Greg Bert, he did listen and liked aspects of my proposal, so I would not say he personally discriminated against me then - however, he did not offer me a copy of the RFP while I was there, and I would argue withholding the RFP document may be considered as a discriminatory factor.

2.b.i) On 31 Oct. 2011, I resubmitted my possibly late RFP proposal (type-A contract) via email (this application Schedule A, item group 2) to Mr Bert which was amended to include specifics of the cost estimates. Mr. Bert did mention my submissions to Town Council at the Nov.1st meeting, however, my proposal was devalued by Mr. Bert as not being concrete (false), and not meeting many RFP requirements.

2.b.ii) Ultimately, Mr.Bert's hearing, considering and accepting my emailed proposal -and then rendering his opinion to Canmore Mayor, Town Council, the public, and news reporters, did constitute the acceptance, consideration, formation of a " type-A contract" - a bid submission. My ProLife, SaveCanmoreRabbits proposal was not fairly reviewed, nor equally treated.

Double N Earthmovers Ltd. v. Edmonton (City), [2007] 1 S.C.R. 116, 2007 SCC 3

" ... Where an owner undertakes a fair evaluation and enters into Contract B on the terms set out in the tender documents, Contract A is fully performed and any obligations on the part of the owner to unsuccessful bidders have been fully discharged. ... While there is much merit to the contention that an owner should be entitled to take a submitted bid at face value, the tender documents must be carefully

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reviewed and considered in their totality. ... By failing to insist on compliance with an essential term of the tender, the City breached its duty under Contract A to treat all bidders fairly and equally. ... The City cannot escape this fundamental obligation by postponing the fulfilment of its duty under Contract A to a time after Contract B has been entered into and then argue that Contract A is at an end."

2.b.iii) I argue that Canmore has not completed its duties under my type A contract - my "Feral Rabbit" RFP bid, and that by failing to give fair and equal treatment to my proposal and other SaveCanmoreRabbits proposals, Canmore discriminated against my and other ProLife, SaveCanmoreRabbits proposals.

2.b.iv) Mr Bert was quoted in a news (Sched A - part 1) referring to my bid, "it did not comply with many of the requirements of the RFP." That too was unfair discrimination :

Double N Earthmovers Ltd. v. Edmonton (City), [2007] 1 S.C.R. 116, 2007 SCC 3:

"Since each bidder is legally obliged to comply if its bid is accepted, there is no reason why bidders would expect an owner to investigate whether a bidder will comply. There was also neither an express nor an implied obligation in the tender documents to investigate the equipment bid prior to the acceptance. To imply such a duty would overwhelm and ultimately frustrate the tender process (...)."

2.b.v) Mr Bert's act of presenting his unfairly discriminatory opinion devaluing my RFP proposal to the Mayor and Town Council, did NOT properly discharge all of Canmore's duties and obligations for fair and equal treatment of my type A contract. Entering into a type B contract (actual rabbit removal) was done in an unfairly discriminatory manner due to the individual group discriminatory premise regarding type A contracts for myself, and further issues of unfair systemic bias favouring a deadly RFP solution - which constitutes "bad faith", "misrepresentation", and so the Canmore type-B contract should also be void(able). This could also apply to other SaveCanmoreRabbits proposals to their type A contract agreements. That would then indicate a group discrimination. Thirdly, an inherent systemic bias that would also thwart any other ProLife, SaveCanmoreRabbits solutions - which constitutes "bad faith", "misrepresentation", so the type-B contract Canmore formed ***should be void(able), and result in rewriting and re-tendering of the RFP.***

2.b.vi) I claim that both personal, group, and systemic discrimination occurred because the Canmore RFP document very unfavourably biased and disadvantaged any ProLife,

SaveCanmoreRabbits proposals - and instead made the RFP award selection process for the type-B contract to be more biased or more susceptible to bias to a proKill proposal. I also claim that a proKill bias was a "hidden agenda" of active intent or subconscious intent in the minds of the Canmore Mayor, Town Council, and possibly Mr. Bert., bylaw manager, and whomever else was involved in the writing of the RFP document (to be determined).

2.b.vii) Canmore also said they would consider ProLife, SaveCanmoreRabbits solutions, *but Canmore also publicly proclaimed nobody brought forth such a proposal* - yet my proposal and other SaveCanmoreRabbits proposals were again implicitly unfairly discriminated against.

2.c.i) ***Andrews v. Law Society of British Columbia***, [1989] 1 S.C.R. 143 made clear, not only does *The Charter of Rights and Freedoms* protect from direct or intentional discrimination; it also protects from adverse impact discrimination. The discrimination contemplated by s.15 of *The Charter* is based on grounds of relating to personal characteristics of an individual or a group. The discrimination must result in **the imposition of disadvantages** on such individual or groups **which are not imposed upon others**: *McKinney v. University of Guelph*, 1990 CanLII 60 (S.C.C.), [1990] 3 S.C.R. 229; *Tétreault-Gadoury v. Canada (C.E.I.C.)*, 1991 CanLII 12 (S.C.C.); *Law v. Canada*, [1999] 1 S.C.R. 497 (S.C.C.). Supreme Court unanimously backed away from the test for s.15 of the Charter used in *Law v. Canada* and re-emphasized the analytical approach that was applied in *Andrews v. Law Society of BC*.

By the fundamental legal principle of *stare decisis*, this Court is obligated to follow the decisions and methods of analysis employed in *Andrews v Law Society of BC*, 1989 1 SCR 143.

2.c.ii) I have reason to believe that Canmore did substantially discriminate against another ProLife, Save-Canmore-Rabbits proposals, thought to be submitted by Susan Vickery or her company or her associates. I do not represent S. Vickery or her company - at this time as I am awaiting her reply, and I ask the Court for more time to receive her reply. ***This Court should direct Canmore to provide a copy of all other ProLife, SaveCanmoreRabbit RFP documents*** as evidence for the Court to review the validity of my claims of **systemic group or categorical discrimination** against any or all of the ProLife, SaveCanmoreRabbits proposals.

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2.c.iii) Consideration must also be given to the legal rights, moral or religious concerns *Wishart Estate, 1992 (NB QB) 2679* of **citizens and property owners who want to save the rabbits lives** by finding a total pro-life solution that would meet the objectives of **all parties concerned**.

see also homeowner rights - Petty Trespass Act, Trespass to Premises Act.

2.c.iv) Given that the only **functional objective** of the RFP was rabbit trapping and removal, the individual, group, and systemic discrimination occurred by Canmore creating **special conditions escalating the qualifying entry requirements and costs - only against all types of ProLife, SaveCanmoreRabbits applicants**, subjecting these types of proposals to unfair cost burdens and expectations that were not placed upon the ProKill proposals.

2.c.v) For example, the requirement *separately pay* the spay-neuter costs, medicines, and feed. This "*separate medical pay*" discrimination was emphasized by denying all the ProLife, SaveCanmoreRabbits advocates the fair opportunity to employ their internal cost-saving methods of trapping (volunteers) and to apply any of the internal savings-profits towards the spay-neuter, medical and sustenance costs. Canmore could have easily allowed a fair and equal "**per rabbit capture value**" which should have been enabled for spays-neuters, food, meds, relocation, that was used as a tool to screen out and deny ProLife, SaveCanmoreRabbits proposals.

2.c.vi) *In comparison, the RFP required that proKill proposals only had to trap and humanely kill, and have submitted a cheap solution for cost saving pennies per rabbit (and would be doing so against the Humane Society of Canada, and statutes regarding causing distress or harm).*

The only safe, humane way to perform euthanasia is by injection performed only by a qualified veterinarian (Exhibits D1-4). Injection by veterinarian should have been a "humane criteria" requirement for any proKill proposal, but was deliberately or negligently omitted to avoid the extra costs of vet supervision, thus giving the proKill proposals another subtle economic advantage. Avoiding "humane treatment" as a **weighted criteria** and then masking the need for truly humane veterinarian costs was "unfair and unequal treatment" for type-A contracts against proLife, SaveCanmoreRabbits, and further discrimination (individual, group, systemic).

2.c.vii) All types of ProLife, SaveCanmoreRabbits proposals were further disadvantaged by having to predefine a destination - which were implicitly dependent upon the aforementioned

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“*separate medical pay*” factors which had to be satisfied before any sanctuary could possibly be viable. By comparison proKill contractors only have to find a pre-existing destination without any costs of financial obligations, and in fact may also be paid for supplying dead rabbits as feed - which is another subtle advantage given to proKill contractors.

2.c.viii) Canmore further biased the RFP bidding by failing to provide any type temporary live rabbit holding area to facilitate a live capture process. Canmore is empowered to do so by the Municipal Govt Act s.664, 671 - land reserves, or simply provided some town-owned land to be available for such use. Such a step would be obvious and necessary to enable any ProLife, SaveCanmoreRabbits proposal to fairly compete, and to have a reasonable chance of success. “Probability of Success” factor was heavily weighted at 40% of evaluation.

2.d.i) It appears to be unfairly discriminatory that the RFP did not require:

- i) what number of manpower and equipment would be employed to achieve those projected goals. The RFP was further biased by failing to require a monitoring schedule (live animals, winter) and any comparison of the average number of people that are nearby and readily available.
- ii) TOTAL project time & costs estimates per rabbit costs for the ENTIRE project;

2.d.ii) ***Without any professional scientific pre-estimates by Canmore of rabbit populations, (supported by video) and with no requirement to define TOTAL project costs & time estimates, or methods of humane treatment to compare and properly weight, Canmore failed to employ non-discriminatory evaluation metrics and methods to determine which solution would reasonably and fairly be more humane, time and cost effective to solve the primary objectives - to humanely remove the rabbits.*** So when the SaveCanmoreRabbit total expected capture totals and total rabbit costs were given, there was no method of RFP weighting the projected capture numbers, time and trap monitoring, or projected total costs to the proKill proposals, and so by avoiding these fundamental project task specifics and total cost accountability, ***there was no reasonably fair way to compare*** SaveCanmoreRabbits proposals to ProKill proposals.

2.d.iii) This issue of nebulous total time and costs was further emphasized in my discussion and letter to Mr. Bert. During our meeting, Mr. Bert and I discussed the Kelowna, BC solution to their feral rabbits which Mr Bert was knowledgeable of. He already knew that Kelowna has humanely trapped and financially supported about 800 rabbits that were found in a small geographic area. It took Kelowna 3-4 years to trap those rabbits. Mr. Bert also stated that the Canmore rabbits were spread out all over Town of Canmore, in many difficult areas.

Mr. Bert admitted that it could take well over 3-4 years to trap all of the Canmore rabbits.

At \$50,000 per year (2011 budget) the total cost is likely \$150,000 to \$200,000 or more.

2.d.iv) Mr. Bert was also aware that groups of volunteers in 2010 removed over 900 rabbits from UVictoria campus *within a year*, and the rabbits were safely sterilized and relocated. The UVic Feral Rabbit RFP allowed volunteer trapping and funds for long term care.

2.d.v) Susan Vickery was a UVic contract winner who still has over 600 rabbits, and had applied to the Canmore RFP without success. No reason was ever given as to why her application failed to SaveCanmoreRabbits. My later RFP proposal was devalued and unfairly ignored, yet Canmore repeatedly publicized that no proposals were submitted to Save Canmore Rabbits. Yet Canmore gave onerous preconditions and set discriminatory conditions that prevented any SaveCanmoreRabbits proposal from being able to fairly compete to bid or succeed. Court should consider the related case of *Cassels v University of Victoria*.

2.d.vi) *Sorelle Saidman* of *Rabbitats Canada* was also a key rescue leader at UVic in 2010, and she has recently negotiated a shelter space (www.preciouslifeanimalsanctuary.org) for at least 50 Canmore Rabbits (Exhibit B1) . She submits her comments (Tab B2) of obstacles to participate due to the very confusing and restrictive Canmore RFP wording.

