

Action No.

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

CASTLE-CROWN WILDERNESS COALITION

Applicant

– and –

**JILLIAN FLETT, DIRECTOR OF REGULATORY ASSURANCE DIVISION,
ALBERTA ENVIRONMENT and
LORNE TAYLOR, MINISTER OF THE ENVIRONMENT**

Respondents

ORIGINATING NOTICE

APPLICATION FOR JUDICIAL REVIEW

TO: Jillian Flett
Lorne Taylor
Attorney General of Alberta
Castle Mountain Resort Inc.

TAKE NOTICE that an application will be made before the presiding Justice in Chambers, at the Court House, in Calgary, Alberta, on Monday, the 28th day of October, 2002 at 10:00 o'clock in the forenoon, or so soon thereafter as counsel may be heard, for judicial review of decisions of the respondents as hereinafter more fully described, in the matter of the environmental impact assessment of proposed activity at the Castle Mountain Resort.

TAKE NOTICE that the grounds upon which relief is claimed are as follows.

Applicant

1. The applicant Castle-Crown Wilderness Coalition is a society pursuant to the laws of Alberta, dedicated to the establishment, restoration, maintenance and

environmental protection of the Castle Watershed as a viable wilderness within the Crown of the Continent Ecosystem, which extends from the Crowsnest Pass in Alberta and British Columbia to the Bob Marshall Wilderness Area south of Glacier National Park in Montana.

Respondents

2. The respondent Jillian Flett is a person designated Director of the Regulatory Assurance Division by the Minister.
3. The respondent Lorne Taylor is the Minister responsible for the *Environmental Protection and Enhancement Act*.

Proposed Activity

4. Castle Mountain Resort Inc. is carrying on activity to develop public and private lands, in particular by opening up Haig Ridge to expand the Westcastle Ski Hill and facilities through the addition of runs and lifts and snowmaking equipment.
5. Proposed residential development includes 225 housing units, a 60 room lodge-style hotel, a hostel, a recreational vehicle park with at least 50 new stalls and the toilet and other facilities for users and staff. More commercial construction is proposed; a new day lodge has been completed. Parking will be increased to over 700 cars daily, 186 core residential spots and 10 bus stalls.

Location

6. The activity is being and will be carried on in the Westcastle Valley in the C-5 Forest Management Region, formerly Bow-Crow Forest Reserve, within the Castle Watershed, including Gravenstafel Mountain, Barnaby Ridge and the Westcastle River.

General Area

7. The location of the activity is approximately 40 kilometres southwest of the Town of Pincher Creek and about 25 kilometers northwest of Waterton Lakes National Park.
8. The activity is being carried on immediately west of the Westcastle Wetlands Ecological Reserve and immediately north of Gravenstafel Creek.
9. The Castle Watershed was part of Waterton Lakes National Park from 1914 to 1921, was a Game Preserve from 1921 until 1954 and in 1974 the greater part of the watershed was given a reserve notation by the Alberta Government for a provincial park. The activity is within the Castle Special Management Area, designated as a “forest land use zone.”

Biodiversity

10. Precipitation is unusually high in the South and West Castle Valleys in the Castle Watershed. One half of Alberta’s vascular plant species are found there, more than 120 of which are designated provincially rare.
11. Grizzly bears, wolverines, cougars and wolves are rare or endangered species whose habitat is in the Castle Watershed. Elk, moose, deer, bighorn sheep and mountain goats range the area in summer and winter. The area is a vital connecting link, for dispersal and genetic exchange, for the populations of large carnivores in Waterton Lakes and Glacier National Parks.
12. Other species in the area recognized to be rare or endangered include the wandering shrew, found only in Westcastle Valley in Alberta, the long-toed salamander and the red-tailed chipmunk.
13. The proposed activity will have profound, permanent, irreversible and detrimental environmental consequences for the sensitive Castle Watershed, and specifically on the Castle Wetlands Ecological Reserve.

1992 EIA

14. Vacation Alberta Corporation proposed in 1992 to expand the then-existing Westcastle Park Ski Area into a four season destination resort with increased ski terrain, two golf courses and residential and commercial development. The responsible Minister of the day ordered an environmental impact assessment.

15. The Natural Resources Conservation Board sought to determine whether the proposal was in the public interest, having regard to the social and economic effects of the project and the effects of the project on the environment.

Public Hearings

16. The NRCB conducted a full public hearing with funded interveners and evidence from government departments and planning authorities at all levels. Water demand, source, storage, treatment and distribution and geotechnical effects such as roads, utilities and solid wastes all were considered. Social and economic effects were addressed. Environmental impacts on air, aquatic ecosystems, vegetation, wildlife and regional ecosystems were assessed.

NRCB Decision Report #9201

17. The NRCB in December 1993 granted a conditional approval of the Vacation Alberta Corporation project. Construction could not commence “unless an area substantially similar in location and land use to the Waterton-Castle Wildland Recreation Area as described by the Board has been designated as a special area for wildland recreation purposes.”

18. The Board was aware that the project may not have proceeded, and recommended “that in any event that the area the Board has described as the proposed WCWRA should be protected and land uses should be established for it as described by the Board, whether or not the project proceeds. Regional management on an ecosystem basis is necessary.”

19. The conditional approval was confirmed by Order – in – Council in 1994.
20. The approval was rescinded by Order – in – Council in 1995.

Respondent's Decisions

21. The respondent Flett, decided May 1, 2002, in response to a request made by the applicant, that an environmental impact assessment would not be ordered.
22. The respondent Taylor on July 24, 2002 refused to order an environmental impact assessment under the *Environmental Protection and Enhancement Act*, section 47.

