

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**WILDLANDS LEAGUE and
FEDERATION OF ONTARIO NATURALISTS**

Applicants
(Moving Parties)

- and -

**LIEUTENANT GOVERNOR IN COUNCIL and
MINISTER OF NATURAL RESOURCES**

Respondents
(Responding Parties)

FACTUM OF THE MOVING PARTIES

July 3, 2015

Lara Tessaro, LSUC #: 67052M
Charles Hatt, LSUC #: 64418I

550 Bayview Ave, Suite 401
Centre for Green Cities
Toronto, ON M4W 3X8
T: 416-368-7533 ext. 531
F: 416-363-2746

Lawyers for the Moving Parties
Wildlands League and Federation
of Ontario Naturalists

TABLE OF CONTENTS

| | |
|---|----|
| OVERVIEW | 1 |
| PART I – THE PARTIES AND THE DECISION APPEALED FROM | 2 |
| PART II – CONCISE SUMMARY OF THE FACTS | 2 |
| A. The modern <i>ESA</i> was enacted to ensure meaningful legal protections for species at risk and their habitats | 2 |
| B. In December 2012, the government proposed to achieve through regulatory exemptions what it had failed to achieve through legislative amendment | 3 |
| C. In May 2013, the Minister purported to make a statutory determination under s. 57(1) of the <i>ESA</i> | 5 |
| D. The Minister’s Determination fails to assess 150 of the 155 endangered and threatened species to which the proposed regulation would apply..... | 5 |
| E. The Exemption Regulation means no endangered or threatened species enjoys the full protection of the <i>ESA</i> 's prohibitions against kill them or destroying their habitat..... | 7 |
| F. The Divisional Court dismisses the Environmental Groups' application..... | 8 |
| PART III – QUESTIONS TO BE ANSWERED ON APPEAL | 9 |
| PART IV -- ISSUES AND THE LAW | 10 |
| I. PUBLIC IMPORTANCE | 10 |
| A. The <i>ESA</i> is aimed at protecting Ontario's most vulnerable species | 11 |
| B. The proposed appeal is needed to restore integrity and coherence to the <i>ESA</i> 's statutory scheme and purpose | 11 |
| C. The proposed appeal will address an important administrative law issue left unresolved by the Supreme Court of Canada in <i>Dunsmuir</i> and <i>Katz</i> | 14 |
| D. The proposed appeal will ensure greater consistency with the Federal Courts' approach to judicial review under endangered species laws..... | 16 |
| II. BRIEF OVERVIEW OF THE <i>ESA</i> | 18 |
| III. PROPOSED APPEAL QUESTIONS 2 AND 3: THE MINISTER'S DETERMINATION | 19 |
| A. The Minister's Determination is reviewable and must use the correct legal test..... | 19 |
| B. The correct legal test under s. 57(1) requires the Minister to reach an opinion on each individual species to which a proposed regulation would apply..... | 20 |
| (i) Subsection 57(1) must be interpreted according to the grammatical meaning of its text..... | 21 |
| (ii) Subsection 57(1) must be interpreted consistently with the <i>ESA</i> 's scheme..... | 23 |
| (iii) Subsection 57(1) must be interpreted consistently with the <i>ESA</i> 's purpose..... | 24 |
| IV. PROPOSED APPEAL QUESTION 1: THE REGULATION'S INCONSISTENCY WITH THE PURPOSE OF THE <i>ESA</i> | 25 |
| A. The Divisional Court failed to perform the first step of the analysis -- determining the <i>ESA</i> 's purpose | 25 |
| B. To the extent the Divisional Court analyzed the <i>ESA</i> 's purpose, it misconstrued that purpose..... | 26 |
| C. The Exemption Regulation is inconsistent with the purpose of the <i>ESA</i> | 28 |

OVERVIEW

1. The Moving Parties seek leave to appeal the Divisional Court's decision upholding Ontario Regulation 176/13 ("the Exemption Regulation"). The Exemption Regulation creates wide-ranging exemptions from the *Endangered Species Act, 2007*, SO 2007, c 6 ("ESA") for most industrial activities in Ontario. It deprives each of the province's 161 endangered and threatened species of statutory protections against killing them and destroying their habitats.
2. In its decision, the Divisional Court undermines the entire scheme of the *ESA*. It does so by ignoring and misconstruing the Act's purposes, as legislated at s. 1. Instead, the Court read into the *ESA* the non-legislated purpose of promoting the economic interests of industry.
3. The Divisional Court also held that the Minister of Natural Resources had met a statutory precondition under s. 57(1) of the *ESA*, giving him the power to recommend the Exemption Regulation to Cabinet. Strikingly, the Court held that the Minister's performance of his duty under s. 57(1) was not reviewable under either a correctness or reasonableness standard. Further, the Court held that the Minister had met this duty despite failing to consider whether the proposed regulation would jeopardize each individual species affected by it.
4. The Moving Parties submit that the legislature intended the *ESA* to protect and recover Ontario's species at risk. The Exemption Regulation is inconsistent with that overarching purpose. Further, a correct interpretation of s. 57(1) requires consideration of whether a proposed regulation would likely jeopardize each individual species to which it would apply.
5. The validity of the Exemption Regulation turns on these important environmental and administrative law issues – as does the survival and recovery of Ontario's most imperilled species.

PART I - THE PARTIES AND THE DECISION APPEALED FROM

6. The Environmental Groups CPAWS-Wildlands League (“Wildlands League”) and the Federation of Ontario Naturalists (“Ontario Nature”) are non-profit organizations with long histories of advocating for the protection and recovery of species at risk in Ontario.¹ They come to the Court as public interest litigants.²
7. The Respondent Minister of Natural Resources (“Minister”) is responsible for administering the *ESA*, while the Respondent Lieutenant Governor in Council (“Cabinet”) has regulation-making power under s. 55 of the *ESA*.³
8. The Environmental Groups seek leave to appeal the Divisional Court’s order, dated May 28, 2015, dismissing their application for judicial review of the *vires* of Ontario Regulation 176/13 (the “Exemption Regulation”).

PART II - CONCISE SUMMARY OF THE FACTS

A. The modern *ESA* was enacted to ensure meaningful legal protections for species at risk and their habitats

9. In 2007, the Ontario Legislature enacted a modernized *ESA*. The *ESA* was enacted to “provide significantly broader and more effective provisions for protecting species at risk and their habitats” and “includes a stronger commitment to species recovery”.⁴

¹ Affidavit of Caroline Schultz (“Schultz Affidavit”), paras 6-18 [Environmental Groups’ Motion Record (“MR”), Vol 3, Tab 7, pp 604-608]; Affidavit of Anna Baggio (“Baggio Affidavit”), paras 4-11 [MR Vol 2, Tab 6, pp 177-181].

² Reasons for Judgment of Lederer J. at para 2 [MR Vol 1, Tab 3, p 13].

³ Referred to in the collective as the “government.”

⁴ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 2nd Sess, No 143, (20 March 2007) at 7195 (Hon David Ramsay, Minister of Natural Resources) [Environmental Groups’ Book of Authorities (“BOA”) at Tab 13].

10. The new *ESA* remedied major shortcomings in the previous *Endangered Species Act*.⁵ In contrast to the old Act, which offered only limited protection for 42 of 176 species designated at risk, the *ESA* extended some immediate protection to all listed species in Ontario.⁶ Notably, it also provided general habitat protection for all endangered and threatened species as of July 1, 2013.⁷ In the words of then-Minister of Natural Resources David Ramsay, the *ESA* created a “presumption of protection” for all listed species.⁸
11. In the spring of 2012, the government proposed significant legislative amendments weakening the *ESA* as part of an omnibus budget bill.⁹ The amendments would have exempted many sectors of economic activity from the prohibitions in the *ESA* against killing endangered or threatened,¹⁰ or destroying their habitats.¹¹ After significant public outcry, the government removed the proposed amendments from the omnibus bill.¹²

B. In December 2012, the government proposed to achieve through regulatory exemptions what it had failed to achieve through legislative amendment

12. By late 2012, it became clear that the government had not given up on its desire to weaken the *ESA*. On December 5, 2012, the Ministry of Natural Resources (“MNR”) made a formal posting to the Environmental Bill of Rights (“EBR”) Registry, proposing changes to the

⁵ *Endangered Species Act*, RSO 1990 c E.15 (repealed 30 June 2008).

⁶ Environmental Commissioner of Ontario, *Reconciling our Priorities: Annual Report 2006-2007*, submitted to Legislative Assembly of Ontario November 2007 (Toronto: ECO, 2007) at 96 [BOA at Tab 8].

⁷ *Endangered Species Act*, SO 2007, c 6 (“*ESA*”) s 10(3).

⁸ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 2nd Sess, No 148, (28 March 2007) at 7500 (Hon David Ramsay, Minister of Natural Resources) [BOA at Tab 11].

⁹ Bill 55, *Strong Action for Ontario Act (Budget Measures)*, 1st Sess, 40th Parl, Ontario, 2012, Schedule 19 (see Schultz Affidavit, Ex C [MR Vol 3, Tab 7C, pp 641]).

¹⁰ Section 9(1) of the *ESA* says no person shall “kill, harm, harass, capture or take” a member of an endangered or threatened species at risk [prohibition against “killing”].

¹¹ Section 10(1)(a) of the *ESA* says no person shall “damage or destroy the habitat” of an endangered or threatened species [prohibition against “destroying habitat”].

¹² Baggio Affidavit, paras 19-25 and Exs I, L and M [MR Vol 2, Tab 6, pp 183-186, Tab 6.I, pp 292, Tab 6.L, pp. 324, Tab 6.M, pp 326]; Schultz Affidavit, paras 19-31 and Ex I at pp 5-6 [MR Vol 3, Tab 7, pp 608-612, Tab 7.I, pp 683-684].

implementation of the *ESA* consistent with the MNR's ongoing "Modernization of Approvals" process.¹³

13. "Modernization of Approvals" is an MNR policy framework aimed, in essence, at "streamlining" permit approvals to introduce cost savings and "reduce the burden on individuals, businesses and government."¹⁴ MNR was concerned that, since 2007, the number of permit applications to be dealt with under the *ESA* had grown.¹⁵

14. The MNR's posting to the EBR Registry on January 24, 2013, made it clear that the MNR was in fact contemplating significant regulatory exemptions for entire industrial sectors.¹⁶ The proposed exemptions would significantly reduce the number of activities requiring permits under the *ESA*. The MNR's proposal did not consider the specific authority given to it by the legislature to charge fees for permitting.¹⁷

15. These exemption proposals provoked major public concern. Over 10,000 Ontarians commented publically on the MNR's December 2012 EBR Registry posting.¹⁸

16. The Environmental Groups expressed concerns about the proposed regulation in meetings with MNR officials, letters to Minister David Oraziotti and Premier Kathleen Wynne, and comments on EBR Registry notices.¹⁹

¹³ Schultz Affidavit, para 40 and Ex O [MR Vol 3, Tab 7, pp 616-617 and Tab 7.O, pp 779].

¹⁴ See MNR EBR Registry posting of 27 Sept 2012, Schultz Affidavit, Ex J [MR Vol 3, Tab 7.J, pp 703].

¹⁵ *Ibid.*

¹⁶ Schultz Affidavit, para 41 and Ex P [MR Vol 3, Tab 7, pp 617 and Tab 7.P, pp 785].

¹⁷ *ESA*, s 50(1)(a).

¹⁸ Schultz Affidavit, para 55 [MR Vol 3, Tab 7, pp 622].

¹⁹ Baggio Affidavit, paras 47-53 and Ex T [MR Vol 2, Tab 6, pp 191-193 and Tab 6.T, pp 388]; Schultz Affidavit at paras 43, 48-54 and Exs Q, X, Y, Z, AA, & BB [MR Vol. 3, Tab 7, pp 618-622, and Tabs 7.Q, 7X-7.BB, pp 797, 849-886].

17. Ontario Nature wrote to Minister Oraziotti in February and April of 2013, putting him on notice of his duties under s. 57(1) of the *ESA*. It stressed his obligation to determine whether the regulatory proposal was likely to jeopardize the survival of, or have any other significant adverse effect on, each of the endangered and threatened species to which it would apply.²⁰
18. The Minister's response months later was silent on whether s. 57(1) required the effects on each individual species to be assessed.²¹ The correctness of the Environmental Groups' interpretation was eventually conceded by the Respondents in the hearing before the Divisional Court.

C. In May 2013, the Minister purported to make a statutory determination under s. 57(1) of the *ESA*

19. Cabinet made the Exemption Regulation on May 15, 2013.
20. Prior to Cabinet's making of the Exemption Regulation, Minister Oraziotti had signed the Minister's Determination on May 1, 2013. By this act, Minister Oraziotti purported to satisfy his duty under s. 57(1).²²

D. The Minister's Determination fails to assess 150 of the 155 endangered and threatened species to which the proposed regulation would apply

21. After initiating this litigation, the Environmental Groups obtained the Minister's Determination from the Respondents.²³ The Minister's Determination consists of a recommendation from MNR staff to which Minister Oraziotti signed his concurrence.²⁴

²⁰ Schultz Affidavit, para 50 [MR Vol 3, Tab 7, p 620]. In addition, Ontario Nature alerted the Premier and Cabinet members to its concerns that the Minister may not have performed his s 57(1) duty. See Schultz Affidavit, para 53 and Exs AA, W, X and Y [MR Vol 3, Tab 7, p 621 and Tabs 7.AA, 7.W-7.Y, pp 875, 841-866].

²¹ Schultz Affidavit, para 60, Ex DD [MR Vol 3, Tab 7, p 624 and Tab 7.DD, p 897].

²² *Ibid* at paras 64-68 [MR Vol 3, Tab 7, pp 625-627].

²³ *Ibid*.

²⁴ Minister's Determination, p 36 [MR Vol 1, Tab 4, p 30].

22. With the exception of five species, the Minister's Determination does not assess the effect of the proposed regulation on any of the endangered or threatened species to which it would apply.²⁵ For example, at no point does the Minister conclude that the Exemption Regulation would not likely jeopardize the survival of, or have any other significant effects on, Blanding's Turtle in Ontario. To the contrary, Blanding's Turtle is not even mentioned. Likewise, the Minister's Determination does not at any point assess or determine the effects of the Exemption Regulation on the American Eel.²⁶
23. Of the 155 endangered and threatened species listed at the time of the Minister's Determination,²⁷ only five are specifically assessed: Butternut,²⁸ Bobolink, Eastern Meadowlark,²⁹ Barn Swallow and Chimney Swift.³⁰
24. Rather than assessing the proposed regulation's effect on each of the 155 individual species to which it would apply, the Minister's Determination focuses on the 18 proposals for exemptions. Of these, fifteen proposals focus on individual sectors or activities to be exempted—including forestry, early mining exploration, aggregate operations, hydro

²⁵ At the time of the Minister's Determination, 155 species were listed on the Species at Risk in Ontario List as endangered or threatened.

²⁶ Minister's Determination, p 14 [MR Vol 1, Tab 4, p 30]. American Eel is exempted from the Exemptions Regime for only one hydro-electric generating station (R. H. Saunders Station), but is otherwise exempted by the Exemption Regulation from s. 9(1) and 10(1) of the *ESA*. This exemption from the Exemptions Regime continues the prior exemption that applied to all hydro-electric generating stations. The prior exemption (see O Reg 242/08 as originally made at s 11) imposed stricter conditions than the Exemptions Regime, including an agreement with the Minister that required ministerial determinations in relation to "reasonable steps to minimize adverse effects" and that "if the agreement is complied with, the operation will not jeopardize survival or recovery."

²⁷ There are now 161 species listed as endangered or threatened on the Species at Risk in Ontario List, O Reg 230/08. See Schedule B, p 33.

²⁸ Minister's Determination, p 25, noting that "It is unlikely that the section will result in any significant adverse effect on Butternut or jeopardize the survival of the species" [MR Vol 1, Tab 4, p 61].

²⁹ *Ibid* at pp 27-28 [MR Vol 1, Tab 4, pp 63-64].

³⁰ *Ibid* at pp 28-29 [MR Vol 1, Tab 4, pp 64-65].

operations, operation of wind facilities, drainage works, and an exemption for all activities not completed or operating, but that have been approved or planned.