2.d.vii) The confusing inconsistent RFP tender is addressed by *Robert Huckle*, an experienced contract specialist, who attended Canmore Town Meeting(s) regarding the rabbits and has followed these issues previously and recently. His letter appears as Exhibits C1, with another prior confusing RFP in C2.

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2.d.viii) The requirement for Non-profit society is very difficult to get, and takes a lot of time and paperwork that the RFP did not allow for, but unfairly required of the ProLife advocates to overcome this obstacle in just a few weeks, whereas proKill proposals had no such barrier. This was an unfair and unequal treatment for type-A contracts, and discrimination (individual, group, systemic bias). ProLife, SaveCanmoreRabbits groups and myself should have been allowed to present "for profit" just as proKill contractors, or, allowed to negotiate a tax deductible receipt from a registered charity such as the **World Society for Protection of Animals** or the **International Fund for Animal Welfare**, that could intermediate funding. The implicit "charitable tax benefit" for Canmore was also an "unfair and unequal" type-A contract expectation implicitly placed **only upon** the ProLife, SaveCanmoreRabbits individuals and groups, and is a further sign of discrimination (individual, group, systemic).

2.d.ix) Canmore's RFP gave a substantial 50% weighting to an ambiguous, inexperienced, subjective judgement of "probability of success" which did not require recent, relevant large scale trapping knowledge and experience factors, especially for rabbits specifically. **This failure to require and properly weight specialized rabbit experience also indicates a pre-bias against any SaveCamoreRabbits proposals.** This loose, ambiguous subjective and major 40% weighting on "probability of success" shows that the RFP and Canmore (Mayor, Council, Bylaw, et al) deliberately or negligently acted to unfairly favour proKill proposals and effectively discriminated against SaveCanmoreRabbits proposals and their experience.

2.e.i) By omitting total project time and total cost estimates, and failing to require rabbit capture projections or plans, Canmore deliberately or negligently acted to unfairly favour proKill proposals and discriminated against achievable SaveCanmoreRabbits proposals. By failing to provide any significant RFP weighting to the above time (and thus cost) and prior large scale rabbit capture experience, *and locally available human resources*, the SaveCanmoreRabbits were unfairly discriminated against, and the proKill bias was given an unfair advantage in the RFP "Feral Rabbit Control" document completion and this led to and unfairly biased, discriminatory decision by Canmore (Mayor, Council, employees).

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2.e.ii) The subsequent type-B contract awarded does not support fund sharing to assist any ProLife, SaveCanmoreRabbits types of solutions, which are already Canmore budgeted items for 2011, and 2012 in a fairly wealthy mountain resort community, in one of the wealthiest regions and provinces in North America. Instead, ProLife, SaveCanmoreRabbits advocates are further discriminated from doing supplemental work to the newly formed type-B contract, and to concurrently receive any benefits of "per rabbit equivalent capture value" that being given exclusively to proKill contractors. This is contrary to the goal of quicker resolution.

2.e.iii) Mr Burt (Canmore Bylaw Manager) wrote to me 3 Nov 2011: (Applic. Sched-A, part 2)

" Town Council approved the awarding of the feral rabbit control contract per approved methods (*Locating, trapping, humanely euthanizing, transporting and delivering rabbits to a location for a suitable use*), **and** that the approved contractor be authorized to work with (approved) organizations that have the capacity to spay/neuter, transport and house captured rabbits in a sanctuary, acceptable to the Town of Canmore.

What this means is that if a group or organization comes forward with a plan to spay/neuter, transport and house at a sanctuary the Town (most likely myself) would work with the group to ensure the plan is viable and sustainable in the long term prior to turning feral rabbits over to them. This group will have to demonstrate that it can be financially viable and sustainable on its own without Town support. What you have submitted required Town funding which is not an option." - my underlining

I submit this quote reflects Mr. Burt's mindset in reviewing my proposal (type-A contract) because he refers to the past tense - "submitted", "required". He also uses present and future tense verbs to also indicate this is also a present and future requirement for type-B contracts.

2.f.i) On or around the 6th Oct. CTV reporter Janet Dirks interviewed Mayor Casey (<http://watch.ctv.ca/news/#clip?542817>) wherein Mr Casey was relaying to viewers was the Town's commitment to work on relocation submissions. Canmore's actions appear contrary. Since Canmore officers so actively devalued SaveCanmoreRabbits proposals, and misled the public as to their true intent, I would also ask this Court to also directing Canmore to pay for

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the distribution and news publication of information provided by all SaveCanmoreRabbits proposals, and to help gather volunteers to support this method.

2.f.ii) Canmore's reluctance to place obviously necessary funding and "fair and equal" or even plain fair conditions to supplement the new type B contract, is again a sign of individual, group and systemic discrimination. Although Canmore says they want to solve the problem humanely, quickly and cost-effectively, Canmore is not behaving as such, and so is acting in a discriminatory manner against any non-lethal ProLife proposals to SaveCanmoreRabbits.

2.f.iii) Canmore then went on to skewed public perceptions to adversely bias community support toward a proKill solution and thus against any SaveCanmoreRabbits proposals. Canmore often publicized the one year RFP cost of \$50,000 but deliberately downplayed the actual total projected time and associated costs - thus making any and all proposals by SaveCanmoreRabbits - which had to address total costs of all rabbits - as being unfairly perceived as too costly in the public minds - and so this too was unfairly discriminatory.

2.f.iv) This all greatly skewed advantages towards selection of a proKill proposal for a type B contract, and thus discriminated against ProLife, SaveCanmoreRabbits individuals and groups type-A contracts.

2.g.i) Canmore's RFP failed to provide any weighting factor for the humane treatment of the feral rabbits. **Humane treatment is a requirement under the (Alberta) Animal Protection Act, and the (Alberta) Wildlife Act.** Canmore's lack of respect for statutory laws is a concern, and further evidence of the Canmore proKill bias. Further evidence is the subtle public manipulation by Canmore which allowed or actively programmed a road sign to encourage public abuse and hostility towards rabbits (application Schedule A-part 1).

Canmore then allowed this picture to be published and further bias a larger audience.

2.g.ii) Canmore unfairly discriminated against my and other ProLife RFP proposals that preserve the rabbits lives, and instead went on to select a more costly and society damaging RFP proposal of *trapping with inhumane suffocating* of the captured rabbits, which the Canada Humane Society does not approve (Exhibit D1), nor do other authorities (D3, D4).

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2.g.iii) Why should taxpayers be forced to pay a proKill contractor \$100-\$200+ per rabbit in (average TOTAL project costs) just to have a contractor set down a cage and then pick it up.

Gassing bunnies takes a few pennies - death by suffocation is very painful and inhumane.

"Gas chambers have many limitations which make the method less practical, slower, more dangerous to staff (workers dying of CO poisoning), and ultimately more expensive than lethal injection. Abuse of the chamber is common. In many cases animals are simply shoved into the chamber, the door sealed, the button pushed, and the employee walks away, resulting in a slow, painful death for the animals. Animals who end their lives in a shelter, humane society, or even city pound, deserve to have the last moments free of pain and discomfort as can be provided by the practice of humane euthanasia." - AnimalLaw.com/HumaneEuthanasia.htm

Gas will stay in the system so if it was to go towards feed for animals it would in fact create potential for second hand poisoning in the system. Also very young rabbits and pregnant rabbits must not ever be euthanized by gas. ***The only safe, humane way to perform euthanasia is by injection performed only by a qualified veterinarian.***

Wikipedia.com says "pets are almost always euthanized by **intravenous injection**, typically a very high dose of sodium pentobarbital or sodium thiopental. Unconsciousness, respiratory then cardiac arrest follow usually within 30 seconds. **Observers generally describe it as a quick and peaceful death.** Somulose (Secobarbital/Cinchocaine) and Tributame (Embutramide/Chloroquine/Lidocaine), cause deep unconsciousness and cardiac arrest independently, with a lower volume of injection, making it faster, safer, more effective."

2.g.iv) IF HMQRA claims ownership of the feral rabbits, *Her Majesty the Queen in Right of Alberta (HMQRA)* has a responsibility to ensure that humane care, gentle treatment is provided for the rabbits. Properly treated feral rabbits are passive, not vicious animals.

2.h.i) Canmore's proKill bias and intent is obvious by the recent, hasty passing (Exhibit E1) of a proKill bylaw (Exhibit E2) which Canmore verbally ***condones arming young boys with guns and slingshots*** - ignoring my faxed warning letter to Canmore Bylaw (Exhibit E3). The attitude of Canmore encourages youth offender violations of the *(Alberta) Wildlife Act, Animal Protection Act*, encouraging youths to disregard laws and life by "Officially" condoning such actions. This reflects a ***"pre-bias, intent"*** of the Canmore Mayor and Town Council.

It is not clear whether Canmore properly complied with the **Municipal Govt Act** :

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230(1) When this or another enactment requires council to hold a public hearing on a proposed bylaw or resolution, the public hearing must be held, unless another enactment specifies otherwise,

- (a) before second reading of the bylaw, or
- (b) before council votes on the resolution.

(4) In the public hearing, council

- (a) must hear any person, group of persons, or person representing them, who claims to be affected by the proposed bylaw or resolution and who has complied with the procedures outlined by the council, and
- (b) may hear any other person who wishes to make representations and whom the council agrees to hear.

2.h.ii) Canmore's recent bylaw revision appears to be contrary to the *(Alberta) Wildlife Act - s.1(1.o.(i-v)), 1(5), 1(6), 5, 7, 8, 12, 13, 24, 25, et seq. (Alberta) Animal Protection Act 1(2c), 2(1) for HMQrA, 2(1.1), 2.1, 3, 4.1, 5, 6.1*. It is not clear to me as to what designation (wildlife, escaped domestic pets) that the Feral Rabbits have **while within the jurisdiction of the Town of Canmore**, as s.7(h) of the Municipal Government Act **does grant** Canmore of Canmore authority to regulate **both** escaped domestic pets and original native wildlife.

However, there is no mention of any Town or Town Bylaw Officers being empowered to act as wildlife officers or to confer such powers. Those are legislative authorities beyond Canmore.

At this stage, no legal ownership finding is needed or desired, it is only necessary to determine if an inconsistency may exist. The rabbits are subject to the protections granted by the Alberta Wildlife Act and according to s.13 of the Municipal Government Act:

13 If there is an inconsistency between a bylaw and this or another enactment, the bylaw is of no effect to the extent of the inconsistency. 1994 cM-26.1 s13

2.h.iii) The prior and still existing Canmore bylaw **1991-33** (original application "Schedule A" - part 3, or Exhibit E4) **is** consistent with the protections granted by the Wildlife Act regarding hunting and trapping and therefore is not subject to s.13 of the Municipal Govt Act.

Therefore, any Town Council resolution and any RFP contract that is based on hunting, and trapping must first comply with the provisions and requirements of the Alberta Wildlife Act, and ALSA, and until such time, the bylaws, resolutions are of no effect by s.13 of the Municipal Govt Act. and so a RFP "feral rabbit" contract could not be legally awarded during that time.

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Bylaw passing powers in other enactments

10(1) In this section, "specific bylaw passing power" means a municipality's power or duty to pass a bylaw that is set out in an enactment other than this Division, but does not include a municipality's natural person powers.

(2) If a bylaw could be passed under this Division and under a specific bylaw passing power, the bylaw passed under this Division is subject to any conditions contained in the specific bylaw passing power.

(3) If there is an inconsistency between a bylaw passed under this Division and one passed under a specific bylaw passing power, the bylaw passed under this Division is of no effect to the extent that it is inconsistent with the specific bylaw passing power.

2.h.iv) Municipal Govt Act s.7(h) " wild and domestic animals and activities in relation to them" should not be construed as a means to circumvent the protections of the Alberta Wildlife Act, Animal Protection Act, and the associated legislative powers of the responsible Minister(s) of the Government, the electorate.