Purpose of EIA

23. The present proposed activity is similar in most respects to the activity proposed by Vacation Alberta Corporation ten years ago. An environmental impact assessment is required in accordance with the object and purpose of the *Environmental Protection and Enhancement Act*, in particular:

- (a) to support the goals of environmental protection and sustainable development,
- (b) to integrate environmental protection and economic decisions at the earliest stages of planning an activity,
- (c) to predict the environmental, social, economic and cultural consequences of the proposed activity and to assess plans to mitigate any adverse impacts resulting from the proposed activity, and
- (d) to provide for the involvement of the public, proponents, the government and government agencies in the review of proposed activities.

Error of Law

24. The proposed activity is a mandatory activity pursuant to the *Environmental Protection and Enhancement Act* and the respondents therefore erred in law in deciding to not order an environmental impact assessment in accordance with the Act.

Abuse of Discretion

25. In the alternative, the respondents lost jurisdiction through abuse of discretion; in particular by:

- (a) exercising statutory power for an ulterior purpose,
- (b) acting on irrelevant considerations,
- (c) acting on inadequate material
- (d) reaching an unreasonable and improper result,
- (e) misconstruing the law, and
- (f) failing to give reasons.

Statutes

26. The applicant intends to rely upon the *Environmental Protection and Enhancement Act*, the *Water Act*, the *Municipal Government Act* and the *Natural Resources Conservation Board Act*, and the Regulations made under the various Acts, and other materials as counsel may advise and the court may permit.

Remedies

27. The applicant seeks an order:

- (a) quashing the decision to not order an environmental impact assessment,

- (b) requiring that an environmental impact assessment be ordered,
- (c) declaring that an environmental impact assessment is required by law,
- (d) requiring the respondents to reconsider and determine the matter, and
- (e) awarding costs to the applicant on an indemnity basis.

DATED at Calgary, Alberta, this 17th day of October, 2002 and delivered by Code Hunter LLP, Barristers, counsel for the applicant, whose address for service is in care of the said Barristers at Suite 2500, 400 – 3rd Avenue SW, Calgary, Alberta T2P 4H2.

ISSUED out of the office of the Clerk of the Court of Queen's Bench, Judicial District of Calgary, this 17th day of October, 2002.

Clerk of the Court of Queen's Bench

Rule 753.13 of the Alberta Rules of Court

1. On receiving the application for judicial review endorsed in accordance with Rule 753.12, the person from whose decision or act relief is claimed shall return forthwith to the office mentioned therein the judgment, order or decision, as the case may be, together with the exhibits filed, if any, and all things touching the matter and the notice served on him with a certificate endorsed thereon in the following form:

“Pursuant to the accompanying notice, I hereby return to the Honourable Court the following papers and documents, that is to say

- (a) the judgment, order or decision, as the case may be, and the reasons therefore;
- (b) the process commencing the proceedings;
- (c) the evidence taken at the hearing and all exhibits filed;
- (d) all other papers or documents touching the matter.

And I hereby certify to this Honourable Court that I have above truly set forth all the papers and documents in my custody and power relating to the matter set forth in the originating notice.”

2. The certificate prescribed in subrule (1) has the same effect as a return to a writ of certiorari.

3. If the proceedings are not in the possession of the person required to transmit them, he shall, in lieu of the certificate, so state and explain the circumstances.

4. If the proceedings have not been received by the officer to whom or the clerk of the office to which they are by law required to be transmitted, that officer or clerk shall return a certificate of the fact.

5. The court may dispense with the return of the evidence or exhibits or part of them.

6. A copy of this Rule shall appear on or be annexed to the application for judicial review served on the person from whom the return is required.

NOTICE

To the Respondents:

JILLIAN FLETT, DIRECTOR OF REGULATORY ASSURANCE DIVISION, ALBERTA ENVIRONMENT and LORNE TAYLOR, MINISTER OF THE ENVIRONMENT

You are hereby notified that if you do not attend either in person or by Counsel or Solicitor before the said Judge at the time and place set out in the within Originating Notice, the Order and relief asked for herein may be made in your absence, or such Order may be made or proceedings taken as according to the practice of the Court the Applicant is entitled to take, without any further notice to you.

NOTICE FOR RETURN:

You are required forthwith after service of this notice to return to the clerk of the Court of Queen's Bench at Calgary the judgment, order or decision (or as the case may be) to which this notice refers and reasons, if any, together with the process commencing the proceedings, the evidence and all exhibits filed, if any, and all things touching the matter as fully and entirely as they remain in your custody, together with this notice.

Date: _____, 2002.

Signed: _____

This Originating Notice is issued by: CODE HUNTER LLP, Barristers, counsel for the Applicant whose address for service is in care of the said counsel at:

2500, 400 – 3rd Avenue SW
CALGARY, AB T2P 4H2
Attn: Dr. Sheilah L. Martin, Q.C.

The Applicant carries on business in the Province of Alberta.

The Respondents carry on business in the Province of Alberta.

Action No. _____

**IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

Between:

CASTLE-CROWN WILDERNESS COALITION

Applicant

- and -

**JILLIAN FLETT, DIRECTOR OF
REGULATORY ASSURANCE DIVISION,
ALBERTA ENVIRONMENT and
LORNE TAYLOR, MINISTER OF THE
ENVIRONMENT**

Respondents

ORIGINATING NOTICE

CODE HUNTER LLP

Barristers
2500, 400 – 3rd Avenue SW
CALGARY, AB T2P 4H2

Counsel: Dr. Sheilah L. Martin, Q.C.
Telephone: 403.261.2386
Fax: 403.261.2054

File No. 10280.001/SLM