25. The Minister's Determination states that the 18 proposals are meant to "increase administrative efficiency and reduce burdens on individuals and businesses engaged in activities that affect species at risk and their habitat while providing for the protection of species at risk."³¹

E. The Exemption Regulation means no endangered or threatened species enjoys the full protection of the *ESA*'s prohibitions against killing them or destroying their habitats

26. The Exemption Regulation introduces a broad suite of exemptions from the *ESA*'s prohibitions by amending Ontario Regulation 242/08. Major industrial activities are now presumptively exempt from the *ESA*'s prohibitions against killing species or destroying their habitats, subject to standardized conditions.

27. As confirmed by the Environmental Commissioner of Ontario, the Exemption Regulation accomplished, in part, what government had tried to do through its omnibus bill in 2012.³²

28. Overall, the Exemption Regulation applies to every endangered and threatened species in Ontario. Put another way, not one of the now 161 endangered or threatened species of lichens, mosses, vascular plants, molluscs, insects, fishes, reptiles, birds or mammals enjoys the full protection of the *ESA*'s legislated prohibition against killing them or destroying their habitats. For a visual aid representing the legal effect and scope of the Exemption

³¹ *Ibid* at p 2 [MR Vol 1, Tab 4, p 38].

³² Baggio Affidavit, paras 68-69 and Ex DD, p 48 [MR Vol 2, Tab 6, pp 197-198 and Tab 6.DD, p 508].

Regulation, refer to the Table of Endangered and Threatened Species, located at the final tab of the Environmental Groups' Motion Record.³³

29. The Exemption Regulation largely came into effect on July 1, 2013.³⁴ This was the same day that all endangered and threatened species had been scheduled to receive general habitat protection under the *ESA*.³⁵

F. The Divisional Court dismisses the Environmental Groups' application

30. The Divisional Court dismissed the Environmental Groups' application for judicial review by order dated May 28, 2015.³⁶

31. The Court held that the Exemption Regulation was consistent with the purpose of the *ESA*. In reaching this conclusion, the Court rejected the Environmental Groups' position that the overarching purpose of the *ESA* is the protection and recovery of species at risk. While the Court never established the purpose of the Act, it held that the Act calls for balancing species' needs against the economic interests of industries whose activities harm species.³⁷

32. The Court accepted that the Minister's Determination under s. 57(1) was a condition precedent to Cabinet's making of the Exemption Regulation.³⁸ However the Court held that it could not review the correctness or reasonableness of the Minister's Determination.³⁹ Rather, the Court believed that it was limited to reviewing whether the condition precedent was "met". According to the Court, the condition was met.⁴⁰

³³ Table of Endangered and Threatened Species [MR Vol 5, Tab 15, pp 1475].

³⁴ O Reg 176/13, s 16 [MR Vol 1, Tab 5, p 83]. See also Schultz Affidavit at para 56 [MR Vol 3, Tab 7, p 622].

³⁵ See para 6 above.

³⁶ Order of the Divisional Court dated May 28, 2015 [MR Vol 1, Tab 2, p 9].

³⁷ Reasons for Judgment of Lederer J. at paras 49-53 [MR Vol 1, Tab 3, pp 31-33].

³⁸ *Ibid* at paras 35-36 [MR Vol 1, Tab 3, pp 27-28].

³⁹ *Ibid* at para 37 [MR Vol 1, Tab 3, p 28].

⁴⁰ *Ibid* at para 36 [MR Vol 1, Tab 3, p 28].

PART III - QUESTIONS TO BE ANSWERED ON APPEAL

33. The questions proposed to be answered on appeal are:

1. Is the *ESA*'s overarching purpose the protection and recovery of species at risk?
Does the *ESA* have other purposes, for example the promotion of economic interests or industrial development that the legislature chose not to express when it enacted the Act's purpose provision in s. 1?
2. Is a ministerial statutory decision, where it functions as a condition precedent to subordinate legislation, shielded from judicial review?
3. Did the Minister's determination here satisfy his duty under s. 57(1), such that he lawfully assumed jurisdiction to recommend the Exemption Regulation to Cabinet?

34. The Environmental Groups first address how this proposed appeal will resolve environmental and administrative law issues of public importance.

35. The Environmental Groups then address Questions 2 and 3 above. These two questions are addressed first for chronological reasons. They both address the lawfulness of the Minister's Determination under s. 57(1). Importantly, that statutory decision is separate from, and a *precondition* to, the making of the Exemption Regulation by Cabinet.

36. Finally, the Environmental Groups address Question 1. They submit that, had the Court below correctly determined the overarching purpose of the *ESA*, it would have held that the Exemption Regulation is inconsistent with that purpose. For clarity, while not pleaded with precision in the Notice of Motion, the Environmental Groups propose that, on any appeal for which leave may be granted, this Honourable Court should ask whether the Exemption Regulation is inconsistent with the purpose of the *ESA* and thus *ultra vires*.

PART IV - ISSUES AND THE LAW

I. PUBLIC IMPORTANCE

37. The Environmental Groups submit that the proposed appeal will contribute to the development of Ontario’s jurisprudence and resolve questions of broad public importance.⁴¹ It is noted that Divisional Court did not act in an appellate capacity, but as a court of original jurisdiction assessing the *vires* of the Exemption Regulation at first instance.⁴²
38. The Exemption Regulation exempts major industrial activities known to harm species and their habitats from complying with the Act’s core prohibitions. Persons conducting these activities may now kill species and destroy their habitats, subject only to a largely self-monitored requirement to minimize species death and habitat destruction. Thus the government has taken a legislated regime intended to create a “presumption of protection” and replaced it with a regulatory regime that operates from a presumption of permission.
39. No regulation can be made by Cabinet under s. 55(1) unless the statutory condition precedent in s. 57(1) is satisfied by the Minister. Whether the Minister performed this mandatory duty depends on the interpretation of s. 57(1), a novel question for this Court.
40. The Exemption Regulation is controversial and concerning. Indeed, over 10,000 Ontarians submitted comments on the regulation proposal. The Environmental Commissioner of Ontario expressed serious concerns as well. The Environmental Groups submit that the Exemption Regulation frustrates the Legislature’s intent in enacting the *ESA*. Without the *ESA*’s protections, Ontario’s endangered and threatened species will not survive or recover.

⁴¹ *Re Sault Dock Co Ltd and City of Sault Ste Marie*, [1973] 2 OR 479 (Ont CA) [BOA at Tab 22].

⁴² *Re United Glass & Ceramic Workers of North America (AFL-CIO-CLC), Local 246 and Dominion Glass Co Ltd et al*, [1973] 2 OR 763 (Ont CA) [BOA at Tab 23].

A. The *ESA* is aimed at protecting Ontario’s most vulnerable species

41. The *ESA* is Ontario’s only statute aimed at protecting species at risk. It was enacted in 2007 and came into force on June 30, 2008.
42. The Legislature enacted the legislation because it recognized that a stronger, more effective approach was needed to protect species in Ontario. The *ESA* was designed to arrest and reverse the alarming rate of species decline and extinction seen around the world.⁴³
43. Sadly, in the years since, Ontario’s at-risk species have continued to decline.⁴⁴
44. This Honourable Court has never interpreted the *ESA*. This proposed appeal provides an opportunity to consider, and to improve government implementation of, an environmental law that serves as the “last line of defence”⁴⁵ for Ontario’s most imperilled species.

B. The proposed appeal is needed to restore integrity and coherence to the *ESA*’s statutory scheme and purpose

45. The Exemption Regulation and the Divisional Court’s decision below threaten the integrity and coherence of the *ESA*. They do so, in particular, by misconstruing the Act’s purpose.
46. In short, the *ESA* is about putting species first. The Act’s purposes are legislated at s.1. Importantly, the overarching purpose of the *ESA* is to protect species at risk and their habitats, and to promote these species’ recovery.⁴⁶

⁴³ Ontario, Legislative Assembly, Official Report of Debates (Hansard), 38th Parl, 2nd Sess, No 143, (28 March 2007) at 7499 (Hon David Ramsay, Minister of Natural Resources) [BOA at Tab 13].

⁴⁴ Ontario Biodiversity Council, *State of Ontario’s Biodiversity 2015: Summary*, (Peterborough, 2015) at 3, 6 [BOA at Tab 12].

⁴⁵ ECO Report “The Last Line of Defence”, February 2009, referred to in Baggio Affidavit, para 67 and Ex CC [MR Vol 2, Tab 6, p 197, Tab 6CC, p 432].

⁴⁶ The first legislated purpose of the Act, at s. 1.1, is to identify species at risk based on the best available scientific information; this applies to the Act’s listing provisions at ss. 3-7. The third legislated purpose of the Act, at s. 1.3, is to promote stewardship activities; this applies to the Act’s stewardship provisions at ss. 16 and 47-48. The second legislated purpose of the Act, at s. 1.2, is the overarching purpose applying to every operative provision in the Act.

47. Because the purpose of the *ESA* informs every other provision in the Act, it deserves to be clearly determined by this Honourable Court. The purpose guides the actions of all public officials charged with implementing the *ESA*, not just the Minister or Cabinet. This Honourable Court should hear the proposed appeal in order to determine the *ESA*'s purpose.
48. To determine whether the Exemption Regulation is inconsistent with the *ESA*'s objects and purposes, it is necessary first to determine or establish the Act's purpose.⁴⁷ Troublingly, the Divisional Court failed to do this critical first step in the analysis.
49. To the extent that the Court did analyze the *ESA*'s purpose, it undermined the Legislature's intent. For example, the Court entirely ignored the Act's legislated purpose provision, in s.1, when analyzing the Act's purpose. It also declined to rely on legislative history.⁴⁸
50. Instead, the Court's decision sanctions the balancing of species' needs against the economic interests of industries that harm species at risk. This reads in a purpose that the Legislature debated but then did not include in the Act.⁴⁹
51. In this respect, the *ESA*'s purpose contrasts sharply with the purposes of Ontario's resource management statutes.⁵⁰ These statutes seek to balance society's often competing interests in the economic uses of natural resources – wood, water, minerals, fish and game – with their

⁴⁷ *Katz Group Canada Inc v Ontario (Health and Long -Term Care)*, 2013 SCC 64 ("*Katz*") at para 30 [BOA at Tab 18].

⁴⁸ Reasons for Judgment of Lederer J. at para 47 [MR Vol 1, Tab 3, p 31].

⁴⁹ During the legislative debates on Bill 184, then-MPP David Oraziotti specifically queried the *ESA*'s ability to promote economic interests as well as protect and recover species at risk. His interpretation was challenged by a representative of one of the Environmental Groups. Two days later, the Committee's only amendment to the Act's purpose provision in section 1, at Mr. Oraziotti's motion, was the addition of a paragraph on the "promotion of stewardship activities." See Ontario, Legislative Assembly, Official Report of Debates (Hansard): Standing Committee on General Government, 38th Parl, 2nd Sess, No 169, (7 May 2007) at G-1139; Ontario, Legislative Assembly, Official Report of Debates (Hansard): Standing Committee on General Government, 38th Parl, 2nd Sess, No 171, (9 May 2007) at G-1147 [BOA at Tabs 15 and 16].

⁵⁰ See para 99 below.

conservation. The *ESA* shares more in common with social welfare legislation aimed at protecting vulnerable persons than it does with resource management laws. Yet the Divisional Court's analysis places it among the latter.

52. The Divisional Court's analysis of the *ESA*'s purpose also stands in stark contrast to the approaches of other courts. In the United States, the *Endangered Species Act* has afforded endangered species "the highest of priorities" ever since the seminal 1978 Supreme Court decision in *Tennessee Valley Authority v Hill*.⁵¹ In *Guelph (City) v Soltys*,⁵² the Ontario Superior Court looked to the *ESA*'s purpose provision as an indicator of the importance the legislature ascribed to the Act's policy goals.
53. Many of the species listed as endangered or threatened under the *ESA* are transboundary species, with habitat straddling political jurisdictions; or are migratory species that only reside in Ontario for a time before moving on to other jurisdictions. By weakening legal protections under the *ESA* for these species in Ontario, the Exemption Regulation undermines the efficacy of neighbouring jurisdictions' efforts to protect these species.⁵³
54. The Environmental Groups submit that this Honourable Court should hear the proposed appeal and should properly establish the *ESA*'s overarching purpose as the protection and recovery of species at risk. This will provide much needed guidance to all public officials charged with implementing the *ESA*, now and in the future.

⁵¹ *Tennessee Valley Authority v Hill*, 437 US 153 (USSC 1978), at pp 20-21 [BOA at Tab 27].

⁵² *Guelph (City) v Soltys* (2009), 45 CELR (3d) 26 (Ont Sup Ct) [BOA at Tab 10].

⁵³ The Federal Courts have appreciated the interdependent nature of species protection legislation in neighbouring jurisdictions. See *Centre Québécois Du Droit De L'environnement et Nature Québec c Le Ministère De L'environnement*, 2015 CF 773 ("Western Chorus Frogs") [BOA at Tab 6].

C. The proposed appeal will address an important administrative law issue left unresolved by the Supreme Court of Canada in *Dunsmuir* and *Katz*

55. Section 57(1) requires the Minister to assess whether a proposed regulation is likely to jeopardize the survival in Ontario of, or have any other significant adverse effect on, an endangered or threatened species to which it applies.
56. A ministerial determination under s. 57(1) is properly characterized in two ways. Firstly, it is akin to any other administrative decision governed by statute, and is a decision made pursuant to “a statutory power of decision.”⁵⁴ Second, it is a decision that also serves as a statutory condition precedent to possible, future subordinate legislation.
57. Despite this, and at the Respondents’ insistence that the Minister’s Determination was not subject to review, the Divisional Court held, at paragraph 37, that decisions under s. 57(1) are not reviewable under either a correctness or reasonableness standard of review.
58. Therefore, the question arises: what approach or framework should courts use when they are judicially reviewing the performance of statutory duties serving as conditions precedent to a statutory decision-maker recommending, or Cabinet making, subordinate legislation?
59. It is trite that failure to perform a statutory precondition is a fatal jurisdictional defect going to a regulation’s validity.⁵⁵ Yet the decisions confirming this truism do not themselves give instruction on how to review whether a condition precedent was lawfully performed.
60. In *Dunsmuir v New Brunswick*, the Supreme Court confirmed a long-standing trend in modern administrative law – namely that, to maintain the principle of the rule of law, *all*

⁵⁴ *Judicial Review Procedure Act*, RSO 1990, c J.1, s 1.

⁵⁵ *Thorne’s Hardware Ltd v The Queen*, [1983] 1 SCR 106 at 111 (“*Thorne’s Hardware*”) [BOA at Tab 28]. See also this Court’s decision in *Apotex Inc. v Ontario (Office of the Lieutenant Governor)*, 2007 ONCA 570 at paras 32-34 [BOA at Tab 3]

administrative decisions made under statute are subject to judicial review.⁵⁶ The main innovation in *Dunsmuir* was that courts would now only apply two standards of review: correctness or reasonableness.

61. On the other hand, in *Katz Group Canada Ltd v Ontario*, the Supreme Court excluded one type of decision from standard of review analysis – namely, the exercise of regulation-making powers. The Supreme Court instead rearticulated various existing common law criteria unique to reviewing regulations.⁵⁷

62. Thus, these two decisions leave open the question of *how* judges should review compliance with a statutory condition precedent. Must courts apply the *Dunsmuir* analysis to determine by what standard they should review performance of a statutory precondition? By what alternate standard would courts review whether a decision maker had “met” a mandatory statutory precondition? Are decision makers relieved from applying the correct legal test in making such decisions? Currently these questions cannot be answered with any confidence.

63. It is of broad importance to public administration in Ontario that this question be resolved. Many laws found in Ontario’s statute book create analogous statutory preconditions to the recommendation or making of subordinate legislation, in diverse areas such as securities regulation,⁵⁸ occupational health and safety,⁵⁹ fire protection services,⁶⁰ and privacy rights in health care.⁶¹ Applying the logic of the Divisional Court, decision-makers’ compliance with these many, varied statutory preconditions is effectively shielded from judicial review.