2.d.v) Canmore possibly bypassed these legal steps and possibly undermined the legislative powers and authority of HMQRA, elected Members of the Legislative Assembly, Ministry of Sustainable Resources Development which regulates these Alberta acts, and denies the rights of the Alberta public to submit comments for review and legislative debates by MLAs, Ministers, Lt. Governor, et al.

2.h.v) ~~The~~ *Alberta Land Stewardship Act* (ALSA) requires reviews and document filing of amendments and reviews for compliances with the regional planning authorities and publication in the Alberta Gazette **before** coming into full effect. *ALSA - s.13, 15, et seq.*

2.h.vi) Canmore is adjacent to Banff National Park, and the transient, migratory wildlife therein, and so is obligated to respect Federal laws. It is not clear whether Canmore intended to presume total powers over the potential impact upon wildlife (or potential wildlife) in the Town of Canmore so as to supercede or bypass Federal laws and the Federal Minister responsible for Wildlife throughout Canada. The **Canada Wildlife Act, RSC 1985, c W-9** states:

2.1 This Act is binding on Her Majesty in right of Canada or a province. 1994, c. 23, s. 5.

POWERS, DUTIES AND FUNCTIONS OF THE MINISTER

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In the Court of Queen's Bench of Calgary, Alberta
Daniel W. Onischuk v HMQRA, Town of Canmore
Applicant Brief - 14 Nov 2011

1101-14786

3. The Minister may

(a) undertake, promote and recommend measures for the encouragement of public cooperation in wildlife conservation and interpretation;

(b) initiate conferences and meetings respecting wildlife research, conservation and interpretation;

(c) undertake programs for wildlife research and investigation, and establish and maintain laboratories and other necessary facilities for that purpose;

(d) establish such advisory committees as the Minister deems necessary and appoint the members of those committees; and

(e) coordinate and implement wildlife policies and programs in cooperation with the government of any province having an interest therein. R.S., 1985, c. W-9, s. 3; 1994, c. 23, s. 6(F).

To my limited knowledge, Canmore does not have any statutory standing to co-develop, communicate or advise on Wildlife policies for Canada, only HMQRA is entitled by 3(e).

2.h.vii) The impact of predators is often cited as a reason to be rid of the rabbits, however, predators have a twenty year history of feral rabbit prey in Canmore - what will be the impact of removing all the feral rabbits? Will predators become more aggressive to seek other sources of food in the town? People from Canmore have expressed this concern.

Yet the number of coyotes in the Canmore area was significantly reduced recently, so these grounds for the RFP are inconsistent with the facts of coyotes that prey on the feral rabbits. *City of Calgary has a well researched article on co-existing with coyotes (Exhibit F2).*

Rabbit removal to resolve this issue does not require killing any of the rabbits.

3.) As a government, HMQRA has a responsibility to ensure that local municipal governments act fairly and in conformance with statutory laws, and a duty of care to public consumers in general to protect them from legitimate but harmful business practices.

Harm can be financially or emotionally aggravating or vexatious. In this case, the lack of full, honest good faith disclosure and fair, balanced RFP and considerations by Canmore, have caused, and are acting to deliberately cause harmful actions to the rabbits, myself, other SaveCanmoreRabbits RFP proposal owners, to the SaveCanmoreRabbits supporters, and any Canmore citizen who pays taxes or has issues with others about these feral rabbits.

Canmore has failed to disclose the total projected time and costs and of the Pro-Kill solution, and thus manipulated the public perception to sell the idea that only a \$50,000 cost was projected. The \$50,000 criteria was used to discriminate unfairly against ProLife solutions,

which were inherently forced to solve the total long term costs and issues within a one year budget, while at the same time, the proKill solutions were favoured unfairly by being able to offer a lower up-front cost without addressing the entire scope of time and costs in their proposals. Canmore, and the ProKill proposal(s) have failed to provide a contract that protects the taxpayers of Canmore, leaving them exposed to long-term recurring billing that may seek to maximize profits.

4.i) Societal benefits were completely ignored by the RFP and no weighting or consideration was given to those factors, The social relations and benefits of my proposal were clearly described to Mr Bert and in my letter of RFP proposal. These societal benefits would apply to any sterilize & relocate proposal. Although not obvious, this too was a discrimination factor to be considered, because environmental and social considerations are important enough to be mentioned in the Municipal Govt Act -

632(1) A council of a municipality with a population of 3500 or more must by bylaw adopt a municipal development plan.

(3) A municipal development plan

- (a) must address
 - (v) the provision of municipal services and facilities either generally or specifically,
- (b) may address
 - (ii) the co-ordination of municipal programs relating to the physical, social and economic development of the municipality,
 - (iii) environmental matters within the municipality,
 - (iv) the financial resources of the municipality,
 - (vi) any other matter relating to the physical, social or economic development of the municipality

4.ii) I submit that the RFP " Feral Rabbit Control" impacts the social, environmental, and financial considerations, and is itself a type of program or service. The discriminatory manner in which the RFP was developed and decided undermines the social and environmental objectives and does not fairly address the long-term financial concerns of Canmore residents - and ignores the adverse social impact on adults, youths and children.

Killing the rabbits is not a good example to youth or young children who are very aware and sensitive to the situation, and care for the rabbits. As adults, Canmore should not set the example that problems of neglect are best solved by simply killing innocent lives. Canmore should not set the example that paying for killing is an acceptable way to save money that

could alternatively go to save those lives. The moral high bar was set in other locales such as Kelowna, Univ. of Victoria, and earlier in Seattle, Washington and California.

Canmore should not hold the rabbits hostage - rescuers and property owners will both be highly motivated to get the rabbits out and out of harms way by relocating rabbits to a clean-conscience sanctuary. **Everyones needs are respected.** Local, Regional and International support for my petition started just last week has over 300 e-signatures (Exhibit G1).

4.iii) Via the Alberta Land Stewardship Act, Canmore may qualify for HMQRA assistance to help deal with costs of the Feral Rabbit program in a more community healthy, humane way.

Incentives and programs

67(1) The Lieutenant Governor in Council may make regulations providing for financial and other incentives to support the purposes of this Act and the objectives and policies of regional plans.

67(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations

- (a) respecting grants or conditional grants and describing their purposes;
- (b) respecting the human, financial and technical services to support or advance the objectives and policies of regional plans;
- (c) respecting eligibility for and terms and conditions of grants, conditional grants and other support or services;
- (d) promoting research, best practices and management programs to advance the purposes of this Act and to advance and implement the objectives and policies of regional plans;
- (f) establishing best or beneficial practices, ethical use and management for the purposes of attaining regional plan objectives and implementing regional plan policies;
- (g) respecting education, information and resources to support programs and policies to advance and implement regional plan objectives and policies.

Town of Canmore - Tourism - Sanctuary Land within Canmore - or elsewhere

Canmore should also consider the adverse impact on tourism by killing the rabbits. Canmore could promote tourism, as Canmore is already well known for their feral rabbits, and could build the World's Biggest Rabbit (eg Rabbit of Alice in Wonderland) just as Drumheller has the World's largest dinosaur, Vulcan has the Starship Enterprise.

Rabbit relocations could also work with other sanctuaries for relocation housing and become a research site. For more ideas, refer to the enclosed Rabbitat Canada proposal (Tab B3).

A temporary safe place would be needed to place captured bunnies awaiting sterilization and relocation. One option is buying a used semi-trailer or Canmore can provide some land.

665(1) A council may by bylaw require that a parcel of land or a part of a parcel of land that it owns or that it is in the process of acquiring be designated as municipal reserve, school reserve, municipal and school reserve, environmental reserve or public utility lot.

Environmental reserve

664(1) Subject to section 663, a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land as environmental reserve if it consists of

- (a) a swamp, gully, ravine, coulee or natural drainage course,
- (b) land that is subject to flooding or is, in the opinion of the subdivision authority, unstable, or
- (c) a strip of land, not less than 6 metres in width, abutting the bed and shore of any lake, river, stream or other body of water for the purpose of
 - (i) preventing pollution, or
 - (ii) providing public access to and beside the bed and shore.

(2) If the owner of a parcel of land that is the subject of a proposed subdivision and the municipality agree that any or all of the land that is to be taken as environmental reserve is instead to be the subject of an environmental reserve easement for the protection and enhancement of the environment, an easement may be registered against the land in favour of the municipality at a land titles office.

Similar land use designations are also available as per the ALSA for a sanctuary (tourist site !)

Market-based instruments

23 The Lieutenant Governor in Council may

- (a) support or advance research and development into the creation, application and implementation of instruments, including market-based instruments, to support, enhance and implement the purposes of this Act and objectives and policies in or proposed for a regional plan;
- (b) establish, support or encourage pilot projects to investigate or test instruments, including market-based instruments, to advance or implement the purposes of this Act and objectives and policies in or proposed for a regional plan.

Programs and measures to support regional plans

24 The Lieutenant Governor in Council may establish, support or participate in programs and other measures to carry out the purposes of this Act and the objectives and policies of regional plans.

Funding to support conservation, environmental and agricultural values

25 The Lieutenant Governor in Council is responsible for establishing, supporting or facilitating funding and cost-sharing initiatives, mechanisms and instruments to support or enhance any one or more of the following:

- (a) conservation easements;
- (b) conservation directives;
- (c) instruments, including market-based instruments, designed or intended to support, encourage or enhance all or any of the following:
 - (i) the protection, conservation and enhancement of the environment;
 - (ii) the protection, conservation and enhancement of natural scenic or esthetic values;

827

- (iii) the protection, conservation and enhancement of agricultural land or land for agricultural purposes.

Transfer of Development Credit Schemes

48(1) A TDC scheme may be established only in accordance with this Division.

(2) A TDC scheme may be established by

- (a) a regional plan,
- (b) a local authority if the scheme is first approved by the Lieutenant Governor in Council, or
- (c) 2 or more local authorities in accordance with an agreement or arrangement among them, with or without other persons, if the agreement or arrangement is first approved by the Lieutenant Governor in Council.

Components of a TDC scheme

49(1) Unless regulations under section 50 provide otherwise, every TDC scheme must include the following :

- (a) the designation of an area or areas of land as a conservation area with one or more of the following purposes:
 - (i) the protection, conservation and enhancement of the environment;
 - (ii) the protection, conservation and enhancement of natural scenic or esthetic values;
 - (iii) the protection, conservation and enhancement of agricultural land or land for agricultural purposes;
- (iv) providing for all or any of the following uses of the land that are consistent with the purposes set out in subclause (i), (ii) or (iii):
 - (A) recreational use;
 - (B) open space use;
 - (C) environmental education use;
 - (D) use for research and scientific studies of natural ecosystems;

Therefore funding and opportunities for economic development of "rabbit tourism" at the final destination is feasible - so a proLife, SaveCanmoreRabbits solution is possible.

ProLife, SaveCanmoreRabbits just needs more time to gather volunteers, funding, and land. This issue has been around over 20 years, and killing the rabbits is an irreversible step.

I hope Canmore and HMQRA finds it in their hearts to agree that with a bit more work, the long-term benefits of ***a harmonious community*** where ***everybody gets what they want - rabbits alive & gone to a safe sanctuary*** or maybe even to a good tourist attraction for to all to enjoy.

I thank the Court for consideration of this mission of mercy.