⁵⁶ *Dunsmuir v New Brunswick*, 2008 SCC 9 (“*Dunsmuir*”) at paras 27-31 [BOA at Tab 8]

⁵⁷ *Katz*, *supra* note 47 at paras 24-28 [BOA at Tab 18]

⁵⁸ *Securities Act*, RSO 1990, c S.5, ss 2.2(3),(9) and (16)

⁵⁹ *Occupational Health and Safety Act*, RSO 1990, c O.1, ss 22.4

⁶⁰ *Fire Protection and Prevention Act, 1997*, SO 1997, c 4, s 2(8), (9)

⁶¹ *Quality of Care Information Protection Act, 2004*, SO 2004, c 3, Sch B, ss 9, 10

64. The Divisional Court held it could not review the correctness or reasonableness of the Minister's Determination as this would conflict with the Supreme Court's holding in *Katz* that courts must not review whether regulations are "necessary, wise, or effective in practice".⁶² Thus the Court conflated the Minister's Determination with Cabinet's Exemption Regulation, treating the former as part and parcel of the latter. Notably, on this point, the Court's reasons are internally inconsistent. The Court had observed earlier in its reasons that a "challenge to the *vires* ... of the Lieutenant Governor in Council in making a regulation stands apart from the review of an administrative decision."⁶³
65. It appears incorrect in law and principle to shield from judicial scrutiny administrative decisions, like those under s. 57(1) of the *ESA*, that confer on Cabinet the power to legislate. Yet in the wake of *Dunsmuir* and *Katz*, this question is unresolved in Ontario. No other appellate court appears to have considered it.⁶⁴ It is submitted that this Court should.

D. The proposed appeal will ensure greater consistency with the Federal Courts' approach to judicial review under endangered species laws

66. The proposed appeal would allow this Court to assess if Ontario's species at risk are entitled to the same level of judicial oversight of executive action as they receive in the Federal Courts. Under the *Species at Risk Act* ("SARA"),⁶⁵ the Federal Courts take a different approach to reviewing ministerial decisions that constitute subordinate legislation, or that serve as statutory preconditions to subordinate legislation.

⁶² Reasons for Judgment of Lederer J. at para 37 [MR Vol 1, Tab 3, p 28]

⁶³ *Ibid* at para 27 [MR Vol 1, Tab 3, p 24]

⁶⁴ Some superior courts have rejected governments' efforts to limit judicial review of conditions precedent, and applied a standard of review analysis (whether under *Dunsmuir* or the predecessor "pragmatic and functional approach"). See e.g. *Alberta Teachers' Association v Alberta*, 2002 ABQB 240 at paras 17-18 [BOA at Tab 1]

⁶⁵ SC 2002, c 29.

67. In Federal Court litigation involving Resident Killer Whales, the federal government argued that a Critical Habitat Protection Order, made by two ministers under s. 58(4) of the SARA, was not justiciable as it was a statutory enactment. The Court firmly rejected that position.⁶⁶

68. The Federal Courts have likewise not hesitated to review government action under s. 80 of the SARA. Much like s. 57 of the *ESA*, s. 80 requires a minister to reach an opinion about whether a species faces imminent threats to its survival or recovery [s. 80(1)]. If he reaches the opinion that a species faces such threats, he is obliged to recommend an emergency order to the Governor in Council [s. 80(2)]. In a 2013 decision regarding the Greater Sage Grouse, Canada argued that whether the Minister had reached this opinion or made a recommendation could not be disclosed as it was part and parcel of one “Cabinet decision making process”. The Court of Appeal held this would impermissibly shelter ministerial determinations under s. 80(2) from judicial review, and that such decisions were reviewable on a reasonableness standard.⁶⁷ In proceedings regarding Woodland Caribou and Western Chorus frogs, the Federal Court held that ministers had acted unreasonably under s. 80(2).⁶⁸

II. BRIEF OVERVIEW OF THE *ESA*

69. The *ESA* is a complete scheme for the protection and recovery of species at risk.

70. Section 1 of the *ESA* provides the Act’s purposes as follows:

1. To identify species at risk based on the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge.
2. To protect species that are at risk and their habitats, and to promote the recovery of species that are at risk.

⁶⁶ *David Suzuki Foundation v Canada*, 2010 FC 1233 at paras 156-235 [BOA at Tab 7].

⁶⁷ *Alberta Wilderness Assn v Canada (Attorney General)*, 2013 FCA 190 at paras 43-49 [BOA at Tab 2]

⁶⁸ *Athabasca Chipewyan First Nation v Canada (Minister of the Environment)*, 2011 FC 962, 62 CELR (3d) 218 (“*Caribou*”) [BOA at Tab 4]; *Western Chorus Frogs* [BOA at Tab 6].

3. To promote stewardship activities to assist in the protection and recovery of species that are at risk. (emphasis added)⁶⁹

71. Species are identified and classified as endangered or threatened through a science-based process. The Committee on the Status of Species at Risk in Ontario (“COSSARO”), an independent body of expert scientists, periodically reviews the status of species.⁷⁰ If COSSARO classifies a species as endangered or threatened,⁷¹ the Minister’s delegate must add that species to the Species at Risk in Ontario List, a process known as listing.⁷²
72. Listing triggers automatic protections and the Minister’s obligation to develop recovery strategies for each individual listed species.⁷³ The *ESA*’s prohibitions on killing endangered or threatened species, and destroying their habitats,⁷⁴ form the core of the Act. It is an offence to violate the prohibitions.⁷⁵ The Act provides substantial enforcement powers to those charged with upholding it.⁷⁶
73. The Legislature built a few narrow exceptions into the Act’s general scheme prioritizing the protection and recovery of species. The Minister has narrow authority to issue permits⁷⁷ or instruments⁷⁸ authorizing violations of the prohibitions, where stringent conditions are satisfied. Cabinet has power to make regulations prescribing exemptions from the Act’s

⁶⁹ See explanation of how these purposes apply to the Act at note 46 above.

⁷⁰ *ESA*, ss 3-6.

⁷¹ Species can also be classified as “extinct,” “extirpated” or “special concern species”.

⁷² *ESA*, s 7; O Reg 230/08.

⁷³ *ESA* ss 9(1), 10(1), 11(1).

⁷⁴ As noted above at para 25, the extension of the *ESA*’s habitat protection to all endangered and threatened species was scheduled to begin on July 1, 2013, the same day the Exemption Regulation largely came into force.

⁷⁵ *ESA*, s 36.

⁷⁶ *Ibid* at ss 21-35.

⁷⁷ *Ibid* at s 17. The Act also provides for specific permits for Aboriginal persons in s 19.

⁷⁸ *Ibid* at s 18.

prohibitions.⁷⁹ However this authority is subject to the Minister’s duties under s. 57(1) and, where applicable, s. 57(2).

III. PROPOSED APPEAL QUESTIONS 2 AND 3: THE MINISTER’S DETERMINATION

74. The Minister recommended the Exemption Regulation to Cabinet without having lawfully performed his duty under s. 57(1). Failure to comply with a condition precedent in the enabling statute is, in the words of *Thorne’s Hardware*, a “fatal jurisdictional defect”. Consequently, the Exemption Regulation is *ultra vires*.⁸⁰

A. The Minister’s Determination is reviewable and must use the correct legal test

75. The Environmental Groups submit that the Minister’s Determination is justiciable. It should be examined under either a correctness or reasonableness standard of review. Regardless of which standard is used, the Minister’s Determination cannot survive judicial scrutiny.

76. Regardless of which standard is adopted, the Minister must still apply the correct legal test in reaching his opinion under s. 57(1). Support for this proposition arises from the Supreme Court’s decision in *Halifax (Regional Municipality) v Canada (Public Works and Government Services)*.⁸¹ At issue were, *inter alia*, the scope of the Minister of Public Works’ discretion to reach an opinion determining a “property value”; and the standard of review applicable to that determination.⁸² The Court held that, while the Minister of Public Works clearly has discretion in reaching an opinion about the property value, in doing so he

⁷⁹ *ESA*, s 55(1)(b).

⁸⁰ *Thorne’s Hardware*, *supra* note 55 at p 111 [BOA at Tab 28]; *Katz*, *supra* note 47 at paras 27-28 [BOA at Tab 18].

⁸¹ *Halifax (Municipality) v Canada (Public Works and Government Services)*, 2012 SCC 29 (“*Halifax*”) [BOA at Tab 11].

⁸² *Ibid* at para 37.

“must comply with the requirements of the Act”. His exercise of discretion is reviewed for reasonableness only if he applies “the correct legal test”.⁸³

77. As explained below, the correct legal test under s. 57(1) is whether a proposed regulation is likely to jeopardize *each individual species* to which it would apply. Only if the Minister asks the correct question, can his ensuing opinion then attract any deference.⁸⁴ The Minister did not do so here. In the alternative, even if he is said to have asked the correct question, the Minister’s answer is unreasonable. The Minister’s Determination is unjustified, non-transparent and unintelligible.⁸⁵ For example, it is entirely impossible to discern *why* the Minister may have concluded that the Blanding’s Turtle would not likely be jeopardized by the proposed regulatory exemptions, or *why* the American Eel would not likely suffer any other significant adverse effects.

B. The correct legal test under s. 57(1) requires the Minister to reach an opinion on each individual species to which a proposed regulation would apply

78. Section 57(1) sets out the legal test for the Minister:

57(1) If a proposal for a regulation under subsection 55 (1) is under consideration in the Ministry, the proposed regulation would apply to a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, and either or both of the following criteria apply, the Minister shall consult with a person who is considered by the Minister to be an expert on the possible effects of the proposed regulation on the species:

1. In the case of any proposed regulation under subsection 55(1), the Minister is of the opinion that the regulation is likely to jeopardize the survival of the species in Ontario or to have any other significant adverse effect on the species.⁸⁶

⁸³ *Ibid* at paras 40-43.

⁸⁴ *Ibid* at para 43 [BOA at Tab 11].

⁸⁵ *Dunsmuir*, supra note 56 at paras 62-64 [BOA at Tab 8]. See also *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 15-17 [BOA at Tab 19].

⁸⁶ The second criterion mentioned in s. 57(1) is not relevant. It only applies to regulations made under s. 55(1)(a), whereas the Exemption Regulation was made under s. 55(1)(b).

79. A Ministerial opinion that a proposed regulation *is* likely to jeopardize a species' survival, or have any other significant adverse effect, triggers additional duties under s. 57(2).
80. The Environmental Groups submit that the correct legal test under s. 57(1) is whether a proposed regulation is likely to jeopardize *each individual species* to which it would apply. The Minister acts unlawfully if he assesses only whether a regulation will jeopardize *a few species* to which it would apply. Likewise, he acts unlawfully if he assesses whether a regulation is likely to jeopardize *a collective group of species* or *all species overall* – without ever turning his mind to any impacts on any individual species.
81. The modern approach to statutory interpretation requires that s. 57(1) must be construed in light of the provision's text, the broader context and scheme, and the Act's purpose.⁸⁷
82. The Divisional Court declined to apply the modern approach to statutory interpretation when interpreting s. 57(1). It considered only the provision's text, without regard to the Act's scheme or purpose. Moreover, the Court misconstrued the text, by failing to recognize its grammatical imperatives.

i. Subsection 57(1) must be interpreted according to the grammatical meaning of its text

83. The text of s. 57(1) provides that if the MNR is considering a proposal for a regulation that “would apply to **a species**” listed as endangered or threatened, then the Minister must reach an opinion on whether the regulation “is likely to jeopardize the survival of **the species**”. As a matter of English grammar and syntax, this definite article refers back to a noun already

⁸⁷ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 (“*Rizzo Shoes*”) at para 21 [BOA at Tab 24].

identifiable to the reader—namely, the single listed species already identified. Indeed the same syntactic structure is employed in the French version of s. 57(1).⁸⁸

84. In *Pastore v Aviva Canada Inc.*,⁸⁹ this Court addressed the meaning of “a” in s. 2(1.1)(g) of the Statutory Accident Benefits Schedule (“SABS”) under the *Insurance Act*. In overturning the Divisional Court, this Court held that the tribunal at first instance had reasonably construed the meaning of “a” in this context. The tribunal had held that “a” referred to “any or one single marked or extreme impairment out of the four areas of functioning” – and that it did not refer to an “overall” impairment, across the board, in all four functions.⁹⁰

85. Despite being overturned in *Pastore*, in his reasons for the Court here, Lederer J. construed “a species” in s. 57(1) as effectively meaning *species overall and across the board*.⁹¹ He held that “[t]here is nothing that says that the Minister has to examine the impact on each species to which the regulation would apply separately or independently of the others”.

86. Indeed, as found as a fact by the Divisional Court, the Minister’s Determination did not give any “independent” or “separate” consideration to the individual species that would be affected by the proposed regulation.⁹² Rather, the Court found that the Minister considered whether the proposed regulatory exemptions, including their conditions, were likely to jeopardize “any” of the affected species.⁹³ Thus, the Court’s interpretative errors are not academic or hypothetical – they go directly to the *vires* of the Exemption Regulation.

⁸⁸ Specifically, where “le règlement proposé s’appliquerait à *une espèce*,” the Minister must then assess the effects of the proposed regulation on “*l’espèce*.”

⁸⁹ *Pastore v Aviva Canada Inc.*, 2012 ONCA 642 [BOA at Tab 20].

⁹⁰ *Ibid* at paras 39-43.

⁹¹ It should be noted that the Reasons for Judgment never actually analyze the phrase “a species” in s. 57(1). Subsection 57(1) is introduced in paragraph 7. However, the Court misquotes it as saying “the species to which it would apply”. The actual words of s. 57(1) are “the proposed regulation would apply to a species”.

⁹² Reasons for Judgment of Lederer J. at para 35 [MR Vol 1, Tab 3, pp 27-28].

⁹³ *Ibid* at paras 34-35 [MR Vol 1, Tab 3, pp 27-28].

87. Analogous errors caused the Alberta Court of Queen’s Bench to overturn an Order in Council that ordered Alberta’s striking teachers back to work. Under Alberta’s *Labour Relations Code*, Cabinet may only make such an order if, in its opinion, “an emergency arising out of a dispute exists or may occur in such circumstances that...unreasonable hardship is being caused”. Chief Justice Wachowich held that the Cabinet had failed to consider each dispute, in each of the 22 separate school districts covered by the Order, on a separate and individual basis. Each dispute had its own issues – some school boards had a surplus of money and some were in deficit, some teachers were locked out and some were not – yet the Cabinet had treated them all the same, considering hardship generally across Alberta. A “blanket” opinion for all districts, that failed to consider whether each district was suffering hardship, was held to be especially objectionable when its effect was to eradicate a statutory right to strike for all districts.⁹⁴ The Environmental Groups submit that it is equally objectionable to reach a blanket opinion on jeopardy covering all affected species, when the effect is to eradicate those species’ statutory right not to be killed.

ii. Subsection 57(1) must be interpreted consistently with the *ESA*’s scheme

88. With respect to the broader context and scheme of the *ESA*, the Legislature has employed the same syntactic pattern found in s. 57(1) in many other provisions throughout the Act. These provisions first mention “a species” and then refer back to it as “the species.”⁹⁵

89. In *Sierra Club*, the Divisional Court reviewed a permitting decision under s. 17, which uses this same pattern of expression. For the Court, Lederer J. observed that the Minister must

⁹⁴ *Alberta Teachers’ Association v Alberta*, 2002 ABQB 240 at paras 4-6 and 35-48 [BOA at Tab 1].

⁹⁵ *ESA*, ss. 9(6), 10(1)(b), 11, 17, 18, 28(1) and 56(1). Again, this is true of both the English and French versions.

apply s. 17 to *each* species to which a s. 17 permit would apply.⁹⁶ That holding is irreconcilable with the case at bar.

90. By giving the same words different meanings in different decisions, the Court takes a result-oriented approach that will wreak havoc on the Act's implementation. Faced with divided authority, how will the MNR know whether to apply the *ESA* provisions containing this pattern of expression to "an individual species" or to "a collective group of species without differentiation"? To resolve the confusion, this Court should grant leave to appeal.

iii. Subsection 57(1) must be interpreted consistently with the *ESA*'s purpose

91. The overarching purpose of the *ESA* demands that the Minister, in performing his duties under s. 57(1), assess a proposed regulation's adverse effects on each individual species. Ministers must always exercise their statutory powers in a manner consistent with the purpose of the statute conferring those powers.⁹⁷ The Act's overarching purpose of protecting and recovering species would be undermined if the Minister could simply do a blanket assessment of a regulation's impacts on "species overall" without considering each individual species affected. Not all species face the same conservation threats, and not all species have the same recovery needs. It is self-evident that one cannot protect a species from threats left unidentified; one cannot recover a species if its needs are ignored. The *ESA* must be interpreted as being remedial,⁹⁸ and s. 57(1) is no exception to this rule.

⁹⁶ *Sierra Club Canada v Ontario (Natural Resources & Transportation)*, 2011 ONSC 4655 at para 23 [BOA at Tab 26].

⁹⁷ See e.g. *Halifax*, *supra* note 81 at paras 47, 55-56 [BOA at Tab 11].

⁹⁸ *Rizzo Shoes*, *supra* note 87 at para 22 [BOA at Tab 24].

IV. PROPOSED APPEAL QUESTION 1: THE REGULATION'S INCONSISTENCY WITH THE PURPOSE OF THE *ESA*

A. The Divisional Court failed to perform the first step of the analysis – determining the *ESA*'s purpose

92. The Environmental Groups argued before the Divisional Court that the Exemption Regulation is *ultra vires* the *ESA* for being inconsistent with the Act's objects and purposes. The Divisional Court erred in deciding this ground without conducting the correct analysis as set out by the Supreme Court of Canada in *Katz*.
93. Specifically, the Supreme Court held in *Katz* that the first step of the analysis is determining the purpose of the enabling statute – there, the *Drug Interchangeability and Dispensing Fee Act*,⁹⁹ and the *Ontario Drug Benefit Act*.¹⁰⁰ The Court looked to statements made by the Minister of Health when introducing the bills in the legislature as evidence of legislative intent. The Court held that the “overarching purpose of the statutory scheme” created by the Acts was to control prescription drug costs without compromising safety.¹⁰¹ With this determination made, the Court then set about determining the purpose of the impugned regulations and assessing whether they were consistent with the Acts' purpose.¹⁰²
94. The Divisional Court's analysis fails at this crucial first step – the Court never established the overarching purpose of the *ESA*.

⁹⁹ RSO 1990, c P.23.

¹⁰⁰ RSO 1990, c O.10.

¹⁰¹ *Katz*, *supra* note 47 at paras 30-33 [BOA at Tab 18].

¹⁰² *Ibid* at paras 34-42.

B. To the extent the Divisional Court analyzed the *ESA*'s purpose, it misconstrued that purpose

95. A correct interpretive approach reveals that the *ESA*'s overarching purpose is the protection and recovery of species at risk.
96. In its analysis, at paragraphs 47-53, the Court ignored the *ESA*'s legislated purpose provision in section 1. As noted earlier, this provision speaks to three purposes.¹⁰³ There is no mention of social or economic interests in the purpose provision. To the contrary, the legislature debated but did not include such language in s. 1.¹⁰⁴
97. The Court also rejected as “not helpful”¹⁰⁵ statements made by then-Minister of Natural Resources, David Ramsay, when describing the proposed *ESA* to the Legislature in 2007. Minister Ramsay expressed the government's concern about the alarming rate of global species loss. He also stressed the fundamental change that automatic protection for species and their habitats would bring – namely, a “presumption of protection” for species.¹⁰⁶
98. Professor Sullivan describes both statutory purpose provisions and legislative history as “authoritative sources” of legislative purpose.¹⁰⁷ Statutory purpose provisions are “[t]he most direct and authoritative evidence of legislative purpose,”¹⁰⁸ while the statements of Ministers sponsoring bills in the legislature are “direct evidence of purpose” and “the type of legislative history most often relied on by courts.”¹⁰⁹

¹⁰³ See explanation of how these purposes apply to the Act at footnote 46 above.

¹⁰⁴ *Hansard*, *supra* note 49 [BOA at Tab 15]; *Hansard*, *supra* note 49 [BOA at Tab 16].

¹⁰⁵ Reasons for Judgment of Lederer J. at para 47 [MR Vol 1, Tab 3, p 31]

¹⁰⁶ *Hansard*, *supra*, note 8 [BOA at Tab 14].

¹⁰⁷ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed (Markham: LexisNexis, 2008), at 269 [BOA at Tab 25].

¹⁰⁸ *Ibid* at 270.

¹⁰⁹ *Ibid* at 609.

99. By ignoring the *ESA*'s purpose provision, and rejecting legislative history as "not helpful," the Divisional Court refused to consider authoritative sources of legislative purpose. Instead the Court substituted its own purpose for the *ESA* by placing far too much weight on isolated language in a few narrowly confined provisions.

100. The Court seized on a single phrase in the Act's non-binding preamble.¹¹⁰ The *ESA*'s preamble recites the importance of biodiversity, the alarming rate of species loss, the utility of the precautionary principle, and Ontario's resolve to protect species at risk. However the Court locked onto one phrase about giving "appropriate regard to social, economic and cultural considerations" to support its belief that the *ESA* balances species' needs against social and economic interests. The Court went so far as to call this isolated statement in the non-binding preamble an "injunction."¹¹¹ Unfortunately, Lederer J. has used these preambular words before to support his belief that the *ESA* is about balancing species' needs with social and economic interests.¹¹²

101. The Court also placed undue weight on several narrowly confined provisions in the *ESA*. The Court turned these exceptions into the rule, implying an overarching purpose for the *ESA* that is implausible given the Act's purpose provision, scheme, and legislative history. For example, the Court noted the Minister's ability to consider significant social or economic benefits to Ontario when issuing one type of permit. This consideration is strictly limited to this type of permit and, even there, the Minister must consider reasonable

¹¹⁰ Reasons for Judgment of Lederer J. at paras 47-49 [MR Vol 1, Tab 3, pp 31-32].

¹¹¹ *Ibid* at para 49 [MR Vol 1, Tab 3, pp 31-32].

¹¹² *Sierra Club*, *supra* note 96 at para 54 [BOA at Tab 26].

alternatives, consult with a species-specific expert, and opine that the permit will not jeopardize the relevant species' survival in Ontario.¹¹³

102. Finally, the Court repeatedly mischaracterized the Environmental Groups' position, suggesting they had argued that the protection and recovery of species at risk was the Act's *sole or only or single* purpose.¹¹⁴ That has never been their position. That position would be nonsensical – as the Legislature decided to expressly legislate *three* purposes.¹¹⁵

103. The *ESA*'s purpose provision contrasts with those found in resource management statutes such as the *Ontario Water Resources Act*,¹¹⁶ the *Lakes and Rivers Improvement Act*,¹¹⁷ the *Aggregate Resources Act*,¹¹⁸ the *Mining Act*,¹¹⁹ or the *Crown Forest Sustainability Act, 1994*.¹²⁰ These laws balance the economic uses of natural resources with their conservation.

C. The Exemption Regulation is inconsistent with the purpose of the *ESA*

104. The second step of the analysis requires a court to determine the purpose of the impugned regulation and assess its consistency with the objects and purposes of its enabling statute.¹²¹

105. The Divisional Court failed to determine the purpose of the Exemption Regulation. The Court erred by not applying a purposive approach to interpreting Cabinet's authority to make exemption regulations under s. 55(1)(b), as set out by this Court.¹²² To the extent the

¹¹³ *ESA*, s 17(2)(d).

¹¹⁴ Reasons for Judgment of Lederer J. at paras 39, 45 and 47 [MR Vol 1, Tab 3, pp 28-31].

¹¹⁵ None of the three legislated purposes are mentioned in the Divisional Court's analyses of either of the grounds of review; see Reasons for Judgment of Lederer J. at paras 34-37 and 47-53 [MR Vol 1, Tab 3, pp 27-28, 31-33].

¹¹⁶ RSO 1990, c O.40, s 0.1.

¹¹⁷ RSO 1990, c L.3, s 2.

¹¹⁸ RSO 1990, c A.8 s 2.

¹¹⁹ RSO 1990, c M.14, s 2.

¹²⁰ SO 1994, c 25, s 1.

¹²¹ *Katz*, *supra* note 47 at paras 34-42 [BOA at Tab 18].

¹²² *Wawanesa Mutual Insurance Company v Axa Insurance (Canada)*, 2012 ONCA 592, 112 OR (3d) 354, at paras 33-35 [BOA Tab 29].

Court interpreted Cabinet's authority, its interpretation disregarded the entire context in which Cabinet's regulation-making authority is found and produced a result that is not just and reasonable, in that it does not advance the overarching purpose of the *ESA*.¹²³

106. Had the Court employed a correct approach, it would have held the purpose of the Exemption Regulation is to balance off the protection and recovery of species at risk with a host of social and economic interests. These interests, ranging from providing certainty and fairness to proponents,¹²⁴ to reducing administrative burden,¹²⁵ to promoting the economics of industries that harm species at risk,¹²⁶ were discussed at various points by the Court but never identified as the purpose of the Exemption Regulation. The Exemption Regulation privileges these social and economic interests over the *ESA*'s purpose. It requires exempt activities only "minimize" the number of species they kill, or habitats they destroy.¹²⁷

107. Given its purpose, the Exemption Regulation is an "egregious case"¹²⁸ of subordinate legislation inconsistent with the objects and purposes of its enabling statute. Through its sweeping nature the Exemption Regulation does violence to its statutory scheme.¹²⁹ Previous cases involved regulations or orders-in-council aimed at an isolated problem: the extension of a single harbour boundary;¹³⁰ the closure of a single hospital;¹³¹ the curtailment of a particular business practice of large retail pharmacies.¹³² However, in its effect the

¹²³ *Bapoo v Co-operators General Insurance Co* (1997), 36 OR (3d) 616 (Ont CA), at para 8 [BOA at Tab 5].

¹²⁴ Reasons for Judgment of Lederer J. at para 9 [MR Vol 1, Tab 3, pp 15-16].

¹²⁵ *Ibid.*

¹²⁶ *Ibid* at para 51.

¹²⁷ Minimization of harm is the protection standard found in most of the exemptions in the Exemption Regulation. The Divisional Court accepted this point: see Reasons for Judgment of Lederer J. at paras 22-23 [MR Vol 1, Tab 3, pp 22-23].

¹²⁸ *Katz, supra* note 47 at para 28, quoting *Thorne's Hardware, supra* note 55.

¹²⁹ See Table of Endangered and Threatened Species, [MR Vol 5, Tab 15].

¹³⁰ *Thorne's Hardware, supra* note 55.

¹³¹ *Re Doctors Hospital v Minister of Health* (1976), 12 OR (2d) 164 (H.C.J. - Div Ct) [BOA Tab 21].

¹³² *Katz, supra* note 47.

Exemption Regulation removes the core protections of the *ESA* for all endangered and threatened species.

108. The Exemption Regulation creates a parallel regime to the *ESA* where industrial activities are presumptively allowed to kill species and destroy their habitats, as long as this harm is “minimized.” It does so to protect the interests of industry and government, not species. In purpose and effect, the Exemption Regulation is inconsistent with the purpose of the *ESA*.

109. For these reasons, the Environmental Groups request that leave to appeal be granted.

110. Should leave to appeal be granted, the Environmental Groups request the costs of this motion. Should leave be denied, they request that the Court exercise its discretion to exempt them from adverse costs liability. Wildlands League and Ontario Nature seek to pursue an appeal not out of any personal, pecuniary or proprietary interest. Rather, they are motivated solely by a desire to ensure that this province’s most vulnerable non-human species receive the protection that the Legislature intended, for the benefit of all Ontarians.

All of which is respectfully submitted this 2nd day of July, 2014 by:



Lara Tessaro



Charles Hatt

c/o 550 Bayview Ave
Centre for Green Cities, Unit 401
Toronto, ON M4W 3X8
Phone: 416-368-7533 ext 531
Fax: 416-363-2746

Lawyers for the Moving Parties

SCHEDULE “A”

LIST OF AUTHORITIES

Jurisprudence

Alberta Teachers’ Association v Alberta, 2002 ABQB 240, 310 AR 89

Alberta Wilderness Association v Canada (Minister of the Environment), 2013 FCA 190, 76 CELR (3d) 1

Apotex Inc v Ontario (Lieutenant Governor in Council), 2007 ONCA 570, 229 OAC 11

Athabasca Chipewyan First Nation v Canada (Minister of the Environment), 2011 FC 962, 62 CELR (3d) 218

Bapoo v Co-operators General Insurance Co (1997), 36 OR (3d) 616 (Ont CA)

Centre Québécois Du Droit De L'environnement et Nature Québec c Le Ministère De L'environnement, 2015 CF 773

David Suzuki Foundation v Canada (Minister of Fisheries and Oceans), 2010 FC 1233, [2012] 3 FCR 136

Dunsmuir v New Brunswick, 2008 SCC 9, [2008] 1 SCR 190

Guelph (City) v Soltys (2009), 45 CELR (3d) 26 (Ont Sup Ct)

Halifax (Municipality) v Canada (Public Works and Government Services), 2012 SCC 29, [2012] 2 SCR 108

Heppner v Alberta (1977), 80 DLR (3d) 112 (Alta SC (AD))

Katz Group Canada Inc v Ontario (Health and Long-Term Care), 2013 SCC 64, [2013] 3 SCR 810

Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62, [2011] 3 SCR 708

Pastore v Aviva Canada Inc, 2012 ONCA 642, 112 OR (3d) 523

Re Doctors Hospital v Minister of Health (1976), 12 OR (2d) 164 (HCJ - Div Ct)

Re Sault Dock Co Ltd and City of Sault Ste Marie (1973), 2 OR 479 (Ont CA)

Re United Glass & Ceramic Workers of North America (AFL-CIO-CLC), Local 246 and Dominion Glass Co Ltd et al (1973), 2 OR 763 (Ont CA)

Rizzo & Rizzo Shoes Ltd (Re), [1998] 1 SCR 27

Sierra Club Canada v Ontario (Ministry of Natural Resources), 2011 ONSC 4655, 63 CELR (3d) 273 (Div Ct)

Tennessee Valley Authority v Hill, 437 US 153 (USSC 1978)

Thorne's Hardware Ltd v The Queen, [1983] 1 SCR 106

Wawanesa Mutual Insurance Company v Axa Insurance (Canada), 2012 ONCA 592, 112 OR (3d) 354

Secondary Sources

Environmental Commissioner of Ontario, *Reconciling our Priorities: Annual Report 2006-2007*, submitted to Legislative Assembly of Ontario November 2007 (Toronto: ECO, 2007)

Ontario Biodiversity Council, *State of Ontario's Biodiversity 2015: Summary*, (Peterborough, 2015)

Ontario, Legislative Assembly, *Official Report Debates (Hansard)*, 38th Parl, 2nd Sess, No 143, (March 20, 2007)

Ontario, Legislative Assembly, *Official Report Debates (Hansard)*, 38th Parl, 2nd Sess, No 148, (March 28, 2007)

Ontario Legislative Assembly, *Official Report Debates (Hansard), Committee Transcripts: Standing Committee on General Government*, 38th Parl, 2nd Sess, No 169, (May 7, 2007)

Ontario Legislative Assembly, *Official Report Debates (Hansard), Committee Transcripts: Standing Committee on General Government*, 38th Parl, 2nd Sess, No 171, (May 9, 2007)

Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed (Markham: LexisNexis, 2008)

SCHEDULE B
TEXT OF STATUTES, REGULATIONS & BY-LAWS
TABLE OF CONTENTS

| | |
|--|----|
| <i>Endangered Species Act, 2007, SO 2007, c 6</i> | 1 |
| Preamble..... | 1 |
| Section 1..... | 1 |
| Section 9..... | 2 |
| Section 10..... | 3 |
| Section 11..... | 3 |
| Section 17..... | 5 |
| Section 18..... | 8 |
| Section 36..... | 11 |
| Section 50..... | 11 |
| Section 55..... | 11 |
| Section 57..... | 13 |
| <i>Loi de 2007 sur les espèces en voie de disparition, LO 2007, c 6</i> | 15 |
| Preamble | 15 |
| Section 1..... | 15 |
| Section 9..... | 16 |
| Section 10..... | 17 |
| Section 11..... | 17 |
| Section 17..... | 20 |
| Section 18..... | 23 |
| Section 36..... | 25 |
| Section 50..... | 26 |
| Section 55..... | 26 |
| Section 57..... | 28 |
| <i>Judicial Review Procedure Act, RSO 1990, c J.1</i> | 30 |
| Section 2..... | 30 |
| <i>Ontario Water Resources Act, RSO 1990, c O.40</i> | 30 |

| | |
|--|-----------|
| Section 0.1..... | 30 |
| Lakes and Rivers Improvement Act, RSO 1990, c L.3..... | 31 |
| Section 2..... | 31 |
| Aggregate Resources Act, RSO 1990, c A.8 | 31 |
| Section 2..... | 31 |
| Mining Act, RSO 1990, c M.14..... | 32 |
| Section 2..... | 32 |
| Crown Forest Sustainability Act 1994 SO 1994, c 25 | 32 |
| Section 1..... | 32 |
| O Reg 230/08 (Endangered Species Act, 2007)..... | 33 |
| Section 1..... | 33 |
| Section 2..... | 33 |
| Section 3..... | 33 |
| Section 4..... | 33 |
| Section 5..... | 33 |
| Section 6..... | 33 |
| Schedule 2 - Endangered Species | 34 |
| Schedule 3 - Threatened Species | 37 |
| Securities Act, RSO 1990, c S 5..... | 39 |
| Subsections 2.2(3), (9) and (16)..... | 39 |
| Occupational Health and Safety Act, RSO 1990, c O 1..... | 40 |
| Section 22.4..... | 40 |
| Fire Protection and Prevention Act, 1997, SO 1997, c 4 | 41 |
| Subsections 2(8) and (9) | 41 |
| Quality of Care Information Protection Act, 2004, SO 2004, c 3, Schedule B..... | 41 |
| Sections 9 and 10 | 41 |
| O Reg 176/13 (Endangered Species Act, 2007) - see Moving Parties' Motion Record | |
| Vol 1, Tab 5, p 83 | |

SCHEDULE B

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Endangered Species Act, 2007, SO 2007, c 6

Preamble

Biological diversity is among the great treasures of our planet. It has ecological, social, economic, cultural and intrinsic value. Biological diversity makes many essential contributions to human life, including foods, clothing and medicines, and is an important part of sustainable social and economic development.