P28

- 1 1. I petition the Court of Queen's Bench of Calgary to re-open this case, and then to accept for
- 2 reconsideration: a new response brief, affidavits, new facts, new laws & new evidence - on the
- 3 grounds that I was not properly and timely served any or all of the documents for Town of
- 4 Canmore "Application to Strike" to enable me understand the facts, issues and legal grounds
- 5 and any other documents so as to enable me to properly prepare a response in my defence.
- 6 2. When I got home after Court in Calgary on Monday night at 8pm, Nov 14th, the Canmore
- 7 lawyers documents were in the mailbox. Fedex receipts faxed last week to all parties and
- 8 the Court proves the Canmore lawyer(s) sent their Strike application & case documents
- 9 to the wrong address. By the Canmore lawyers mistake, I was not legally served until 8PM
- 10 Monday, 10 hours AFTER Court. Service AFTER Court is not fair Notice. Service **after**
- 11 Court cannot be abridged as that would be grossly unfair to the party being served - as it is
- 12 far too late after the Court's decision. This violates "procedural fairness" of "natural justice
- 13 principles" in common law, and also unfairly denied my civil legal rights for a fair hearing and
- 14 to have a fair trial as per Canadian Bill of Rights, The Charter of Rights and Freedoms.

15 Alberta Rules of Court (2011) - 3.11(1) If the respondent to an originating application
 16 intends to rely on an affidavit or other evidence when the originating application is
 17 heard or considered, the respondent must reply by serving on the originating applicant,
 18 a reasonable time before the originating application is to be heard or considered, a copy of
 19 the affidavit or other evidence on which the respondent intends to rely.

20 1.5(1) If a person contravenes or does not comply with these rules, or if there is an
 21 irregularity in a commencement document, pleading, document, affidavit or
 22 prescribed form, a party may apply to the Court

23 (b) to set aside an act, application, proceeding or other thing because of prejudice
 24 to that party arising from the contravention, non-compliance or irregularity.

25 1.5(4) The Court must not cure any contravention, non-compliance or irregularity
 26 unless (a) to do so will cause no irreparable harm to any party,
 27 (b) in doing so the Court imposes terms or conditions that will
 28 (i) eliminate or ameliorate any reparable harm

29 **(Alberta) Interpretation Act, RSA 2000, c I-8**
 30 10 An enactment shall be construed as being remedial, and shall be given the fair, large
 31 and liberal construction and interpretation that best ensures the attainment of its objects.

32 **Canadian Bill of Rights, S.C. 1960, c. 44 – Part I, s.1(a,b,d), 2(b,e):**
 33 (2) Every law of Canada shall, ... be so construed and applied as not to abrogate, abridge
 34 or infringe... any of the rights or freedoms herein ... or applied so as to:
 35 (e) deprive a person of the right to a fair hearing in accordance with the principles of
 36 fundamental justice for the determination of his rights and obligations;

P29

37 **The Canadian Charter of Rights and Freedoms**

38 *7. Everyone has the right to life, liberty and security of the person and the right not to*
39 *be deprived thereof except in accordance with the principles of fundamental justice.*

40 *12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.*

41 *15.(1)(b) the right of the individual to equality before the law and the protection of the law;*
42 *(d) freedom of speech;*

43 **Adeco Exploration Company Ltd. v. Hunt Oil Company of Canada, Inc., 2008 ABCA 214**

44 [26] The standard of review for issues of law is correctness: *Housen v. Nikolaisen*, 2002
45 SCC 33, 2002 SCC 33, [2002] 2 S.C.R. 235 at para. 8. For issues of fact, including inferences
46 drawn from proven facts, the standard of review is palpable and overriding error: *Housen*
47 at paras. 10 & 25. For issues of mixed fact and law, the standard of review is palpable and
48 overriding error, unless there is an extricable question of law, in which case the issue is
49 reviewed on the correctness standard: *Housen* at paras. 27 & 36.

50 3. In my return call at 10AM Thursday, Mr. Mason only said he represented Canmore, and that
51 he prepared an application to strike. Nothing was said about the actual particulars of the legal
52 grounds for their position, the factual legal arguments of their application, or any supporting
53 document evidence in the form of supporting case laws or other documents, testimony or
54 witnesses. I had no proof or prior contact from him or Canmore in the previous several days
55 which he had prepared his strike application. Mr Mason wanted to fax me about 100 pages of
56 documents. My fax device and software has been unreliable and that was too many pages to
57 accept without chance of error and no chance for me to get a correction if an error was found
58 later over the Remembrance Day long weekend. As email can contain viruses that damage
59 computers, I refused email as my computer security software routinely deletes unknown email,
60 especially unknown attachments. Email can be tampered with, files corrupted, viruses added in
61 transit, delayed by computer servers or networks, or simply end up going to the wrong party.
62 Mr Mason could then claim service - but the email may not reach me until later - if ever at all.
63 Privacy laws entitle me to keep my email private. **My originating application provided a**
64 **correctly stated address for paper document service. Canmore lawyers offered and accepted**
65 **agreement to the physical service of paper documents as the only reliable method. I clearly**
66 **agreed I would accept paper service, so Canmore had a duty to serve me by 10AM Sunday.**
67 I was home until 830PM Sunday, but nothing arrived so I assumed they were not ready or
68 changed their minds or this was tactic to disable me or discourage me from going to Court.
69 **Service is not called "retrieval" - timely service is the responsibility of the serving party.**
70 Respondents must NOT be required to retrieve or continually poll as to whether any real or
71 potential documents are ready or possibly ready to be served. Respondents just provide a

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72 legal address and the burden is on the applicant to serve there in a "procedurally fair" time.
73 **I drove 900 km just to timely file and serve my documents** which was greatly inconvenient,
74 and a great time and cost disadvantage, yet I have done so for all my documents of this case.
75 Canmore lawyers are near Calgary Courts. **Canmore lawyers have office staff able to**
76 **provide service of documents themselves, or via process service companies, or via their**
77 **affiliate company branch office in downtown Edmonton.** They had 3-4 days to serve me but
78 completely failed to do so, informing the Court they had served me previously, to enable their
79 application to unfairly proceed. Canmore lawyers should have first checked whether their
80 Fedex service (which only they knew details of at the time) before proceeding to mislead the
81 Court that I was previously served, then acted from an unfair position of private knowledge of
82 the contents of their strike application, thus giving themselves an unfair advantage in Court.

83 **4. A respondent has the "procedural fairness" right to be Notified of the specifics of an**
84 **application - what are the legal grounds or other grounds for the application, what are the**
85 **arguments of laws, any "other evidence" of case laws, testimony, or documents that**
86 **allegedly supports their application, and is referred to by the Court in reaching a decision.**

87 I was at Court on time, ready and willing to take whatever documents they would give me.
88 Canmore lawyer signed a receipt (faxed to all 16 Nov) accepting service of my affidavit.
89 Nobody said or asked anything about my being served any Notice documents to strike.
90 Since I was not served anything, I naturally assumed that they were not ready, they changed
91 their minds, or they were going to wait and see what the Court said about my application
92 before taking any further steps. **Even if they had decided to serve me in Court, there was**
93 **not enough time for this layperson to read, comprehend, research and prepare a defence.**

94 I was not given a copy of the Canmore application to strike or any Canmore lawyer case laws
95 to read in Court, so I had no copy of the Canmore lawyers documents to read or refer to help
96 me to prepare my ad hoc defence for all of the fast spoken points raised by Canmore lawyers
97 and case laws documents given to the Court to read, but not to me. I did inform the Court of
98 the lack of service, but no relief was granted, as the Court relied on the professional word of
99 Canmore lawyers that I had been previously served their application notice and documents.

100 **R. v. Ferguson, 1996 ABCA 260**

101 [11] Procedural fairness dictates that both parties should have been given an opportunity to
102 retain counsel in that regard **and be able to properly prepare for the hearing, presenting any**
103 **exhibits and witnesses that were desired.** Because of the breach of procedural fairness the change
104 of custody order must be reversed, and we so order. (...)

P31

105 **Nortel Networks Inc. v. Calgary (City), 2008 ABCA 370**

106 [20] Having regard to the factors outlined in *Baker v. Canada (Minister of Citizenship and*
107 *Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, in determining the content of the duty of
108 procedural fairness, and in particular both to the nature of the decision and the nature of the
109 statutory scheme, Nortel was entitled to expect that the decision would be made using a fair and
110 open procedure. In our view, the chambers judge rightly concluded that Nortel was deprived of
111 procedural fairness, through the Board's failure to require disclosure of the information sought by
112 Nortel to permit challenge of the evidence accepted and relied upon (...)

113 **Airport Self Storage and R.V. Centre Ltd. v. Leduc (City), 2008 ABQB 12**

114 [21] This is an application for judicial review which raises an issue of procedural fairness.
115 On such an application the standard of review is correctness as measured by the factors set out in
116 *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R.
117 817, [1999] S.C.J. No. 39; *The Edmonton Police Association and Murdoch v. City of Edmonton*,
118 2007 ABCA 194 (CanLII), [2007] A.J. No. 584, 2007 ABCA 194.

119 **A. The nature of the decision being challenged and the process followed in making that decision.**

120 [24] This factor involves an examination of the functions performed by the body making the
121 decision. These functions are characterized and placed on a notional spectrum. At one end of the
122 spectrum are purely legislative functions which attract requirements of minimal procedural
123 fairness. At the other end of that notional spectrum are judicial or quasi judicial functions which
124 attract a higher standard of fairness.

125 **McIntyre Ranching Co. Ltd. v. Cardston (Municipal District No. 6), 1983 ABCA 210**

126 [29] (...) A long line of authorities, both old and recent, establish that in judicial or quasi-judicial
127 proceedings notice is required unless the statute expressly dispenses with it. The mere silence of
128 the statute is not enough to do away with notice. In such cases, as has been said, the justice of the
129 common law will supply the omission of the legislature. Some of the authorities dealing with this
130 subject are referred to by Kirby J. in the recent case of *Camac Exploration Ltd. v. Oil and Gas*
131 *Conservation Board of Alberta*, (1964), 47 W.W.R. 81."

132 The obligation on a body with the power to decide not to act until it has afforded the other party
133 affected a proper opportunity to be heard is aptly stated by Lord Reid in *Ridge v. Baldwin*, at p. 81
134 as follows: 'Then there was considerable argument whether in the result the watch committee's
135 decision is void or merely voidable. Time and again in the cases I have cited it has been
136 stated that a decision given without regard to the principles of natural justice is void and that
137 was expressly decided in Wood v. Wood, (1874) L.R. 9 Exch. 190. I see no reason to doubt
138 these authorities. The body with the power to decide cannot lawfully proceed to make a
139 decision until it has afforded to the person affected a proper opportunity to state his case.'
140

141 **Bridgeland Riverside Community Association v. Calgary (City), 1982 ABCA 138**

142 [29] In my view, no concept is more sterile than that which says that a proceeding is a nullity
143 for failure of compliance with a procedural rule and without regard to the effect of the failure.

144

145 1657575 Ontario Inc. v. Hamilton (City), 2008 ONCA 570

146 [23] It is not necessary to assess the appropriate standard of review when considering an
147 allegation of a denial of procedural fairness. This principle was explained in *London (City) v.*
148 *Ayerswood Development Corp.* 2002 CanLII 3225 (ON CA), 167 O.A.C. 120 at par. 10 (C.A.):
149 When considering an allegation of a denial of natural justice, a court need not engage in
150 an assessment of the appropriate standard of review. Rather, the court is required to
151 evaluate whether the rules of procedural fairness or the duty of fairness have been
152 adhered to. The court does this by assessing the specific circumstances giving rise to the
153 allegation and by determining what procedures and safeguards were required in those
154 circumstances in order to comply with the duty to act fairly.

155 [25] Disclosure is a basic element of natural justice at common law and, in the administrative
156 context, procedural fairness generally requires disclosure unless some competing interest
157 prevails. As discussed in Jones & de Villars, *Principles of Administrative Law*, 4th ed. (Scarborough,
158 Ont.: Carswell, 2004) at 258: "The courts have consistently held that a fair hearing can only be
159 had if the persons affected by the tribunal's decision know the case to be made against them.
160 Only in this circumstance can they correct evidence prejudicial to their case and bring evidence to
161 prove their position. Without knowing what might be said against them, people cannot properly
162 present their case."