Unfortunately, throughout the world, species of animals, plants and other organisms are being lost forever at an alarming rate. The loss of these species is most often due to human activities, especially activities that damage the habitats of these species. Global action is required.

The United Nations Convention on Biological Diversity takes note of the precautionary principle, which, as described in the Convention, states that, where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

In Ontario, our native species are a vital component of our precious natural heritage. The people of Ontario wish to do their part in protecting species that are at risk, with appropriate regard to social, economic and cultural considerations. The present generation of Ontarians should protect species at risk for future generations.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Purposes

1. The purposes of this Act are:

1. To identify species at risk based on the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge.
2. To protect species that are at risk and their habitats, and to promote the recovery of species that are at risk.
3. To promote stewardship activities to assist in the protection and recovery of species that are at risk. 2007, c. 6, s. 1.

...

Prohibition on killing, etc.

9. (1) No person shall,

- (a) kill, harm, harass, capture or take a living member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;
- (b) possess, transport, collect, buy, sell, lease, trade or offer to buy, sell, lease or trade,
 - (i) a living or dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species,
 - (ii) any part of a living or dead member of a species referred to in subclause (i),
 - (iii) anything derived from a living or dead member of a species referred to in subclause (i); or
- (c) sell, lease, trade or offer to sell, lease or trade anything that the person represents to be a thing described in subclause (b) (i), (ii) or (iii). 2007, c. 6, s. 9 (1).

Possession, etc., of species originating outside Ontario

(2) Clause (1) (b) does not apply to a member of a species that originated outside Ontario if it was lawfully killed, captured or taken in the jurisdiction from which it originated. 2007, c. 6, s. 9 (2).

Specified geographic area

(3) If the Species at Risk in Ontario List specifies a geographic area that a classification of a species applies to, subsection (1) only applies to that species in that area. 2007, c. 6, s. 9 (3).

Possession by Crown

(4) Clause (1) (b) does not apply to possession by the Crown. 2007, c. 6, s. 9 (4).

Transfer for certain purposes

(5) If the Crown is in possession of anything referred to in clause (1) (b), the Minister may transfer it to another person or body and authorize the person or body to possess it, despite clause (1) (b), for,

- (a) scientific or educational purposes; or
- (b) traditional cultural, religious or ceremonial purposes. 2007, c. 6, s. 9 (5).

Interpretation

(6) A reference in this section to a member of a species,

- (a) includes a reference to a member of the species at any stage of its development;
- (b) includes a reference to a gamete or asexual propagule of the species; and
- (c) includes a reference to the member of the species, whether or not it originated in Ontario. 2007, c. 6, s. 9 (6).

Prohibition on damage to habitat, etc.

10. (1) No person shall damage or destroy the habitat of,

- (a) a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species; or
- (b) a species that is listed on the Species at Risk in Ontario List as an extirpated species, if the species is prescribed by the regulations for the purpose of this clause. 2007, c. 6, s. 10 (1).

Specified geographic area

(2) If the Species at Risk in Ontario List specifies a geographic area that a classification of a species applies to, subsection (1) only applies to that species in that area. 2007, c. 6, s. 10 (2).

Transition

(3) Clause (1) (a) does not apply to a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species under clause 7 (7) (c) or (d) until the earlier of the following dates:

- 1. The date that a regulation made under clause 55 (1) (a) that applies to the species comes into force.
- 2. The fifth anniversary of the day section 7 comes into force. 2007, c. 6, s. 10 (3).

Recovery strategies

11. (1) The Minister shall ensure that a strategy is prepared for the recovery of each species that is listed on the Species at Risk in Ontario List as an endangered or threatened species. 2007, c. 6, s. 11 (1).

Contents

(2) A strategy prepared for a species under subsection (1) shall include the following:

- 1. An identification of the habitat needs of the species.
- 2. A description of the threats to the survival and recovery of the species.
- 3. Recommendations to the Minister and other persons on,
 - i. objectives for the protection and recovery of the species,
 - ii. approaches to achieve the objectives recommended under subparagraph i, and
 - iii. the area that should be considered in developing a regulation under clause 55 (1) (a) that prescribes an area as the habitat of the species.

4. Such other information as is prescribed by the regulations. 2007, c. 6, s. 11 (2).

Precautionary principle

(3) In preparing a strategy under subsection (1), the persons who are preparing the strategy shall consider the principle that, where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat. 2007, c. 6, s. 11 (3).

Time limit

(4) The Minister shall ensure that a strategy prepared under subsection (1) is made available to the public under section 51 not later than,

- (a) the first anniversary of the date the species is listed on the Species at Risk in Ontario List as an endangered species;
- (b) the second anniversary of the date the species is listed on the Species at Risk in Ontario List as a threatened species; or
- (c) despite clauses (a) and (b), the fifth anniversary of the date section 7 comes into force, if the species is listed on the Species at Risk in Ontario List as an endangered or threatened species under clause 7 (7) (a), (c) or (d). 2007, c. 6, s. 11 (4).

Same

(5) Subsection (4) does not apply to a strategy if, before the time limit set out in subsection (4) expires, the Minister publishes a notice on the environmental registry established under the *Environmental Bill of Rights, 1993* that,

- (a) states that the Minister is of the opinion that additional time is required to prepare the strategy because of,
 - (i) the complexity of the issues,
 - (ii) the desire to prepare the strategy in co-operation with one or more other jurisdictions, or
 - (iii) the desire to give priority to the preparation of recovery strategies for other species;
- (b) sets out the Minister's reasons for the opinion referred to in clause (a); and
- (c) provides an estimate of when the preparation of the strategy will be completed. 2007, c. 6, s. 11 (5).

Same

(6) The Minister shall not publish a notice under subsection (5) in respect of a species if he or she is of the opinion that a delay in the preparation of the strategy will jeopardize the survival or recovery of the species in Ontario. 2007, c. 6, s. 11 (6).

Extirpated species

(7) The Minister shall ensure that a strategy is prepared for the recovery of a species that is listed on the Species at Risk in Ontario List as an extirpated species if the Minister is of the opinion that reintroduction of the species into Ontario is feasible. 2007, c. 6, s. 11 (7).

Response to recovery strategy

(8) Within nine months after a recovery strategy is prepared under this section, the Minister shall publish a statement that summarizes the actions that the Government of Ontario intends to take in response to the recovery strategy and the Government's priorities with respect to taking those actions. 2007, c. 6, s. 11 (8).

Implementation

(9) The Minister shall ensure the implementation of the actions referred to in a statement published under subsection (8) that, in the opinion of the Minister, are feasible and are within the responsibilities of the Minister. 2007, c. 6, s. 11 (9).

Priorities

(10) If statements have been published under subsection (8) in respect of more than one species, subsection (9) is subject to the right of the Minister to determine the relative priority to be given to the implementation of actions referred to in those statements. 2007, c. 6, s. 11 (10).

Five-year review of progress

(11) Not later than five years after a statement is published under subsection (8), the Minister shall ensure that a review is conducted of progress towards the protection and recovery of the species. 2007, c. 6, s. 11 (11).

Feasibility

(12) The Minister may consider social and economic factors in reaching his or her opinion on whether something is feasible for the purpose of subsection (7) or (9). 2007, c. 6, s. 11 (12).

...

Permits

17. (1) The Minister may issue a permit to a person that, with respect to a species specified in the permit that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, authorizes the person to engage in an activity specified in the permit that would otherwise be prohibited by section 9 or 10. 2007, c. 6, s. 17 (1).

Limitation

(2) The Minister may issue a permit under this section only if,

- (a) the Minister is of the opinion that the activity authorized by the permit is necessary for the protection of human health or safety;
- (b) the Minister is of the opinion that the main purpose of the activity authorized by the permit is to assist, and that the activity will assist, in the protection or recovery of the species specified in the permit;
- (c) the Minister is of the opinion that the main purpose of the activity authorized by the permit is not to assist in the protection or recovery of the species specified in the permit, but,
 - (i) the Minister is of the opinion that an overall benefit to the species will be achieved within a reasonable time through requirements imposed by conditions of the permit,
 - (ii) the Minister is of the opinion that reasonable alternatives have been considered, including alternatives that would not adversely affect the species, and the best alternative has been adopted, and
 - (iii) the Minister is of the opinion that reasonable steps to minimize adverse effects on individual members of the species are required by conditions of the permit;
or
- (d) the Minister is of the opinion that the main purpose of the activity authorized by the permit is not to assist in the protection or recovery of the species specified in the permit, but,
 - (i) the Minister is of the opinion that the activity will result in a significant social or economic benefit to Ontario,
 - (ii) the Minister has consulted with a person who is considered by the Minister to be an expert on the possible effects of the activity on the species and to be independent of the person who would be authorized by the permit to engage in the activity,
 - (iii) the person consulted under subclause (ii) has submitted a written report to the Minister on the possible effects of the activity on the species, including the person's opinion on whether the activity will jeopardize the survival or recovery of the species in Ontario,
 - (iv) the Minister is of the opinion that the activity will not jeopardize the survival or recovery of the species in Ontario,
 - (v) the Minister is of the opinion that reasonable alternatives have been considered, including alternatives that would not adversely affect the species, and the best alternative has been adopted,

- (vi) the Minister is of the opinion that reasonable steps to minimize adverse effects on individual members of the species are required by conditions of the permit, and
- (vii) the Lieutenant Governor in Council has approved the issuance of the permit. 2007, c. 6, s. 17 (2).

Response to recovery strategy

(3) Before issuing a permit under this section, the Minister shall consider any statement that has been published under subsection 11 (8) with respect to a recovery strategy for the species specified in the permit. 2007, c. 6, s. 17 (3).

Conditions

(4) A permit issued under this section may contain such conditions as the Minister considers appropriate. 2007, c. 6, s. 17 (4).

Same

- (5) Without limiting the generality of subsection (4), conditions in a permit may,
- (a) limit the time during which the permit applies;
 - (b) limit the circumstances in which the permit applies;
 - (c) require the holder of the permit to take steps specified in the permit, and require that steps be taken before engaging in the activity authorized by the permit;
 - (d) require the holder of the permit to furnish security in an amount sufficient to ensure compliance with the permit;
 - (e) require the holder of the permit to ensure that the activity authorized by the permit, and the effects of the activity, are monitored in accordance with the permit;
 - (f) require the holder of the permit to rehabilitate habitat damaged or destroyed by the activity authorized by the permit, or to enhance another area so that it could become habitat suitable for the species specified in the permit; or
 - (g) require the holder of the permit to submit reports to the Minister. 2007, c. 6, s. 17 (5).

Compliance

(6) An authorization described in subsection (1) does not apply unless the holder of the permit complies with any requirements imposed by the permit. 2007, c. 6, s. 17 (6).

Amendment or revocation

- (7) The Minister may,
- (a) with the consent of the holder of a permit issued under this section,

(i) amend the permit, if the permit was issued under clause (2) (a), (b) or (c) and the Minister is of the opinion that he or she would be authorized under the same clause to issue the permit in its amended form,

(ii) amend the permit, if,

(A) the permit was issued under clause (2) (d),

(B) the Minister has consulted with a person who is considered by the Minister to be an expert on the possible effects of the amendment on the species specified in the permit and to be independent of the person who would be authorized by the permit in its amended form to engage in an activity,

(C) the Lieutenant Governor in Council has approved the amendment, and

(D) the Minister is of the opinion that he or she would be authorized under clause (2) (d) to issue the permit in its amended form, or

(iii) revoke the permit; or

(b) without the consent of the holder of the permit issued under this section, but subject to section 20, amend or revoke the permit, if,

(i) the Minister is of the opinion that the revocation or amendment,

(A) is necessary to prevent jeopardizing the survival or recovery, in Ontario, of the species specified in the permit, or

(B) is necessary for the protection of human health or safety, and

(ii) the Lieutenant Governor in Council has approved the revocation or amendment, in the case of a permit that was issued with the approval of the Lieutenant Governor in Council. 2007, c. 6, s. 17 (7).

Delegation

(8) In addition to any authority under any Act to delegate powers to persons employed in the Ministry, the Minister may, in the circumstances prescribed by the regulations, delegate his or her powers under this section to a person or body prescribed by the regulations, subject to any limitations prescribed by the regulations. 2007, c. 6, s. 17 (8).

Instruments under other Acts

Minister's instruments

18. (1) An instrument authorizing a person to engage in an activity has the same effect as a permit issued under section 17 if,

(a) the instrument was entered into, issued, made or approved by the Minister;

- (b) the instrument was entered into, issued, made or approved under a provision of an Act of Ontario or Canada or a provision of a regulation made under an Act of Ontario or Canada;
- (c) the instrument affects a species specified in the instrument that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;
- (d) before entering into, issuing, making or approving the instrument, the Minister considered any statement that had been published under subsection 11 (8) with respect to a recovery strategy for the species specified in the instrument; and
- (e) at the time the instrument was entered into, issued, made or approved,
 - (i) the Minister was of the opinion that the activity authorized by the instrument was necessary for the protection of human health or safety,
 - (ii) the Minister was of the opinion that the main purpose of the activity authorized by the instrument was to assist, and that the activity would assist, in the protection or recovery of the species specified in the instrument, or
 - (iii) the Minister was of the opinion that the main purpose of the activity authorized by the instrument was not to assist in the protection or recovery of the species specified in the instrument, but,
 - (A) the Minister was of the opinion that an overall benefit to the species would be achieved within a reasonable time through requirements imposed by the instrument,
 - (B) the Minister was of the opinion that reasonable alternatives had been considered, including alternatives that would not adversely affect the species, and the best alternative was adopted, and
 - (C) the Minister was of the opinion that reasonable steps to minimize adverse effects on individual members of the species were required by the instrument. 2007, c. 6, s. 18 (1).

Prescribed instruments

(2) An instrument authorizing a person to engage in an activity has the same effect as a permit issued under section 17 if,

- (a) the instrument was entered into, issued, made or approved under a provision of an Act of Ontario or Canada or a provision of a regulation made under an Act of Ontario or Canada;
- (b) the provision referred to in clause (a) is prescribed by the regulations;
- (c) the Minister has entered into an agreement with the authorizing official that, for the purpose of this subsection, applies to the entering into, issuance, making or approval of instruments under the provision referred to in clause (a);

- (d) the instrument affects a species specified in the instrument that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;
- (e) before entering into, issuing, making or approving the instrument, the authorizing official considered any statement that had been published under subsection 11 (8) with respect to a recovery strategy for the species specified in the instrument; and
- (f) at the time the instrument was entered into, issued, made or approved,
 - (i) the authorizing official was of the opinion that the activity authorized by the instrument was necessary for the protection of human health or safety,
 - (ii) the authorizing official was of the opinion that the main purpose of the activity authorized by the instrument was to assist, and that the activity would assist, in the protection or recovery of the species specified in the instrument, or
 - (iii) the authorizing official was of the opinion that the main purpose of the activity authorized by the instrument was not to assist in the protection or recovery of the species specified in the instrument, but,
 - (A) the authorizing official was of the opinion that an overall benefit to the species would be achieved within a reasonable time through requirements imposed by the instrument,
 - (B) the authorizing official was of the opinion that reasonable alternatives had been considered, including alternatives that would not adversely affect the species, and the best alternative was adopted, and
 - (C) the authorizing official was of the opinion that reasonable steps to minimize adverse effects on individual members of the species were required by the instrument. 2007, c. 6, s. 18 (2).

Application of subs. (2)

- (3) Subsection (2) applies only if the instrument was entered into, issued, made or approved,
- (a) after the regulation referred to in clause (2) (b) came into force; and
 - (b) during a period when the agreement referred to in clause (2) (c) was in effect. 2007, c. 6, s. 18 (3).

Compliance

(4) Subsections (1) and (2) do not apply to an instrument unless the person seeking to rely on the instrument has complied with any requirements imposed by the instrument. 2007, c. 6, s. 18 (4).

Definitions

(5) In this section,

“authorizing official” means,

- (a) with respect to an agreement that authorizes a person to engage in an activity, any federal, provincial or municipal official who entered into the agreement, or

(b) with respect to any other instrument, the person who issued, made or approved the instrument; (“agent autorisateur”)

“instrument” means an agreement, permit, licence, order, approved plan or other similar document. (“acte”) 2007, c. 6, s. 18 (5).

Offences

36. (1) A person is guilty of an offence if the person contravenes any of the following provisions:

1. Subsection 9 (1), 10 (1), 24 (2) or 26 (5), section 35, or subsection 49 (1) or (2).
2. Any provision of an agreement entered into under section 16 or 19, if the agreement authorizes a person to engage in an activity that would otherwise be prohibited by section 9 or 10.
3. Any provision of a permit issued under section 17 or 19.
4. Any provision of an order made under section 27, 28 or 41. 2007, c. 6, s. 36 (1).

...

Fees

50. (1) The Minister may establish and charge,

(a) fees related to entering into agreements or issuing permits under this Act; and

(b) fees for the use of facilities, equipment, services or other things provided by the Ministry relating to species listed on the Species at Risk in Ontario List. 2007, c. 6, s. 50 (1).

Refund

(2) The Minister may direct the refund of all or part of a fee if, in the Minister’s opinion, it is equitable to do so. 2007, c. 6, s. 50 (2).

Payment required

(3) A person shall pay any fees charged by the Minister under this Act. 2007, c. 6, s. 50 (3).

Regulations

55. (1) Subject to subsection (2) and section 57, the Lieutenant Governor in Council may make regulations,

- (a) prescribing, for the purpose of clause (a) of the definition of “habitat” in subsection 2 (1), an area as the habitat of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;
- (b) prescribing exemptions from subsection 9 (1) or 10 (1), subject to any conditions or restrictions prescribed by the regulations;
- (c) providing that subsection 11 (1) or (7) has no application to a species, if subsections 9 (1) and 10 (1) have no application to the species;
- (d) governing the preparation of recovery strategies under section 11 and management plans under section 12;
- (e) prescribing or respecting any matter that this Act refers to as a matter prescribed by the regulations or as otherwise dealt with by the regulations, other than regulations that are required by section 7. 2007, c. 6, s. 55 (1).

Consideration of recovery strategy

(2) Before a regulation is made under clause (1) (a) prescribing an area as the habitat of a species, the Minister shall consider any recovery strategy that has been prepared for the species under section 11 and any statement that has been published under subsection 11 (8) with respect to the recovery strategy. 2007, c. 6, s. 55 (2).

Description of habitat

(3) Without limiting the generality of clause (1) (a), a regulation under that clause prescribing an area as the habitat of a species,

- (a) may describe the area by,
 - (i) describing specific boundaries for the area,
 - (ii) describing features of the area, or
 - (iii) describing the area in any other manner;
- (b) may prescribe areas where the species lives, used to live or is believed to be capable of living; and
- (c) may prescribe an area that is larger or smaller than the area described by clause (b) of the definition of “habitat” in subsection 2 (1). 2007, c. 6, s. 55 (3).

Conditions and restrictions on exemptions

(4) Without limiting the generality of clause (1) (b), a regulation under that clause may, as a condition or restriction on an exemption, provide that the exemption only applies to a person if the person complies with an agreement entered into between the person and the Minister. 2007, c. 6, s. 55 (4).

...

Special requirements for certain regulations

57. (1) If a proposal for a regulation under subsection 55 (1) is under consideration in the Ministry, the proposed regulation would apply to a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, and either or both of the following criteria apply, the Minister shall consult with a person who is considered by the Minister to be an expert on the possible effects of the proposed regulation on the species:

1. In the case of any proposed regulation under subsection 55 (1), the Minister is of the opinion that the regulation is likely to jeopardize the survival of the species in Ontario or to have any other significant adverse effect on the species.
2. In the case of a proposed regulation under clause 55 (1) (a), the Minister is of the opinion that the regulation is likely to result in a significant reduction in the number of members of the species that live in the wild in Ontario. 2007, c. 6, s. 57 (1).

Limitation

(2) If the Minister is required by subsection (1) to consult with a person who is considered by the Minister to be an expert on the possible effects of a proposed regulation on a species, the Minister shall not recommend the regulation to the Lieutenant Governor in Council, and the Lieutenant Governor in Council shall not make the regulation, unless,

- (a) the Minister is of the opinion that the regulation will not result in the species no longer living in the wild in Ontario;
- (b) the person consulted by the Minister under subsection (1) submitted a written report to the Minister on the possible effects of the proposed regulation on the species and the report included the person's opinion on,
 - (i) in the case of any proposed regulation under subsection 55 (1), whether the regulation will jeopardize the survival of the species in Ontario or have any other significant adverse effect on the species, and, if so, whether the regulation will result in the species no longer living in the wild in Ontario, and
 - (ii) in the case of a proposed regulation under clause 55 (1) (a), whether the regulation will result in a significant reduction in the number of members of the species that live in the wild in Ontario;
- (c) the Minister considered alternatives to the proposal for a regulation, including,
 - (i) entering into one or more agreements under section 16 or issuing one or more permits under section 17, or
 - (ii) making a different regulation;

- (d) the Minister gave notice of the proposal for a regulation to the public under section 16 of the *Environmental Bill of Rights, 1993* at least two months before the day the regulation is made; and
- (e) the notice given under clause (d),
 - (i) in the case of any proposed regulation under subsection 55 (1),
 - (A) set out the Minister’s opinion on whether the regulation will jeopardize the survival of the species in Ontario or have any other significant adverse effect on the species, and
 - (B) stated that the Minister is of the opinion that the regulation will not result in the species no longer living in the wild in Ontario,
 - (ii) in the case of a proposed regulation under clause 55 (1) (a), set out the Minister’s opinion on whether the regulation will result in a significant reduction in the number of members of the species that live in the wild in Ontario,
 - (iii) gave the Minister’s reasons for the opinions referred to in subclauses (i) and (ii),
 - (iv) set out a copy of the report referred to in clause (b),
 - (v) set out alternatives to the proposal for a regulation that the Minister considered under clause (c),
 - (vi) set out the reasons for making the proposed regulation, including any significant social or economic benefit to Ontario, and
 - (vii) set out steps that could be taken to minimize any adverse effects of the proposed regulation on individual members of the species. 2007, c. 6, s. 57 (2).

Fundamental changes in a proposal

(3) For the purposes of subsection (1), the question of whether a proposal has been so fundamentally altered as to become a new proposal is in the sole discretion of the Minister. 2007, c. 6, s. 57 (3).

Interpretation

(4) In this section, “proposal for a regulation” has the same meaning as in the *Environmental Bill of Rights, 1993*. 2007, c. 6, s. 57 (4)

Préambule

La diversité biologique fait partie des grands trésors de notre planète. Elle a une valeur écologique, sociale, économique, culturelle et intrinsèque. Elle apporte une contribution essentielle et multiple à la vie humaine, notamment l'alimentation, les vêtements et les médicaments, et elle constitue un aspect important du développement social et économique durable.

Malheureusement, partout dans le monde, des espèces d'animaux, de végétaux et d'autres organismes disparaissent à jamais à un taux alarmant, le plus souvent à cause d'activités humaines, surtout celles qui endommagent l'habitat de ces espèces. Des mesures à l'échelle mondiale s'imposent donc.

La Convention des Nations Unies sur la diversité biologique prend acte du principe de précaution, qui, comme l'indique la Convention, veut que lorsqu'il existe une menace de réduction sensible ou de perte de la diversité biologique, l'absence de certitudes scientifiques totales ne doit pas être invoquée comme raison pour différer les mesures qui permettraient d'éviter le danger ou d'en atténuer les effets.

En Ontario, les espèces indigènes constituent un élément crucial de notre précieux patrimoine naturel. La population de l'Ontario désire faire sa part pour protéger les espèces qui sont en péril en tenant dûment compte des considérations sociales, économiques et culturelles. Les Ontariens et Ontariennes d'aujourd'hui devraient protéger ces espèces pour les générations à venir.

Pour ces motifs, Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

...

Objets

1. Les objets de la présente loi sont les suivants :

1. Identifier les espèces en péril en se fondant sur la meilleure information scientifique accessible, notamment l'information tirée des connaissances des collectivités et des connaissances traditionnelles des peuples autochtones.
2. Protéger les espèces qui sont en péril et leurs habitats et promouvoir le rétablissement de ces espèces.
3. Promouvoir des activités d'intendance pour aider à la protection et au rétablissement des espèces qui sont en péril. 2007, chap. 6, art. 1.

Interdiction de tuer et d'accomplir d'autres actes

9. (1) Nul ne doit, selon le cas :

a) tuer, harceler, capturer ou prendre un membre vivant d'une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, en voie de disparition ou menacée, ni lui nuire;

b) posséder, transporter, collectionner, acheter, vendre, louer ou échanger, ou offrir de vendre, d'acheter, de louer ou d'échanger, selon le cas :

(i) un membre, vivant ou mort, d'une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, en voie de disparition ou menacée,

(ii) toute partie d'un membre, vivant ou mort, d'une espèce visée au sous-alinéa (i),

(iii) quoi que ce soit qui est dérivé d'un membre, vivant ou mort, d'une espèce visée au sous-alinéa (i);

c) vendre, louer ou échanger, ou offrir de vendre, de louer ou d'échanger quoi que ce soit que la personne présente comme une chose mentionnée au sous-alinéa b) (i), (ii) ou (iii).
2007, chap. 6, par. 9 (1).

Possession, etc., d'espèces provenant de l'extérieur de l'Ontario

(2) L'alinéa (1) b) ne s'applique pas au membre d'une espèce qui provient de l'extérieur de l'Ontario s'il a été tué, capturé ou pris légalement sur le territoire de l'autorité législative d'où il provient. 2007, chap. 6, par. 9 (2).

Zone géographique précisée

(3) Si la Liste des espèces en péril en Ontario précise une zone géographique à laquelle s'applique le classement d'une espèce, le paragraphe (1) ne s'applique à cette espèce que dans cette zone. 2007, chap. 6, par. 9 (3).

Possession par la Couronne

(4) L'alinéa (1) b) ne s'applique pas à la possession par la Couronne. 2007, chap. 6, par. 9 (4).

Transfert à certaines fins

(5) Si la Couronne est en possession de quoi que ce soit qui est visé à l'alinéa (1) b), le ministre peut le transférer à une autre personne ou à un organisme et l'autoriser à en avoir la possession, malgré l'alinéa (1) b) :

a) soit à des fins scientifiques ou éducatives;

b) soit à des fins culturelles, religieuses ou cérémonielles traditionnelles. 2007, chap. 6, par. 9 (5).

Interprétation

(6) La mention au présent article d'un membre d'une espèce vaut mention à la fois :

- a) d'un membre de l'espèce à tout stade de son développement;
- b) d'un gamète ou d'une propagule asexuée de l'espèce;
- c) du membre de l'espèce, qu'il provienne ou non de l'Ontario. 2007, chap. 6, par. 9 (6).

Interdiction d'endommager l'habitat

10. (1) Nul ne doit endommager ou détruire l'habitat, selon le cas :

- a) d'une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce en voie de disparition ou menacée;
- b) d'une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, si elle est prescrite par les règlements pour l'application du présent alinéa. 2007, chap. 6, par. 10 (1).

Zone géographique précisée

(2) Si la Liste des espèces en péril en Ontario précise une zone géographique à laquelle s'applique le classement d'une espèce, le paragraphe (1) ne s'applique à cette espèce que dans cette zone. 2007, chap. 6, par. 10 (2).

Disposition transitoire

(3) L'alinéa (1) a) ne s'applique à une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce en voie de disparition ou menacée en application de l'alinéa 7 (7) c) ou d) qu'à compter du premier en date des jours suivants :

1. La date de l'entrée en vigueur d'un règlement pris en application de l'alinéa 55 (1) a) qui s'applique à l'espèce.
2. Le cinquième anniversaire du jour de l'entrée en vigueur de l'article 7. 2007, chap. 6, par. 10 (3).

Programmes de rétablissement

11. (1) Le ministre veille à ce que soit élaboré un programme de rétablissement de chaque espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce en voie de disparition ou menacée. 2007, chap. 6, par. 11 (1).

Contenu

(2) Le programme élaboré à l'égard d'une espèce en application du paragraphe (1) comprend ce qui suit :

1. Une désignation des besoins de l'espèce en matière d'habitat.
2. Une description des menaces à la survie et au rétablissement de l'espèce.
3. Des recommandations au ministre et à d'autres personnes sur ce qui suit :
 - i. des objectifs à atteindre en vue de la protection et du rétablissement de l'espèce,
 - ii. des approches à adopter pour atteindre les objectifs recommandés en application de la sous-disposition i,
 - iii. l'aire qui devrait être prise en considération lors de l'élaboration d'un règlement prévu à l'alinéa 55 (1) a) qui prescrit une aire comme étant l'habitat de l'espèce.
4. Les autres renseignements que prescrivent les règlements. 2007, chap. 6, par. 11 (2).

Principe de précaution

(3) Lors de l'élaboration d'un programme en application du paragraphe (1), les personnes qui l'élaborent doivent prendre en considération le principe voulant que lorsqu'il existe une menace de réduction sensible ou de perte de la diversité biologique, l'absence de certitudes scientifiques totales ne doit pas être invoquée comme raison pour différer les mesures qui permettraient d'éviter le danger ou d'en atténuer les effets. 2007, chap. 6, par. 11 (3).

Délai

(4) Le ministre veille à ce que le programme élaboré en application du paragraphe (1) soit mis à la disposition du public en application de l'article 51 :

- a) soit au plus tard au premier anniversaire de la date à laquelle l'espèce a été inscrite sur la Liste des espèces en péril en Ontario comme espèce en voie de disparition;
- b) soit au plus tard au deuxième anniversaire de la date à laquelle l'espèce a été inscrite sur la Liste des espèces en péril en Ontario comme espèce menacée;
- c) soit, malgré les alinéas a) et b), au plus tard au cinquième anniversaire de la date de l'entrée en vigueur de l'article 7, si l'espèce est inscrite sur la Liste des espèces en péril en Ontario comme espèce en voie de disparition ou menacée en application de l'alinéa 7 (7) a), c) ou d). 2007, chap. 6, par. 11 (4).

Idem

(5) Le paragraphe (4) ne s'applique pas à un programme si, avant l'expiration du délai énoncé à ce paragraphe, le ministre publie, dans le registre environnemental établi en application de la *Charte des droits environnementaux de 1993*, un avis qui, à la fois :

- a) indique que le ministre est d'avis qu'un délai plus long est nécessaire pour élaborer le programme en raison :
 - (i) soit de la complexité des questions à traiter,

(ii) soit du désir d'élaborer le programme en collaboration avec une ou plusieurs autres autorités législatives,

(iii) soit du désir de donner la priorité à l'élaboration de programmes de rétablissement pour d'autres espèces;

b) expose les motifs du ministre à l'appui de l'opinion visée à l'alinéa a);

c) indique la date approximative à laquelle l'élaboration du programme sera achevée. 2007, chap. 6, par. 11 (5).

Idem

(6) Le ministre ne doit pas publier un avis en application du paragraphe (5) à l'égard d'une espèce s'il est d'avis qu'un retard dans l'élaboration du programme mettra en danger la survie ou le rétablissement de l'espèce en Ontario. 2007, chap. 6, par. 11 (6).