163 See also *May v. Ferndale Institution*, 2005 SCC 82 (CanLII), [2005] 3 S.C.R. 809 at paras. 92-93.

164 [26] As noted by Lane J. in *Waxman v. Ontario (Racing Commission)* 2006 CanLII 35617 (ON
165 SCDC), (2006), 216 O.A.C. 353 at para. 11 (Div. Ct.), the failure to make proper disclosure has the
166 effect of rendering the process "irretrievably tainted with unfairness from the outset."

167 [27] In cases involving breaches of procedural fairness, the court will generally set aside the
168 decision without considering whether the result would have been the same had there been no
169 unfairness. This principle was recognized by the Supreme Court in *Cardinal v. Director of Kent*
170 *Institution*, 1985 CanLII 23 (SCC), [1985] 2 S.C.R. 643 at 661, in which LeDain J. rejected the suggestion
171 by counsel that a relevant consideration in the procedural fairness analysis is whether the holding of
172 a hearing would have persuaded authorities to change their minds on the decision made:
173 [T]he denial of a right to a fair hearing must always render a decision invalid, whether or
174 not it may appear to a reviewing court that the hearing would likely have resulted in a
175 different decision. The right to a fair hearing must be regarded as an independent,
176 unqualified right which finds its essential justification in the sense of procedural justice
177 which any person affected by an administrative decision is entitled to have. It is not for the
178 court to deny that right and sense of justice on the basis of speculation as to what the result
179 might have been had there been a hearing.
180

181 6. Laypersons such as myself should have be given some leniency and especially should be
182 given the physical documents to read, and should not be forced to defend against what they
183 hear or may mishear of what a fast talking lawyer says in Court. The Court should consider
184 that in addition to arguments, the laws and case laws are often long and complex . Any fair
185 defence must include a fair opportunity to read, understand, research and prepare a reply.
186 Preparation is only enabled by the timely service of all applicant documents well in advance.

P33

187

Reliefs Sought

188

1. To allow this page of "reliefs sought" to be appended to the previous five pages of briefing and accepted by the Court without invalidating this entire submission - or - alternatively, for the Court to consider only the previous five pages with the option to consider this page later.

191

2. In light of the above, I ask the Court of Queen's Bench of Calgary, to grant this request to re-open this case for re-consideration, and to further allow this layperson, who is without the advantages of a law firm, to be granted the reliefs of more time to review the Canmore Strike Application (3 days) and to thereafter be granted additional time to prepare (5 clear days notice), print, organize & bind (3 days), file & serve (1 day long-distance travel) a formal response to the Defendants application to strike.

197

3. I ask to be allowed to submit new facts, new laws and new evidence with any new case laws and any new testimony for reconsideration by the Court.

199

4. I also ask if the Court could possibly appoint me any "free of cost" legal counsel;

200

5. I further ask the reliefs that previous costs against me be struck;

201

6. I ask that costs be assigned against Canmore lawyers for their repeated violations of procedural fairness, and/or for misleading the Court and the HMQRA lawyer as to the true situation of the crucial service of notice and documents.

204

Rule 3.11(3) If either the respondent or originating applicant does not give the other reasonable notice under this rule, and an adjournment is not granted,
(b) the Court may make a costs award against the party who did not give reasonable notice.

205

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209

7. Any further reliefs that this Court may favourably grant me.

210

211

Sincerely,

212

213

214

Daniel W. Onischuk 9628-100A St Edmonton, AB T5K0V8 780-426-7676

834

In response to the Canmore Strike Application:

A. Plaintiff "my civil rights"

1) The Canmore application to strike infringes upon and attempts to unlawfully abrogate "my civil rights" granted by The Constitution Acts of 1867, 1982 for "*The Canadian Charter of Rights and Freedoms*" - s.1, 2, 7, 8, 15(1b, 1d), 24, 32 (The Charter) and by *Canadian Bill of Rights, S.C. 1960, c. 44 - Part I, s.1(a,b,d), 2(b,e)* hereafter "CBR", *Alberta Bill of Rights, R.S.A. 2000, c. A-14, s.1(a,b,d), 2, 3(1,2)* hereafter "ABR" to which I also add the "reasonable expectations for the Court to respect in a fair & democratic society" & "procedural fairness" of natural justice in common law so as to be in harmony with *The Charter, CBR, ABR* hereafter referred to as "*my civil rights*". The Charter is "Supreme Law of Canada" thus so are the inter-related rights of the CBR and ABR.

2) By s.24 of The Charter, I am entitled to bring an action and my claims to this Court. Any "abuse of process" claims are *secondary and inferior to "my civil rights"*, and so *I must not be denied to require evidence from the Respondent(s) and replies to my application claims.* Any denial would infringe or abrogate "*my civil rights*". *Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143* made clear, *The Charter of Rights and Freedoms* protects from *direct or intentional discrimination*; and *it also protects from adverse impact discrimination.* The discrimination contemplated by s.15 of *The Charter* is based on grounds of relating to personal characteristics of an individual or a group. The discrimination must result in *the imposition of disadvantages* on such individual or groups *which are not imposed upon others*: *McKinney v. University of Guelph, 1990 CanLII 60 (S.C.C.), [1990] 3 S.C.R. 229; Tétreault-Gadoury v. Canada (C.E.I.C.), 1991 CanLII 12 (S.C.C.); Law v. Canada, [1999] 1 S.C.R. 497 (S.C.C.).* After *Law v Canada* the Supreme Court has unanimously re-emphasized the analytical framework in *Andrews*.

B. Striking and Amending pleadings:

1) Rule 3.68 "slightly different criteria" than Rule 129: *Wong v. Leung, 2011 ABQB 688 - para. 9-19* [attached] also see: *Hunt v Carey - 1990 2SCR 959 [my affid. Nov14, Authorities s.2A, pg 10-13, SCC at pg 12,13]* *Decock v Alberta - 2000 ABCA 122 at para 61-63, 67,68 [my Affidavit 14 Nov - Authorities s.2B]*

I submit that for "my civil rights" and for the public in general, for ANY strike applications which are being substantially challenged or inherently deficient, *the striking party should be required to provide some good quality supporting evidence and supporting facts* as a fair and reasonable requirement to enable them to prevail.

These considerations are implied by the New Rules slightly different criteria of evaluation than former Rule 129.

Bowes v Edmonton - 2007 ABCA 347 at para 143,145:

[143] The Rule in *Heydon's Case* is alive and well now. See the discussion and citations in *W.R. v. A.-G. Alta.*, 2006 ABCA 219 (CanLII), 2006 ABCA 219, 319 A.R. 91, 98-99 (paras. 40-44). What is that Rule? When interpreting legislation, the court must look to what was the mischief in the old law which the new legislation was aimed at. Then the court must see what solution the new legislation was intended to adopt. Here it is easy to apply the *Heydon* method. (...)

[145] The Supreme Court of Canada is critical of the former fashion for lists of broad categories of statutes destined always to be interpreted narrowly, giving one class of litigant the benefit of every doubt. See *Québec (C.U.) v. Corp. Notre-Dame de Bonsecours* 1994 CanLII 58 (SCC), (...); *Bell ExpressVu v. Rex, supra* (para. 28); *Placer Dome Can. v. Min. of Finance*, 2006 SCC 20 (CanLII), (...)(para. 24); cf. *Utd. Taxi Drivers etc. v. Calgary (City)*, 2004 SCC 19 (CanLII), (...) (paras. 6, 8). For one thing, such a list of statutes to be narrowly interpreted is contrary to the Rule in *Heydon's Case* and s.10 of the *Interpretation Act*, RSA 2000,c.I-8, which mandates a fair, large and liberal interpretation of every Act.

C. Canmore "Strike Application" is similar in effect to a Summary Judgement.

1a) *Milavsky v. Milavsky, 2011 ABCA 231 - para. 13-16* [attached]

1b) *Tottrup v. Clearwater (Municipal District No. 99), 2006 ABCA 380 - para 9,10* [attached]

[9] (...) before a litigant can be deprived of his or her day in court, it must be shown that there is no genuine issue of material fact requiring a trial: *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423, at par. 27.

[10] (...) If the record raises genuine factual or credibility issues, for example if there is conflicting evidence, then summary judgment generally cannot be granted: *Dawson v. Rexcraft Storage* 1998 CanLII 4831 (ON CA), par. 13-20

1c) *Aram Systems Ltd. v. Novatel Inc., 2007 ABCA 100 - para 19* [Plaintiff affidavit 14 Nov.-Authorities s.1]

[19] (...) If a chambers judge must assess and weigh the evidence to arrive at a summary judgment, the "plain and obvious" or "beyond a doubt" test has not been met: *Saxton v. Credit Union Deposit Guarantee Cor.*, 2006 ABCA 175 (CanLII), 2006 ABCA 175, 384 A.R. 309 at para. 18, citing *Liu v. Tangirala*, 2004 ABCA at para. 2. (...)

135

50 2) The affidavits of Jason Pedersen and Ashleigh Illingworth [Exhibit A] shows that Canmore has NOT been
51 making a reasonable effort to obtain information regarding many vital claims that Canmore alleges as factual.
52 **Canmore has not provided any evidence to support their strike application and I ask they do so** regarding:
53 a) any scientifically established approx. number of feral rabbits from a professional survey
54 supported by video evidence (Canmore claim 2000+ highly suspect as false urgency).
55 b) any census or scientifically accurate survey that clearly shows that a large majority of Canmore residents
56 strongly favour a proKill solution over any ProLife relocation proposal.
57 c) proof that the proposed methods of killing the rabbits is more humane, more beneficial to the community,
58 more time and cost effective than any ProLife/SaveCanmore Rabbits proposals to sterilize and relocate.
59 d) **In light of recent donations of veterinary time and facilities** by Calgary Animal Control [Exhibit B,pg11] it
60 is apparent that any of the ProLife, SaveCanmoreRabbits type-A contract proposals submitted earlier in 2011
61 **are now competitive** to the proKill contract awarded. Canmore has not given any further analysis as to which
62 choice is best for long term total project costs, social benefits, tourism business. (my affid. Nov 14,).

63 3) In response to news stories of "no other choice" issued by Canmore [Exhibit B,pg2], *I recently submitted*
64 *two new proposal offer [Exhibit B,pg3,4] to humanely remove the rabbits. I seek more time for myself*
65 *any ProLife group to prepare a new plan & discuss the positive benefits of 2(d) with Canmore officials.*

66 4) **Canmore's application should be dismissed for not giving adequate or a scintilla of evidence for their claims.**

67 **D. No Abuse of Process - Municipal Govt Act**

68 1) It appears that I was misled that the "new bylaw" referred to previously 10-2011 (Affid. Nov.14 s.E-3) was
69 not actually the bylaw that Canmore passed to control the feral rabbits.

70 2) Canmore's new hunt-trap bylaw #19-2011 [Exhibit C, pg3,4] website file of the bylaw was not prepared until
71 18 Nov [Exhibit C, pg1] and so was published **AFTER my application was heard Nov. 14**. The bylaw document
72 was not on the internet website until just a few days ago and Canmore had a legal silence policy [Exhibit C, pg2]
73 which prevented my getting information. By MGA s.538(a)(ii) this raises more issues of procedural fairness (see
74 plaintiff brief 20Nov & 22Nov.supl. email ABCA cases). At the same time, Canmore was creating anxiety pressure
75 and distress for me (and others) to act, by reporting Canmore was starting the rabbit cull as early as "next week"
76 or "anytime". I hope the Court will consider that it may not be fair to saddle me with costs.

77 3) As per MGA s. 537(a,b), 538(a)(iii): MGA s.230(1,4) states that public input and concerns shall be heard, yet it
78 seems to me that passing bylaw 19-2011 **in a single day**, in a special meeting, **without adequate notice** (MGA
79 s.227) does not give enough opportunity to attend, prepare, be fairly heard and enable public consultations,
80 petitions (MGA 229) or voting (MGA s.231-240). This hasty bylaw was a substantial breach of procedural
81 fairness to myself (known interested party, type-A contract proposal), other ProLife advocates, local residents.