Espèces disparues de l'Ontario

(7) Le ministre veille à ce que soit élaboré un programme pour le rétablissement d'une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario s'il est d'avis que sa réintroduction en Ontario est réalisable. 2007, chap. 6, par. 11 (7).

Réponse au programme de rétablissement

(8) Dans les neuf mois suivant l'élaboration d'un programme de rétablissement en application du présent article, le ministre publie une déclaration qui résume les mesures que le gouvernement de l'Ontario entend prendre en réponse au programme et ses priorités en ce qui concerne la prise de ces mesures. 2007, chap. 6, par. 11 (8).

Mise en oeuvre des mesures

(9) Le ministre veille à ce que soient mises en oeuvre les mesures visées dans une déclaration publiée en application du paragraphe (8) qui, à son avis, sont réalisables et entrent dans le cadre de ses responsabilités. 2007, chap. 6, par. 11 (9).

Priorités

(10) Si des déclarations ont été publiées en application du paragraphe (8) à l'égard de plus d'une espèce, le paragraphe (9) est assujéti au droit du ministre de fixer la priorité relative à donner à la mise en oeuvre des mesures visées dans ces déclarations. 2007, chap. 6, par. 11 (10).

Examen quinquennal des progrès accomplis

(11) Au plus tard cinq ans après qu'une déclaration est publiée en application du paragraphe (8), le ministre veille à ce que soit effectué un examen des progrès accomplis en matière de protection et de rétablissement de l'espèce. 2007, chap. 6, par. 11 (11).

Caractère réalisable

(12) Le ministre peut prendre en considération des facteurs sociaux et économiques lorsqu'il se forme une opinion sur la question de savoir si quelque chose est réalisable pour l'application du paragraphe (7) ou (9). 2007, chap. 6, par. 11 (12).

...

Permis

17. (1) Le ministre peut délivrer à une personne un permis qui, à l'égard d'une espèce qui y est précisée et qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, en voie de disparition ou menacée, l'autorise à exercer une activité qui y est précisée et qu'interdirait par ailleurs l'article 9 ou 10. 2007, chap. 6, par. 17 (1).

Restriction

(2) Le ministre ne peut délivrer un permis en vertu du présent article que si, selon le cas :

- a) il est d'avis que l'activité autorisée par le permis est nécessaire pour protéger la santé ou la sécurité des êtres humains;
- b) il est d'avis que l'objet principal de l'activité autorisée par le permis est d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, et qu'elle y aidera;
- c) il est d'avis que l'objet principal de l'activité autorisée par le permis n'est pas d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, mais que, selon lui, à la fois :
 - (i) les exigences qu'imposent les conditions du permis procureront dans un délai raisonnable un avantage plus que compensatoire pour l'espèce,
 - (ii) des solutions de rechange raisonnables ont été envisagées, y compris celles qui ne nuiraient pas à l'espèce, et la meilleure d'entre elles a été retenue,
 - (iii) les conditions du permis exigent la prise de mesures raisonnables pour réduire au minimum les conséquences préjudiciables pour des membres de l'espèce;
- d) il est d'avis que l'objet principal de l'activité autorisée par le permis n'est pas d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, mais les conditions suivantes sont réunies :
 - (i) il est d'avis que l'activité procurera un important avantage social ou économique à l'Ontario,
 - (ii) il a consulté une personne qu'il tient pour un expert sur les conséquences éventuelles de l'activité pour l'espèce et qu'il considère comme étant indépendante vis-à-vis de la personne que le permis autoriserait à exercer l'activité,

(iii) la personne qu'il a consultée en application du sous-alinéa (ii) lui a présenté un rapport écrit sur les conséquences éventuelles de l'activité pour l'espèce, y compris son avis sur la question de savoir si l'activité mettra en danger la survie ou le rétablissement de l'espèce en Ontario,

(iv) il est d'avis que l'activité ne mettra pas en danger la survie ou le rétablissement de l'espèce en Ontario,

(v) il est d'avis que des solutions de rechange raisonnables ont été envisagées, y compris celles qui ne nuiraient pas à l'espèce, et que la meilleure d'entre elles a été retenue,

(vi) il est d'avis que les conditions du permis exigent la prise de mesures raisonnables pour réduire au minimum les conséquences préjudiciables pour des membres de l'espèce,

(vii) le lieutenant-gouverneur en conseil a approuvé la délivrance du permis. 2007, chap. 6, par. 17 (2).

Réponse au programme de rétablissement

(3) Avant de délivrer un permis en vertu du présent article, le ministre prend en considération toute déclaration qui a été publiée en application du paragraphe 11 (8) à l'égard d'un programme de rétablissement relatif à l'espèce précisée dans le permis. 2007, chap. 6, par. 17 (3).

Conditions

(4) Le permis délivré en vertu du présent article peut être assorti des conditions que le ministre juge appropriées. 2007, chap. 6, par. 17 (4).

Idem

(5) Sans préjudice de la portée générale du paragraphe (4), les conditions dont est assorti le permis peuvent, selon le cas :

- a) limiter la période pendant laquelle s'applique le permis;
- b) limiter les circonstances dans lesquelles s'applique le permis;
- c) exiger que le titulaire du permis prenne les mesures que précise le permis et que des mesures soient prises avant que l'activité qu'autorise le permis ne soit exercée;
- d) exiger que le titulaire du permis fournisse une sûreté dont le montant est suffisant pour garantir la conformité au permis;
- e) exiger que le titulaire du permis veille à ce que l'activité qu'autorise le permis et ses conséquences soient surveillées conformément à celui-ci;

f) exiger que le titulaire du permis remette en état l'habitat endommagé ou détruit par l'activité qu'autorise le permis, ou qu'il améliore une autre aire pour qu'elle puisse devenir un habitat qui convient à l'espèce précisée dans le permis;

g) exiger que le titulaire du permis présente des rapports au ministre. 2007, chap. 6, par. 17 (5).

Conformité

(6) L'autorisation visée au paragraphe (1) ne s'applique que si le titulaire du permis se conforme aux exigences qu'impose son permis. 2007, chap. 6, par. 17 (6).

Modification ou révocation

(7) Le ministre peut :

a) avec le consentement du titulaire d'un permis délivré en vertu du présent article :

(i) modifier le permis s'il a été délivré en vertu de l'alinéa (2) a), b) ou c) et que le ministre est d'avis qu'il serait autorisé, en vertu du même alinéa, à le délivrer sous sa forme modifiée,

(ii) modifier le permis si, à la fois :

(A) le permis a été délivré en vertu de l'alinéa (2) d),

(B) le ministre a consulté une personne qu'il tient pour un expert sur les conséquences éventuelles de la modification pour l'espèce précisée dans le permis et qu'il considère comme étant indépendante vis-à-vis de la personne que le permis, sous sa forme modifiée, autoriserait à exercer une activité,

(C) le lieutenant-gouverneur en conseil a approuvé la modification,

(D) le ministre est d'avis qu'il serait autorisé, en vertu de l'alinéa (2) d), à délivrer le permis sous sa forme modifiée,

(iii) révoquer le permis;

b) sans le consentement du titulaire du permis délivré en vertu du présent article, mais sous réserve de l'article 20, modifier ou révoquer le permis si :

(i) d'une part, le ministre est d'avis que la révocation ou la modification est nécessaire :

(A) soit pour empêcher que soit mis en danger la survie ou le rétablissement, en Ontario, de l'espèce précisée dans le permis,

(B) soit pour protéger la santé ou la sécurité des êtres humains,

(ii) d'autre part, le lieutenant-gouverneur en conseil a approuvé la révocation ou la modification, s'il s'agit d'un permis délivré avec son approbation. 2007, chap. 6, par. 17 (7).

Délégation

(8) Outre les pouvoirs que confère toute loi de déléguer des pouvoirs à des personnes employées dans le ministère, le ministre peut, dans les circonstances prescrites par les règlements, déléguer les pouvoirs que lui confère le présent article à une personne ou à un organisme prescrits par les règlements, sous réserve des restrictions prescrites par ceux-ci. 2007, chap. 6, par. 17 (8).

Actes prévus par d'autres lois

Actes pris par le ministre

18. (1) L'acte qui autorise une personne à exercer une activité a le même effet qu'un permis délivré en vertu de l'article 17 si les conditions suivantes sont réunies :

- a) l'acte a été conclu, délivré, pris ou approuvé par le ministre;
- b) l'acte a été conclu, délivré, pris ou approuvé aux termes d'une disposition d'une loi de l'Ontario ou du Canada ou d'une disposition d'un de leurs règlements d'application;
- c) l'acte touche une espèce qui y est précisée et qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, en voie de disparition ou menacée;
- d) avant de conclure, de délivrer, de prendre ou d'approuver l'acte, le ministre a pris en considération toute déclaration qui avait été publiée en application du paragraphe 11 (8) à l'égard d'un programme de rétablissement relatif à l'espèce précisée dans l'acte;
- e) au moment où l'acte a été conclu, délivré, pris ou approuvé :
 - (i) soit le ministre était d'avis que l'activité autorisée par l'acte était nécessaire pour protéger la santé ou la sécurité des êtres humains,
 - (ii) soit le ministre était d'avis que l'objet principal de l'activité autorisée par l'acte était d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, et qu'elle y aiderait,
 - (iii) soit le ministre était d'avis que l'objet principal de l'activité autorisée par l'acte n'était pas d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, mais que, selon lui, à la fois :
 - (A) les exigences imposées par l'acte procureraient dans un délai raisonnable un avantage plus que compensatoire pour l'espèce,
 - (B) des solutions de rechange raisonnables avaient été envisagées, y compris celles qui ne nuiraient pas à l'espèce, et la meilleure d'entre elles avait été retenue,

(C) l'acte exigeait la prise de mesures raisonnables pour réduire au minimum les conséquences préjudiciables pour des membres de l'espèce. 2007, chap. 6, par. 18 (1).

Actes prescrits

(2) L'acte qui autorise une personne à exercer une activité a le même effet qu'un permis délivré en vertu de l'article 17 si les conditions suivantes sont réunies :

- a) l'acte a été conclu, délivré, pris, donné ou approuvé aux termes d'une disposition d'une loi de l'Ontario ou du Canada ou d'une disposition d'un de leurs règlements d'application;
- b) la disposition visée à l'alinéa a) est prescrite par les règlements;
- c) le ministre a conclu un accord avec l'agent autorisateur qui, pour l'application du présent paragraphe, s'applique à la conclusion, à la délivrance, à la prise ou à l'approbation d'actes, ou au fait de les donner, aux termes de la disposition visée à l'alinéa a);
- d) l'acte touche une espèce qui y est précisée et qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, en voie de disparition ou menacée;
- e) avant de conclure, de délivrer, de prendre, de donner ou d'approuver l'acte, l'agent autorisateur a pris en considération toute déclaration qui avait été publiée en application du paragraphe 11 (8) à l'égard d'un programme de rétablissement relatif à l'espèce précisée dans l'acte;
- f) au moment où l'acte a été conclu, délivré, pris, donné ou approuvé :
 - (i) soit l'agent autorisateur était d'avis que l'activité autorisée par l'acte était nécessaire pour protéger la santé ou la sécurité des êtres humains,
 - (ii) soit l'agent autorisateur était d'avis que l'objet principal de l'activité autorisée par l'acte était d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, et qu'elle y aiderait,
 - (iii) soit l'agent autorisateur était d'avis que l'objet principal de l'activité autorisée par l'acte n'était pas d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, mais que, selon lui, à la fois :
 - (A) les exigences imposées par l'acte procureraient dans un délai raisonnable un avantage plus que compensatoire pour l'espèce,
 - (B) des solutions de rechange raisonnables avaient été envisagées, y compris celles qui ne nuiraient pas à l'espèce, et la meilleure d'entre elles avait été retenue,

(C) l'acte exigeait la prise de mesures raisonnables pour réduire au minimum les conséquences préjudiciables pour des membres de l'espèce. 2007, chap. 6, par. 18 (2).

Application du par. (2)

(3) Le paragraphe (2) ne s'applique que si l'acte a été conclu, délivré, pris, donné ou approuvé :

- a) d'une part, après l'entrée en vigueur du règlement visé à l'alinéa (2) b);
- b) d'autre part, pendant la période d'effet de l'accord visé à l'alinéa (2) c). 2007, chap. 6, par. 18 (3).

Conformité

(4) Les paragraphes (1) et (2) ne s'appliquent à un acte que si la personne qui cherche à se fonder sur l'acte s'est conformée aux exigences imposées par celui-ci. 2007, chap. 6, par. 18 (4).

Définitions

(5) Les définitions qui suivent s'appliquent au présent article.

«acte» Accord, permis, licence, arrêté, décret, ordre, plan approuvé ou autre document semblable. («instrument»)

«agent autorisateur» S'entend de l'une ou l'autre des personnes suivantes :

- a) en ce qui concerne un accord qui autorise une personne à exercer une activité, tout agent fédéral, provincial ou municipal qui a conclu l'accord;
- b) en ce qui concerne tout autre acte, la personne qui l'a délivré, pris, donné ou approuvé. («authorizing official») 2007, chap. 6, par. 18 (5).

...

Infractions

36. (1) Est coupable d'une infraction quiconque contrevient à l'une ou l'autre des dispositions suivantes :

1. Le paragraphe 9 (1), 10 (1), 24 (2) ou 26 (5), l'article 35 ou le paragraphe 49 (1) ou (2).
2. Toute disposition d'un accord conclu en vertu de l'article 16 ou 19, si l'accord autorise une personne à exercer une activité qu'interdirait par ailleurs l'article 9 ou 10.
3. Une disposition d'un permis délivré en vertu de l'article 17 ou 19.
4. Toute disposition d'un ordre donné en vertu de l'article 27, d'un arrêté pris en vertu de l'article 28 ou d'une ordonnance rendue en vertu de l'article 41. 2007, chap. 6, par. 36 (1).

Tentatives

(2) Quiconque tente de faire quoi que ce soit qui constituerait une infraction aux termes de la présente loi est coupable de cette infraction. 2007, chap. 6, par. 36 (2).

...

Droits

50. (1) Le ministre peut fixer et exiger :

a) des droits relatifs à la conclusion d'accords ou à la délivrance de permis en vertu de la présente loi;

b) des droits pour l'utilisation d'installations, de matériel, de services ou d'autres choses que fournit le ministère relativement aux espèces inscrites sur la Liste des espèces en péril en Ontario. 2007, chap. 6, par. 50 (1).

Remboursement

(2) Le ministre peut ordonner le remboursement total ou partiel de droits s'il estime qu'il est équitable de ce faire. 2007, chap. 6, par. 50 (2).

Paiement exigé

(3) Toute personne paie les droits que le ministre exige en vertu de la présente loi. 2007, chap. 6, par. 50 (3).

...

Règlements

55. (1) Sous réserve du paragraphe (2) et de l'article 57, le lieutenant-gouverneur en conseil peut, par règlement :

a) prescrire, pour l'application de l'alinéa a) de la définition de «habitat» au paragraphe 2 (1), une aire comme étant l'habitat d'une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, en voie de disparition ou menacée;

b) prescrire des exemptions de l'application du paragraphe 9 (1) ou 10 (1), sous réserve des conditions ou des restrictions prescrites par les règlements;

- c) prévoir que le paragraphe 11 (1) ou (7) ne s'applique pas à une espèce si les paragraphes 9 (1) et 10 (1) ne s'y appliquent pas;
- d) régir l'élaboration des programmes de rétablissement en application de l'article 11 et celle des plans de gestion en application de l'article 12;
- e) prescrire toute question, ou traiter de toute question, que la présente loi mentionne comme étant prescrite par les règlements ou traitée par ailleurs par ceux-ci, à l'exclusion de ceux qui sont exigés par l'article 7. 2007, chap. 6, par. 55 (1).

Prise en considération du programme de rétablissement

(2) Avant que ne soit pris en application de l'alinéa (1) a) un règlement qui prescrit une aire comme étant l'habitat d'une espèce, le ministre prend en considération tout programme de rétablissement qui a été élaboré à l'égard de l'espèce en application de l'article 11 et toute déclaration qui a été publiée en application du paragraphe 11 (8) à l'égard du programme. 2007, chap. 6, par. 55 (2).