82 **McIntyre Ranching Co. Ltd. v. Cardston , 1983 ABCA 210 [attached] [Nov 20 brief for hearing]**

83 [15] On September 11, 1981 following application by McIntyre for an order in the nature of *certiorari* quashing the
84 by-law in question. MacLean J. ordered that the by-law be quashed on the grounds of the bad faith of the Council in
85 failing to give notice to McIntyre of its intention to deal with the matter of the upgrading of the private trail.
86 **procedural fairness, bad faith - para. 28-33, [Nov.20 hearing briefing]**

87 **Murray v. Wheatland (County Subdivision and Development Board), 2007 ABCA 424**

88 [14] (...) in addition to not following its own bylaw dealing with process, and in any event, it is reasonably arguable
89 that the municipal officer, in exercising her powers, owed a duty of procedural fairness to the Murrays: *Imperial Oil*
90 *Ltd. v. Quebec (Minister of the Environment)*, 2003 S.C.C. 58, 2003 SCC 58 (CanLII), [2003] 2 S.C.R. 624 at para. 31.

91 **Airport Self Storage and R.V. Centre Ltd. v. Leduc (City), 2008 ABQB 12 - para 21-36, 39-43 [attached]**

92 **Mather v. Summer Village of Gull Lake (Subdivision and Development Appeal Board), 2011 ABCA 120**

93 [8] (...) A breach of procedural fairness constitutes a jurisdictional error: **Parkdale-Cromdale Comm.League Assn v.**
94 **Edmonton (City), 2006 ABCA 78** at para. 7, 380 A.R. 237. [22Nov email suppl. case voiced in court]

95 **Decisions made in breach of jurisdiction renders a decision void or voidable.**

P36

96 4) I was not seeking enforcement against Canmore or anyone under the (Alberta) Wildlife Act. My Nov.14
97 affidavit (page 3,4) shows that by **Municipal Govt Act (MGA) s.536(1)**: "A person may apply to the Court of
98 Queen's Bench for (a) a declaration that a bylaw or resolution is invalid" **MGA s.13**: "If there is an inconsistency
99 between a bylaw and this or another enactment, the bylaw is of no effect to the extent of the inconsistency."

100 4a)Bylaw 19-2011 also does not comply with the ALSA per **Alberta Wildlife Act**, s.11.1. MGA s.7 does not enable
101 granting permits, and the scope of permits by MGS s.8 is to establish fees, etc. **but NOT to enable granting of**
102 **wildlife hunting permits or trapping permits**. Bylaw 19-2011 s.7(a,b,c) appears to improperly claim powers to
103 bestow or transfer legal rights to permit hunting and trapping, and to issue hunting and trapping permits *that*
104 *are the responsibility of the Provincial Minister* according to **Alberta Wildlife Act, s.12-16, 22.1**. Also s.20 of the
105 Wildlife Act declares permits are not transferrable, so it appears unreasonable that Canmore should claim to be
106 able to authorize themselves to do so. Bylaw 19-2011, s.2(d) incorrectly extends the powers to the CAO and to
107 persons who are not listed in s.1.2 of the *Wildlife Act* and s.1(1)g of the *Animal Protection Act* which has no
108 mention of a Bylaw Enforcement Officer. **The bylaw should be declared inconsistent and quashed.**

109 Canmore officials exercised their discretion contrary to public statutory laws outside the margin of manouvre
110 contemplated by legislature "for an "improper purpose" of providing provincially regulated permits and
111 conferring powers (see s.3 below) beyond the scope of legislation and therefore "**acted unreasonably**" and also
112 "**in bad faith**" because of the lack of public consultation per MGA.

113 see **Baker v. Canada (Minister of Citizenship and Immigration)**, [1999] 2 S.C.R. 817 - para. 20-26, 32, 53)

114 4b)Bylaw s.2(f) also expresses the intent to injure, and thus by permission, to allow traps and weapons to cause
115 injury thereby causing undue distress in contravention of s.1(2) of the Animal Protection Act and automatically
116 invokes s.3 of the Animal Protection Act. It is not clear how many traps will be set and what manpower and
117 methods will be employed by the town to substantially mitigate violations of the Animal Protection Act and
118 Wildlife Act. The Court should note the bylaw deficiency of prohibiting any inhumane use of gases and poisons
119 that are highly traumatic, or are comparable to the list of prohibited chemicals in Wildlife Acts.32. *If ProKill*
120 *prevails, a moral and ethical consideration for the Court is to decide for humane veterinary supervised injections.*

121 5) The new bylaw must conform to the regional plans and **Alberta Land Stewardship Act (ALSA) s.13,15, et seq.**
122 requires reviews and document filing of amendments for compliance with the regional planning authorities (see
123 s.632(1,3) followed by publication in the Alberta Gazette **before** coming into full effect.

124 Canmore cannot legally create a bylaw to enable unlawful actions that are contrary to (Alberta) Wildlife Act -
125 s.1(1.o.(i-v)), 1(6),5,7, 8, 11.1,12,13, 24,25,28,32, 35 et seq. (Alberta) Animal Protection Act 1(2a,b,c), 2 [inhumane
126 treatment-my affidavit Nov14, pg.15,s.2g(iii)] infringing on responsibilities of HMQRA, s.2(1.1), 2.1, 3, 4.1, 5, 6.1.
127 **There is no factually proven urgency, and so an Injunctive Order would reasonably give time for ALSA filing,**
128 **Ministerial Orders to be issued and laws to be properly amended through the normal democratic processes.**

129 6) For MGA s.13, 536, 537, 538, this Court may consider whether a decision **contrary** to a liberal interpretation
130 of "a person" within the MGA as per **Interpretation Act, RSA 2000, c I-8 - s.10** would be an "adverse impact"
131 discrimination (**Andrews v. Law Society of British Columbia**, [1989] 1 S.C.R. 143) of "my civil rights" as per s.1,2,15
132 of The Charter (esp 15(1b)), ABR s.1(b),2,3; CBR s.2(b). Clearly, the text of s.536,537,538 of the MGA specify
133 that "a person" may apply, without restriction on residency within Alberta. It may be fair to weigh *all factors*
134 *of issue interest by a method similar to* assessing "procedural fairness" within the spectrum of legislative,
135 administrative, quasi-judicial, judicial. **Airport Self Storage v. Leduc (City)**, 2008 ABQB 12 - para 21-36, 39-43

136 see **Baker v. Canada (Minister of Citizenship and Immigration)**, [1999] 2 S.C.R. 817
137 see also: **Bowes v. Edmonton (City of)**, 2007 ABCA 347 - para. 145, 157

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140 **E. My Contract Related Legal Standing Rights**

141 1) My application claims Canmore acted unfairly in a discriminatory manner, infringing or abrogating "my civil
142 rights" when considering my and other ProLife applications to "Feral Rabbit" bid tender [my Affid. Nov14 s.A-1].

143 ***Double N Earthmovers Ltd. v. Edmonton (City), [2007] 1 S.C.R. 116, 2007 SCC 3*** [my Affid. Nov14 s.3].

144 " ... **the City breached its duty under Contract A to treat all bidders fairly and equally. ... The City cannot**
145 **escape this fundamental obligation by postponing the fulfilment of its duty under Contract A** to a time after
146 Contract B has been entered into **and then argue that Contract A is at an end.**"

147 2) For the Request for Proposal (RFP) Tender by the Town of Canmore (hereafter "Canmore"), my submitting an
148 RFP proposal by email, and then Canmore's hearing, review and opinion rejecting of my proposal, a "type-A"
149 contract was formed. [see my application Sched A emails, application news evidence (attached here Ex.B,pg6).

150 My standing for contract/bylaw mix, the Court needs to review ***Urban Dev. Inst. v Leduc - 2006 ABQB 62- s.13-30.***

151 3a) Canmore's strike application attempts to abrogate or infringe or deny *my civil legal rights* such as my
152 contractual rights per s.5(1) of the ***Frustrated Contracts Act, RSA 2000, c F-27*** (see my Affidavit Nov 14, s.1) to
153 recover the non-monetary benefits : authorization to trap, possess and decide humane treatment and the final
154 fate of feral or semi-feral and domestic rabbits ("outdoor rabbits") that are outside in the Town of Canmore.

155 3b) By the Canmore acceptance of a "proKill" proposal, Canmore received the added benefit of (i) an unjust right
156 to indiscriminately kill and/or inhumanely treat any "outdoor rabbits" [my affid. Nov.14, pg.14-2gii, pg5-2giii &
157 s.D exhibits]; (ii) implied right to bypass the MGA to undemocratically pass bylaws without fair notice and
158 proper public consultation (iii) psychological health and sense of well-being of many Canmore citizens opposed
159 to any proKill contractor inhumane methods, deadly goals, anti-trespass property rights, or long-term costs;
160 (iv) implied right to acted beyond limits of MGA in granting permits, hunting and trapping rights; (v) implied
161 rights to unfairly discriminate against any ProLife contractor, ProLife ideologies or religious beliefs, and also
162 "my civil rights" and contractual rights per my Affidavit of Nov 14.

163 3c) The proKill contractor has obtained benefits of: (i) the unfair sole right to trap outdoor rabbits in Canmore
164 (ii) deciding what constitutes "humane treatment"; (iii) deciding the final fate of any number of live rabbits,
165 (iv) the potential option to obtain money for any number of dead rabbits; (vii) the psychological advantage for
166 future RFP bidding to favour a continuation of any proKill solution as being the only viable or preferred method;

167 4) The "loss of chance" doctrine mentioned in ***Bowes v Edmonton - ABCA at para 98-100*** is also an issue for my
168 type-A contract (whether or not timely) and related claims issues, and for any other ProLife relocation to remove
169 the rabbits humanely which will help restore community relations and international public regard for tourism.

170 5) No Abuse of Process - by the type-A contract, and loss of chance doctrine, and by ""my civil rights"", I have
171 active or residual rights (Frustrated Contracts Act- s.5) to take action to seek reliefs.

172 **F. Cassels v Univ. of Victoria - BCSC**

173 1) ***Cassels*** did not include to consider any Charter rights or other "civil rights" - I do claim "my civil rights".

174 2) ***Cassels*** did not claim a statutory right to bring her action - I do per the Municipal Govt Act & "my civil rights".
175 The reasons at [82] rejecting Ms Cassels do not apply to my case as I am challenging the validity of Canmore's
176 bylaw legislation, the administrative authority and the "procedural fairness" of Canmore bylaws process.

177 3) ***Cassels*** was a participant, but did not have any type-A contract or implied contractual rights - I do from my
178 first RFP proposal. I also have an interest in wildlife personally which led to my being a photographer for our
179 small business that sells tourism postcards in the Banff area (www.parkfoto.com). **We donate profits to nature**
180 **conservation groups.** Just prior to this Court application, I was working on cards for Canmore, with plans for a
181 "Canmore Rabbits" card as they are a famous tourist attraction. With the negative publicity about the rabbit cull,
182 tourism sales of wildlife and scenic postcards would suffer, as would our business plans and donations. see ***Urban***
183 ***Dev. Inst. v Leduc at s.28-30.*** At the time I spent our last \$200 to file this action because I/we are more concerned
184 about the rabbits humane treatment and a healthy solution for all. My primary personal interest is from a long
185 time ownership of domestic rabbits and by several years of interactions with feral rabbits and the people who

186 resolved feral rabbit problems at Victoria General Hospital, and University of Victoria. I have donated time and
 187 money to those people and the care of those rabbits and I am personally very interested in humane care of the
 188 Canmore rabbits. For the past few years I have made myself available for urgent rescue of domestic rabbits in the
 189 Edmonton area. My website is www.hoppvendings.com [Exhibit B,pg5]

190 4) **Cassels [11]**: important statutory differences: Letter to Mr Smith para 4. *The BC laws wildlife laws are opposite*
 191 *of the laws here in Alberta (only humane treatment similar to Alberta Animal Protection Act).*

192 5) **Cassels [51]**: My case legal context differs considerably from **Cassels** which weighted the fact that Ms. Cassels
 193 never named or served the owners and regulators of the BC Wildlife Act - the BC Govt. I did serve feral rabbit
 194 owner HMQRA via Alberta Justice (and thus Alberta Solicitor General) which HMQRA also administers the
 195 subsidiary Ministries of Sustainable Resources Development (SRD) - to which I faxed a copy of my notice 29 Nov
 196 at 1 pm [Exhibit D]. I ask the Court to provide retroactive cures for any technical and procedural issues.

197 6a) **Cassels [55]**: Canmore interferences with public statutory rights for procedural fairness in passing bylaws and
 198 a reasonable expectations for compliance with **MGA, Wildlife Act(s), Animal Protection Act, ALSA**, thus
 199 interfering with my private rights ("my civil rights") as an Alberta citizen, interested party and contract type-A
 200 person to see that those laws, are respected and enforced as legislated, and to also respect public civil rights to
 201 provide concerns, vote, or petition to bring about a more harmonious solution for all members of the community.

202 6b) Canmore's trapping bylaw and efforts to avoid a ProLife solution injures me personally as a an interested
 203 party who cares about the rabbits well-being, community well-being and type-A contracting party who is denied
 204 a chance to bring about a more harmonious solution that sterilizes and relocates the rabbits so everyone wins.

205 6c) Canmore's trapping bylaw and euthanasia interferes with a public right to not trap and **inhumanely** kill the
 206 feral rabbits per Alberta Wildlife Act and Animal Protection Act. The Canmore bylaw implementation interferes
 207 with my private rights of contract type-A for the feral rabbits -and- my private right (and the private rights of
 208 others) to be fairly considered, without discriminations, for any ProLife bidding to save the rabbits and to effect
 209 positive community relationships by a win-win scenario available only with a ProLife solution. The special
 210 damages that I (and other ProLife advocates) will suffer will be the **deliberate** psychological injuries and
 211 emotional loss of the feral rabbits due to the strong bonds I/we have for those animals, and the loss of personal
 212 goodwill among people in the community which could otherwise be saved with a win-win ProLife solution of
 213 sterilize and relocate. As per the Calgary Animal Bylaw donation of facilities, the ProLife is feasible. My offer to
 214 Canmore to resolve the issue via volunteers is more financially economic. ProLife advocates simply need more
 215 time to put together a proposal and organize volunteers. Otherwise social & tourism damage will be long lasting.

216 7) **Cassels [56]** I do claim incidental public rights issues are significant and related to my private cause of action.

217 8a) **Cassels [64]** I do not claim prior political activism and social activism as Ms Cassels did only rely upon.

218 8b) I do claim several public wrongs by Canmore, and thus also HMQRA : (i) creating or allowing the creating of
 219 public bylaws that violate or advocate violating of public statutory laws; (ii) failure to comply with the
 220 municipal government for public consultation when acting to pass illegal bylaw(s), (iii) public bid tender "bid
 221 rigging" : unfairly disabling and oppressing of my and other ProLife solutions by a subtly discriminatory RFP
 222 document and bid selection process; (iv) public "bid rigging" community support by misleading public
 223 taxpayers on total project time and total project costs to favour a proKill agenda; (v) ignoring the well-being of
 224 community social relationships & "everyone wins" benefits of a ProLife solution; (vi) "bid rigging" by publicly
 225 encouraging and pre-biasing the selection of a proKill option; (vii) disregarding non-lethal solutions to respect
 226 ProLife ethical & religious views (**Wishart Estate, 1992 (NB QB) 2679 - my aff. Nov 14 s.5**); (viii) increased risk of
 227 other types of predator attacks (pets, small people) by removing easy prey from long term "natural" prey area.
 228 (ix) lack of prior scientific impact studies on native predator and prey species in adjacent Banff National Park.
 229 (x) lack of authority and compliance with the Canada Wildlife Act and respect to Canada Minster of Environment.

230 9) **Cassels [73]** notes the "Borowski principles" which although not explained, I believe my case differs because
 231 HMQRA has also acted in bad faith and with negligence for over 10 years regarding the Canmore feral rabbit

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232 issue, leaving the burden of social, political and monetary costs solely upon the people and elected officials of
233 Canmore, and so HMQRA and Alberta Government agencies historically may have waived their legal authority to
234 act fairly and humanely to support my or other ProLife win-win scenarios to benefit all concerned.

235 *In addition to asking "private interest" standing I thus request "public interest" standing per Cassels at [67-71].*

236 **G. Reece v Edmonton - ABCA**

237 1) *Reece* was discriminated against by the Court of Appeal allowing Edmonton to prevail without requiring any
238 defensive evidence or addressing the issues with facts. ***Andrews v. Law Society of BC (1989)1SCR 143*** supports
239 my claim of "adverse impact" and "discrimination" of the decisions made in *Cassels* and *Reece* which unfairly
240 profiles and targets certain types of individuals and groups involved in wildlife care or abuse issues so as to
241 *unfairly ignore their fundamental civil rights* such as "my civil rights" for "equality under and protection of law",
242 "fair hearing, fair trial", "reasonable expectations of the Court in a fair & democratic society" & "procedural
243 fairness" of natural justice in common law so as to be in harmony with civil rights as per *The Charter, CBR, ABR.*

244 2) I claim that an abuse of process proceeding, as per ***Reece v Edmonton (ABCA)***, which relied upon *Cassels*,
245 failed to consider "my civil rights" and the many differences of my case to those of *Cassels*. Therefore the *Reece*
246 decision cannot fairly apply, as doing so abrogates or infringes upon "my civil rights" because I would be denied
247 the opportunity to present my arguments to be fairly considered, and is further unfair as it fails to require the
248 Court to require at least "a scintilla" of evidence from Canmore to support their strike application. *Canmore's*
249 *"no factual evidence" would unfairly bypass and prevail over substantial statutory laws, facts, case laws,*
250 *evidence, arguments, and "my civil rights" of the Charter, CBR, ABR - Supreme law(s) of Canada by Constitution*
251 *Act, 1982.* That is contrary to common sense and fundamental justice which is not in the best interests of, nor
252 reasonable expectations of, the public regarding procedural and general fairness of the legal system in a fair and
253 democratic society (The Charter s.1, 2, 7, 12, 15, 24, 32, etc). Grievances, supported by laws, contentious facts
254 and evidence, must be heard and considered fairly by the Courts empowered to do so. That is the reasonable
255 expectations and purpose of society supporting a legislature to form laws, support the courts, employ judges.
256 **Reece 23-25:** Private litigant standing granted and more relaxed, liberal grounds allowed.

257 **Reece 27:** . I do not ask for enforcement of penal statutes. I am entitled by MGA s.227-240 536,537,538 to (i)
258 ask to apply s.13 & s.10; (ii) procedural fairness (iii) community issue interests (iv) my private type-A contract
259 interests (v) photography business in the area (vi) my personal interests in rabbits and their humane treatment.

260 **Remedies Sought**

- 261 1. The Canmore application to Strike should be completely dismissed, and possibly declared an abuse of process.
- 262 2. That my application be allowed to proceed, and that an Injunctive Order be granted against the rabbit cull to
263 allow only ProLife / SaveCanmoreRabbits a chance to prepare a healthy, win-win solution with Canmore.
- 264 3. The new bylaw allowing trapping should be found to be inconsistent by MGA s.13 and declared quashed.
- 265 4. Alternative to relief 3: preferential or concurrent trapping by ProLife/SaveCanmoreRabbits volunteers should be
266 allowed, and for their equivalent services "quantum meruit" they should be given, equal opportunities to trap,
267 equal advertising promotion by Canmore, equal monetary value per rabbit as allotted to proKill contractors.
- 268 5. Due to the ProLife/SaveCanRabbits humane efforts, inhibitory restrictions and impediments should be removed.
- 269 6. If any proKill methods are in effect, that only veterinarian injections should be permitted for euthanasia.
- 270 7. Although the Court was quick to saddle me with costs for my application, and Court did not find costs against
271 Canmore for failing to serve me strike documents, it should now be fair that Canmore should pay all costs of
272 this action to date, plus punitive damages for knowingly withholding bylaw facts from myself and the Court,
273 for their own negligent lack of diligence in keeping records, and for deliberately misleading the public and the
274 court as to the problem extent by false and unsubstantiated reports to the media and to this Court.
- 275 8. Any such further reliefs that the Court may wish to bestow.

276 Daniel W. Onischuk 30 Nov. 2011

PCO

Government of Alberta ■
Justice and Attorney General

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December 2, 2011

The Honourable Mr. Justice G. C. Hawco
Court of Queen's Bench of Alberta
Calgary Court Centre
601 - 5th Street S.W.
Calgary, Alberta, T2P 1T5

My Lord:

Re: Daniel W. Onischuk v. Her Majesty the Queen in Right of Alberta et al
Court of Queen's Bench Action No. 1101-14786

I write this letter on behalf of the Respondent, HMQ.

By way of background, Mr. Onischuk filed an Originating Application returnable on November 14, 2011. The Town of Canmore (the other Respondent) filed an Application to Strike Mr. Onischuk's Originating Application which was returnable the same date. Both applications were argued before Your Lordship in regular chambers on November 14, 2011.

As a result of some potential service issues of the Town's Application to Strike, on November 22, 2011, Your Lordship determined that Mr. Onischuk may address (and the Respondents may reply to) the following 3 issues:

- a. Whether or not Mr. Onischuk has standing to seek the remedies sought in his Originating Application;
- b. Whether or not Mr. Onischuk's Originating Application constitutes an abuse of process;
- c. Mr. Onischuk's position as it relates to *Cassells v. University of Victoria*, 2010 BCSC 1213.

This letter sets out the position of HMQ responding to the Originating Application filed by Mr. Onischuk. The only issue listed above that is relevant to HMQ's position is the issue of standing and, as a result, this letter will address that issue only.

HMQ Does Not Own the Feral Rabbits and Does Not Have the Authority to Regulate their Taking or Possession

1. The feral rabbit population in the Town of Canmore stems from domestic rabbits that were released into the wild. Feral rabbits are not native to the area.

2. The *Wildlife Regulation*, Alta. Reg. 143/97, very specifically lists species by their scientific names that constitute "wildlife" for the purposes of the *Wildlife Act*, R.S.A. 2000, c. W-10. If the species is not in the regulation, it is not "wildlife".
3. The *Wildlife Regulation* lists 3 species of rabbit/hare (see Schedule 4, Part 6): *Sylvilagus nuttallii* (Nuttall's Cottontail), *Lepus americanus* (Showshoe Hare), and *Lepus townsendii* (White-tailed Jack Rabbit). The feral rabbits are not one of these 3 species.
4. Therefore, feral rabbits are not "wildlife" and, as a result, HMQ does not own the feral rabbits.
5. In addition, the *Wildlife Regulation* also lists species that constitute "controlled animals" for the purposes of *Wildlife Act* (see Schedule 5, Part 1). The feral rabbits are not any of the listed species and, as a result, HMQ does not have the authority to regulate their taking or possession.
6. To sum up, Mr. Onischuk is mistaken in his submissions. HMQ does not own the feral rabbits and does not have the authority to regulate their taking or possession.

Mr. Onischuk Cannot Obtain an Injunction Against HMQ

7. Because the relevant provisions of the *Wildlife Act* do not apply, it is the Town of Canmore (not HMQ) that has taken steps to address the feral rabbit population in the Town. HMQ has not taken any steps, and does not plan to take any steps, to address the feral rabbit population.
8. As such, the injunction sought by Mr. Onischuk (as set out in paragraph 7 of his Originating Application, and at page 6, lines 264 to 265 of his November 30, 2011, written submissions) cannot be sought against HMQ. HMQ has not taken, and does not plan to take, any steps that the Court might prohibit or suspend by way of injunction.
9. Furthermore and in any event, no injunctive relief is available as against HMQ (*Proceedings Against the Crown Act*, R.S.A. 2000, c. P-25 at section 17.).

Mr. Onischuk Cannot Obtain an Order that HMQ Share Costs with the Town of Canmore to Address the Feral Rabbit Population in the Town

10. Mr. Onischuk seeks an order that HMQ "share costs regarding the final resolution of Canmore area rabbits" (as set out in paragraph 8 of his Originating Application).
11. HMQ understands that, for the reasons set out above, the Town of Canmore has borne the costs associated with addressing the feral rabbit population in the Town. Mr. Onischuk does not have standing to seek an order that HMQ share costs with, or pay money to, the Town.

12. Put another way, Mr. Onischuk cannot seek a remedy requiring Respondent A to pay money to Respondent B. Effectively, he purports to seek a pecuniary remedy on behalf of another party – the Town.
13. Mr. Onischuk has no direct, legal or pecuniary interest in the costs associated with addressing the feral rabbit population. This issue, should it ever arise, would be between the Town and HMQ. It would be for the Town, not Mr. Onischuk, to seek an order of this nature.

Mr. Onischuk is Not Entitled to Costs

14. Lastly, in paragraph 9 of his Originating Application, Mr. Onischuk seeks an order that HMQ pay all legal costs of this action. It would appear that he seeks this remedy on his own behalf, and on behalf of the Town of Canmore (despite the fact that the Town, who is represented by counsel, has not sought costs against HMQ).
15. Mr. Onischuk has failed to show any basis in law whatsoever for an order of costs against HMQ. Furthermore, adding HMQ to an action for the purposes of wishing it to pay costs is improper (*Spracklin v. Kichton*, 2003 ABCA 9.).

Conclusion

16. To conclude, this action is about the steps taken by the Town of Canmore to address the feral rabbit population in the Town. HMQ has played no part (and has not had the authority to play any part) in addressing the feral rabbit population. As such, Mr. Onischuk is not entitled to any remedy as against HMQ and his application should be dismissed as against HMQ with costs.

Yours truly,



Cynthia R. Hykaway

CRH/lp

cc: Daniel W. Onischuk (via email and fax)
Bryan & Company LLP, Attention: Kirk Mason (via email)

843

Judge G. Hawco - Queens Bench, Calgary

05 Dec 2011 @10PM

cc: C. Hykaway - HMQRA
cc: K. Mason - for Canmore

served by fax & email

Plaintiff Response to HMQRA letter of 2 Dec 2011 received 5 Dec afternoon

HMQRA advances new arguments which Canmore nor HMQRA did not specify earlier.

I ask the Court to consider this "last minute" response to the new claims of HMQRA as my supplemental exhibit "H" to my brief served 30 Nov. 2011.

In response to HMQRA: Rabbits are **lagomorphs** and members of the taxonomic order **Lagomorpha**, of which there are two families - Leporidae (hares, rabbits), and Ochotonidae (pikas). Next to pikas, rabbits next nearest taxonomic relatives are horses. Rabbits are not rodents.

Oryctolagus cuniculus, also called a European, an Old World, or a domestic rabbit, is the only species in its genus. The last Ice Age confined the species to the Iberian peninsula and small areas of France and northwest Africa, but due to human action and adaptability of this species, European rabbits today exist in the wild on every continent except Asia and Antarctica. Domesticated O. cuniculus may be found worldwide. (Parker, 1990; Wilson and Reeder, 1993)

A. Canmore Rabbits are Wildlife

1) Most of the rabbits living in Canmore are descendants of at least 3-5 or more generations after the originally released rabbits, reported to be have been released in South Canmore in the early 1980's - about 30 years ago- see news articles in my original application "Sched.A". These animals have likely inter-bred with native species within this time.

2) Canmore bid tender specifically stated FERAL Rabbit Control - the definition of "feral" is:
a. Existing in a wild or untamed state.
b. Having returned to an untamed state from domestication.

3) According to the Canmore "Animal Control Bylaw" 10-2011, defines under s. 2(k) "Feral Animal means an animal that has escaped from domestication and become wild." (my Affid. 14 Nov - Exhibit E-3). This supports the fact that local rabbits are asserted and admitted by Canmore as being wildlife, which is also affirmed in the (Alberta) Wildlife Act :

- 1(1) (j) "fur-bearing animal" means an animal of a kind prescribed as such;
- (dd) "subject animal" means a wildlife animal, a controlled animal or any other kind of animal prescribed as a subject animal;

1(1) (ll) "wildlife" means big game, birds of prey, **fur-bearing animals**, migratory game birds, **non-game animals**, **non-licence animals** and upland game birds, and includes any hybrid offspring resulting from the crossing of 2 wildlife animals;

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Any animals (feral or natively wild) "non-game" or "fur-bearing" that are not owned directly by any person are "wildlife" animals by s.1(1)(j, dd, ll) of (Alberta) Wildlife Act, and also by Town of Canmore definition of wildlife which agrees with common language definitions and definition of any biological reference book published on the subject.

HMQRAs refers to Reg 143/97 lists Sched. 4 " Part 6 - Non-licence Animals" *are in fact defined as wildlife by s.1(1)(ll) of the (Alberta) Wildlife Act.*

Reg. 143/97 4(1) (g) animals listed in Part 6 of Schedule 4 are prescribed as **non-licence animals**,
(h) the animals described in Schedule 5 are prescribed as **controlled animals**,

Schedule 5 (Section 4(1)(h) of this Regulation) Controlled Animals

NOTES: 1 Animals listed in this Schedule, as a general rule, are described in the left hand column by reference to common or descriptive names and in the right hand column by reference to scientific names. But, in the event of any conflict as to the kind of animals that are listed, a scientific name in the right hand column prevails over the corresponding common or descriptive name in the left hand column.

2 Also included in this Schedule is any animal that is the hybrid offspring resulting from the crossing, whether before or after the commencement of this Schedule, of 2 animals at least one of which is or was an animal of a kind that is a controlled animal by virtue of this Schedule.

3 **This Schedule excludes all wildlife animals**, and therefore if a wildlife animal would, but for this Note, be included in this Schedule, **it is hereby excluded from being a controlled animal.**

20. HARES AND RABBITS (*Family Leporidae*)

Pygmy Rabbits	<i>Brachylagus (Sylvilagus) idahoensis</i>
Cottontails	
- Desert	<i>Sylvilagus audubonii</i>
- Brush	<i>Sylvilagus bachmani</i>
- Eastern	<i>Sylvilagus floridanus</i>
- New England	<i>Sylvilagus transitionalis</i>
Hares	
- Arctic	<i>Lepus arcticus</i>
- European (Brown)	<i>Lepus europaeus</i>
- Manchurian	<i>Lepus mandshuricus</i>
- Woolly	<i>Lepus oiostolus</i>
- Alaskan	<i>Lepus othus</i>
- Blue (Mountain)	<i>Lepus timidus</i>

Schedule 5, which by note 3 does specically EXCLUDES all "WILDLIFE" animals.

As noted earlier, "*Oryctolagus cuniculus*, also called a European, an Old World, or a domestic rabbit, is the only species in its genus" - is not mentioned in Schedule 5, therefore the "domestic rabbit" is "wildlife" when it is not directly owned or in the possession of a person claiming ownership.

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Per Reg. 143/97 Schedule 9, (Section 3(aaa) of this Regulation) Feral rabbits are within s.108, wildlife in the Bow Corridor Wildlife Management Unit (410) and are within Part 4 (Section 1(1)(f) ("Interpretation of Schedules")) **Fur Management Zones.**

Having lived for many years and generations without human aid or direct human possession, these feral rabbits are now wild or semi-wild animals of various species and should be considered as wildlife within the meaning of the (Alberta) Wildlife Act and (Canada) Wildlife Act.

Having many years of experience as a rabbit owner, and having been previously in close contact for extended time with rescued wild rabbits, I have seen that even the wild rabbits can become tame, friendly and even household pets. Therefore it is reasonable to rescue them for adoption purposes or for release to a sanctuary where taming is not required.

B. Payments by HMQRA

1) Mentioning HMQRA appears to be responsible is not actually seeking an Order requiring payment to Canmore by HMQRA. I was just outlining the fiscal situation to the Court.

2) HMQRA failure to mention Schedule 5 of Reg 143/97 intentionally misleads the Court.

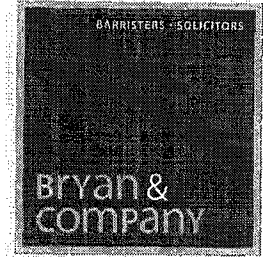
No costs should be granted to HMQRA for this obvious, intentional deceit which should also be viewed as an abuse of Court.

I ask the Court to consider this "last minute" response to the new claims of HMQRA as my supplemental exhibit "H" to my brief served 30 Nov. 2011.

Daniel W. Onischuk

PH

OUR FILE NO. 48377-009
DIRECT 403-261-3348
E mdaasen@bryanco-cgy.com



December 6, 2011

Via Hand Delivery

Alberta Court of Queen's Bench
23rd floor, 601- 5th Street S.W.
Calgary, AB,

Attention: The Honourable Justice G.C. Hawco

Dear Sir:

**Re: Daniel Onischuk v. Town of Canmore and Her Majesty the Queen in Right of Alberta
Action No. 1101-14786**

As requested, we attach herewith copies of the following cases and authorities requested by you:

- *Cassells v. University of Victoria*;
- *Reece v. Edmonton (City)* (QB);
- *Reece v. Edmonton (City)* (CA);
- *Wildlife Act*; and
- *Alberta Lands Stewardship Act*.

The following is a précis of the submissions made to you in Court in reference to these authorities.

The Application is governed by the relief sought in the Originating Application and the evidence filed in support of same;

Our first argument was in relation to standing and we referred to the *Cassells v. University of Victoria* decision, which had similar facts except in that case, the University of Victoria was considered a private citizen. We referenced the Court to paragraphs 48-56 and then read paragraph 62. We then urged the Court to review the summary found at paragraphs 82 and 83 of the decision.

In addition to the standing argument supported by the *Cassells* decision, we then referenced the Court to the abuse of process argument founded on the two decisions of *Reece v. Edmonton (City)*. We referenced the Court to paragraph 9 a. of the decision of Justice Rooke and submitted that the *ratio* of the decision was found at the highlighted portion of paragraph 6. We believe that we then reviewed sections 1.1, 1.2, 7, 10, 11, Part 6 and Part 8 of the *Wildlife Act*, and then referred the Court back to paragraph 29, 40 and 42 of the *Reece* decision. We then referenced the Court to the majority decision of the Court of Appeal in *Reece*, specifically paragraphs 20, 33 and 36.

Finally, with that legal background, we went through the relief sought in the Originating Application and argued that paragraph 1-3 applied to alleged violations of the *Wildlife Act*. Additionally, to the extent

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that paragraph 3 of the Originating Application referenced the *Alberta Lands Stewardship Act*, we referred the Court to Section 62 of the Act which provides a complaint mechanism.

In summary, our argument was that Mr. Onischuk lacks standing to bring the Application and, even if he did have standing, the substantive relief sought, where appropriately put forward in his Originating Application, is in relation to Acts which provide quasi-criminal penalties for offending them, which penalties are assessed by the Province of Alberta and not the Court of Queen's Bench.

We look forward to appearing before you by telephone tomorrow morning at 9:00 a.m.

Yours truly,


BRYAN & COMPANY

Michael D. Aasen
MDA/ac
Enclosures

cc: Daniel W. Onischuk (via email)