Description de l'habitat

(3) Sans préjudice de la portée générale de l'alinéa (1) a), le règlement pris en application de cet alinéa qui prescrit une aire comme étant l'habitat d'une espèce :

- a) peut décrire l'aire :
 - (i) soit en en donnant les limites précises,
 - (ii) soit en en donnant les caractéristiques,
 - (iii) soit en la décrivant de toute autre manière;
- b) peut prescrire une aire dans laquelle l'espèce vit ou vivait ou dans laquelle on la croit capable de vivre;
- c) peut prescrire une aire qui est plus grande ou plus petite que celle décrite à l'alinéa b) de la définition de «habitat» au paragraphe 2 (1). 2007, chap. 6, par. 55 (3).

Conditions et restrictions des exemptions

(4) Sans préjudice de la portée générale de l'alinéa (1) b), le règlement pris en application de cet alinéa peut, comme condition ou restriction d'une exemption, prévoir que cette dernière ne s'applique à une personne que si elle se conforme à l'accord qu'elle a conclu avec le ministre. 2007, chap. 6, par. 55 (4).

...

Exigences particulières à l'égard de certains règlements

57. (1) Si la proposition d'un règlement prévu au paragraphe 55 (1) est à l'étude dans le ministère, que le règlement proposé s'appliquerait à une espèce inscrite sur la Liste des espèces en péril en Ontario comme espèce en voie de disparition ou menacée et que l'un des deux critères suivants ou les deux s'appliquent, le ministre consulte une personne qu'il tient pour un expert sur les conséquences éventuelles du règlement proposé pour l'espèce :

1. Dans le cas de tout règlement proposé qui est prévu au paragraphe 55 (1), le ministre est d'avis que le règlement mettra vraisemblablement en danger la survie de l'espèce en Ontario ou aura vraisemblablement une autre conséquence préjudiciable importante pour l'espèce.
2. Dans le cas d'un règlement proposé qui est prévu à l'alinéa 55 (1) a), le ministre est d'avis que le règlement entraînera vraisemblablement une réduction sensible du nombre de membres de l'espèce qui vivent à l'état sauvage en Ontario. 2007, chap. 6, par. 57 (1).

Restriction

(2) S'il est tenu, en application du paragraphe (1), de consulter une personne qu'il tient pour un expert sur les conséquences éventuelles d'un règlement proposé pour une espèce, le ministre ne doit pas recommander le règlement au lieutenant-gouverneur en conseil et celui-ci ne doit pas le prendre, à moins que les conditions suivantes ne soient réunies :

- a) le ministre est d'avis que le règlement ne fera pas en sorte que l'espèce cesse de vivre à l'état sauvage en Ontario;
- b) la personne que le ministre a consultée en application du paragraphe (1) lui a présenté un rapport écrit sur les conséquences éventuelles du règlement proposé pour l'espèce et le rapport comprenait son avis sur les questions suivantes :
 - (i) dans le cas de tout règlement proposé qui est prévu au paragraphe 55 (1), si celui-ci mettra en danger la survie de l'espèce en Ontario ou aura une autre conséquence préjudiciable importante pour l'espèce et, en pareil cas, s'il fera en sorte que l'espèce cesse de vivre à l'état sauvage en Ontario,
 - (ii) dans le cas d'un règlement proposé qui est prévu à l'alinéa 55 (1) a), si celui-ci entraînera une réduction sensible du nombre de membres de l'espèce qui vivent à l'état sauvage en Ontario;
- c) le ministre a envisagé des solutions de rechange à la proposition de règlement, notamment :
 - (i) soit la conclusion d'un ou de plusieurs accords en vertu de l'article 16 ou la délivrance d'un ou de plusieurs permis en vertu de l'article 17,
 - (ii) soit la prise d'un règlement différent;

d) le ministre a donné avis au public de la proposition de règlement en application de l'article 16 de la *Charte des droits environnementaux de 1993* au moins deux mois avant le jour de la prise du règlement;

e) l'avis donné en application de l'alinéa d), à la fois :

(i) dans le cas de tout règlement proposé qui est prévu au paragraphe 55 (1) :

(A) énonçait l'avis du ministre sur la question de savoir si le règlement mettra en danger la survie de l'espèce en Ontario ou aura une autre conséquence préjudiciable importante pour l'espèce,

(B) indiquait que le ministre est d'avis que le règlement ne fera pas en sorte que l'espèce cesse de vivre à l'état sauvage en Ontario,

(ii) dans le cas d'un règlement proposé qui est prévu à l'alinéa 55 (1) a), énonçait l'avis du ministre sur la question de savoir si le règlement entraînera une réduction sensible du nombre de membres de l'espèce qui vivent à l'état sauvage en Ontario,

(iii) donnait les motifs du ministre à l'appui des avis visés aux sous-alinéas (i) et (ii),

(iv) reproduisait le rapport visé à l'alinéa b),

(v) énonçait les solutions de rechange à la proposition de règlement que le ministre a envisagées en application de l'alinéa c),

(vi) énonçait les motifs à l'appui de la prise du règlement proposé, y compris tout important avantage social ou économique pour l'Ontario,

(vii) énonçait des mesures qui pourraient être prises pour réduire au minimum les conséquences préjudiciables du règlement proposé pour des membres de l'espèce.
2007, chap. 6, par. 57 (2).

Changements fondamentaux apportés à une proposition

(3) Pour l'application du paragraphe (1), le ministre a l'entière discrétion d'établir si une proposition a été fondamentalement modifiée au point de devenir une nouvelle proposition.
2007, chap. 6, par. 57 (3).

Interprétation

(4) La définition qui suit s'applique au présent article.

«proposition de règlement» S'entend au sens de la *Charte des droits environnementaux de 1993*.
2007, chap. 6, par. 57 (4).

Judicial Review Procedure Act, RSO 1990, c J.1

...

Applications for judicial review

2. (1) On an application by way of originating notice, which may be styled “Notice of Application for Judicial Review”, the court may, despite any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following:

1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari.
2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power. R.S.O. 1990, c. J.1, s. 2 (1).

...

Ontario Water Resources Act, RSO 1990, c O.40

...

Purpose

0.1 The purpose of this Act is to provide for the conservation, protection and management of Ontario’s waters and for their efficient and sustainable use, in order to promote Ontario’s long-term environmental, social and economic well-being. 2007, c. 12, s. 1 (1).

...

Lakes and Rivers Improvement Act, RSO 1990, c L.3

...

Purposes of Act

2. The purposes of this Act are to provide for,

- (a) the management, protection, preservation and use of the waters of the lakes and rivers of Ontario and the land under them;
- (b) the protection and equitable exercise of public rights in or over the waters of the lakes and rivers of Ontario;
- (c) the protection of the interests of riparian owners;
- (d) the management, perpetuation and use of the fish, wildlife and other natural resources dependent on the lakes and rivers;
- (e) the protection of the natural amenities of the lakes and rivers and their shores and banks; and
- (f) the protection of persons and of property by ensuring that dams are suitably located, constructed, operated and maintained and are of an appropriate nature with regard to the purposes of clauses (a) to (e). 1998, c. 18, Sched. I, s. 23.

...

Aggregate Resources Act, RSO 1990, c A.8

...

Purposes of Act

2. The purposes of this Act are,

- (a) to provide for the management of the aggregate resources of Ontario;
 - (b) to control and regulate aggregate operations on Crown and private lands;
 - (c) to require the rehabilitation of land from which aggregate has been excavated; and
 - (d) to minimize adverse impact on the environment in respect of aggregate operations.
- R.S.O. 1990, c. A.8, s.

...

Mining Act, RSO 1990, c M.14

...

Purpose

2. The purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment. 2009, c. 21, s. 2.

...

Crown Forest Sustainability Act, 1994, SO 1994, c 25

Purposes

1. The purposes of this Act are to provide for the sustainability of Crown forests and, in accordance with that objective, to manage Crown forests to meet social, economic and environmental needs of present and future generations. 1994, c. 25, s. 1.

...

O Reg 230/08

Last amendment: O Reg 66/15

(Endangered Species Act, 2007)

Extirpated species

1. The species listed in Columns 3 and 4 of Schedule 1 according to their common and scientific names, and belonging to the species grouping referred to in Column 2 opposite the listed species, are classified by COSSARO as extirpated species. O. Reg. 139/14, s. 1.

Endangered species

2. The species listed in Columns 3 and 4 of Schedule 2 according to their common and scientific names, and belonging to the species grouping referred to in Column 2 opposite the listed species, are classified by COSSARO as endangered species. O. Reg. 139/14, s. 1.

Threatened species

3. The species listed in Columns 3 and 4 of Schedule 3 according to their common and scientific names, and belonging to the species grouping referred to in Column 2 opposite the listed species, are classified by COSSARO as threatened species. O. Reg. 139/14, s. 1.

Special concern species

4. The species listed in Columns 3 and 4 of Schedule 4 according to their common and scientific names, and belonging to the species grouping referred to in Column 2 opposite the listed species, are classified by COSSARO as special concern species. O. Reg. 139/14, s. 1.

Geographical limitations

5. If the classification of a species applies only to a specified geographic area in Ontario, the area is described in a footnote to the relevant Schedule. O. Reg. 230/08, s. 5.

6. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 230/08, s. 6.

...

Schedule 2 - ENDANGERED SPECIES

| Column 1 | Column 2 | Column 3 | Column 4 |
|-----------------|-------------------------|---|---------------------------------|
| Item | Species Grouping | Common Name | Scientific Name |
| 1. | Lichens | Pale-bellied Frost Lichen | <i>Physconia subpallida</i> |
| 2. | Mosses | Spoon-leaved Moss | <i>Bryoandersonia illecebra</i> |
| 3. | Vascular Plants | American Chestnut | <i>Castanea dentata</i> |
| 4. | Vascular Plants | American Columbo | <i>Frasera caroliniensis</i> |
| 5. | Vascular Plants | American Ginseng | <i>Panax quinquefolius</i> |
| 6. | Vascular Plants | Bent Spike-rush | <i>Eleocharis geniculata</i> |
| 7. | Vascular Plants | Bird's-foot Violet | <i>Viola pedata</i> |
| 8. | Vascular Plants | Bluehearts | <i>Buchnera americana</i> |
| 9. | Vascular Plants | Blunt-lobed Woodsia | <i>Woodsia obtusa</i> |
| 10. | Vascular Plants | Butternut | <i>Juglans cinerea</i> |
| 11. | Vascular Plants | Cherry Birch | <i>Betula lenta</i> |
| 12. | Vascular Plants | Cucumber Tree | <i>Magnolia acuminata</i> |
| 13. | Vascular Plants | Drooping Trillium | <i>Trillium flexipes</i> |
| 14. | Vascular Plants | Eastern Flowering Dogwood | <i>Cornus florida</i> |
| 15. | Vascular Plants | Eastern Prairie Fringed-orchid | <i>Platanthera leucophaea</i> |
| 16. | Vascular Plants | Eastern Prickly Pear Cactus | <i>Opuntia humifusa</i> |
| 17. | Vascular Plants | Engelmann's Quillwort | <i>Isoetes engelmannii</i> |
| 18. | Vascular Plants | False Hop Sedge | <i>Carex lupuliformis</i> |
| 19. | Vascular Plants | Few-flowered Club-rush | <i>Trichophorum planifolium</i> |
| 20. | Vascular Plants | Forked Three-awned Grass | <i>Aristida basiramea</i> |
| 21. | Vascular Plants | Four-leaved Milkweed | <i>Asclepias quadrifolia</i> |
| 22. | Vascular Plants | Gattinger's Agalinis | <i>Agalinis gattingeri</i> |
| 23. | Vascular Plants | Heart-leaved Plantain | <i>Plantago cordata</i> |
| 24. | Vascular Plants | Hoary Mountain-mint | <i>Pycnanthemum incanum</i> |
| 25. | Vascular Plants | Horsetail Spike-rush | <i>Eleocharis equisetoides</i> |
| 26. | Vascular Plants | Juniper Sedge | <i>Carex juniperorum</i> |
| 27. | Vascular Plants | Large Whorled Pogonia | <i>Isotria verticillata</i> |
| 28. | Vascular Plants | Nodding Pogonia | <i>Triphora trianthophoros</i> |
| 29. | Vascular Plants | Ogden's Pondweed | <i>Potamogeton ogdenii</i> |
| 30. | Vascular Plants | Pink Milkwort | <i>Polygala incarnata</i> |
| 31. | Vascular Plants | Red Mulberry | <i>Morus rubra</i> |
| 32. | Vascular Plants | Scarlet Ammannia | <i>Ammannia robusta</i> |
| 33. | Vascular Plants | Showy Goldenrod (Great Lakes Plains population) | <i>Solidago speciosa</i> |
| 34. | Vascular Plants | Skinner's Agalinis | <i>Agalinis skinneriana</i> |
| 35. | Vascular Plants | Slender Bush-clover | <i>Lespedeza virginica</i> |

| | | | |
|-----|-----------------|-------------------------------------|------------------------------|
| 36. | Vascular Plants | Small White Lady's-slipper | Cypripedium candidum |
| 37. | Vascular Plants | Small Whorled Pogonia | Isotria medeoloides |
| 38. | Vascular Plants | Spotted Wintergreen | Chimaphila maculata |
| 39. | Vascular Plants | Toothcup | Rotala ramosior |
| 40. | Vascular Plants | Virginia Goat's-rue | Tephrosia virginiana |
| 41. | Vascular Plants | Virginia Mallow | Sida hermaphrodita |
| 42. | Vascular Plants | Western Silvery Aster | Symphyotrichum sericeum |
| 43. | Vascular Plants | White Prairie Gentian | Gentiana alba |
| 44. | Vascular Plants | Wood-poppy | Stylophorum diphyllum |
| 45. | Molluscs | Eastern Pondmussel | Ligumia nasuta |
| 46. | Molluscs | Fawnsfoot | Truncilla donaciformis |
| 47. | Molluscs | Hickorynut | Obovaria olivaria |
| 48. | Molluscs | Kidneyshell | Ptychobranchus fasciolaris |
| 49. | Molluscs | Northern Riffleshell | Epioblasma torulosa rangiana |
| 50. | Molluscs | Rayed Bean | Villosa fabalis |
| 51. | Molluscs | Round Hickorynut | Obovaria subrotunda |
| 52. | Molluscs | Round Pigtoe | Pleurobema sintoxia |
| 53. | Molluscs | Salamander Mussel | Simpsonaias ambigua |
| 54. | Molluscs | Snuffbox | Epioblasma triquetra |
| 55. | Insects | Aweme Borer Moth | Papaipema aweme |
| 56. | Insects | Bogbean Buckmoth | Hemileuca sp. |
| 57. | Insects | Gypsy Cuckoo Bumble Bee | Bombus bohemicus |
| 58. | Insects | Hine's Emerald | Somatochlora hineana |
| 59. | Insects | Hungerford's Crawling Water Beetle | Brychius hungerfordi |
| 60. | Insects | Laura's Clubtail | Stylurus laurae |
| 61. | Insects | Mottled Duskywing | Erynnis martialis |
| 62. | Insects | Northern Barrens Tiger Beetle | Cicindela patruela |
| 63. | Insects | Pygmy Snaketail | Ophiogomphus howei |
| 64. | Insects | Rapids Clubtail | Gomphus quadricolor |
| 65. | Insects | Riverine Clubtail | Stylurus amnicola |
| 66. | Insects | Rusty-patched Bumble Bee | Bombus affinis |
| 67. | Fishes | American Eel | Anguilla rostrata |
| 68. | Fishes | Eastern Sand Darter | Ammocrypta pellucida |
| 69. | Fishes | Northern Madtom | Noturus stigmosus |
| 70. | Fishes | Redside Dace | Clinostomus elongatus |
| 71. | Fishes | Shortnose Cisco | Coregonus reighardi |
| 72. | Amphibians | Allegheny Mountain Dusky Salamander | Desmognathus ochrophaeus |
| 73. | Amphibians | Fowler's Toad | Anaxyrus fowleri |
| 74. | Amphibians | Jefferson Salamander | Ambystoma jeffersonianum |
| 75. | Amphibians | Northern Dusky Salamander | Desmognathus fuscus |

| | | | |
|------|------------|--|----------------------------------|
| 76. | Amphibians | Small-mouthed Salamander | <i>Ambystoma texanum</i> |
| 77. | Reptiles | Blue Racer | <i>Coluber constrictor foxii</i> |
| 78. | Reptiles | Butler's Gartersnake | <i>Thamnophis butleri</i> |
| 79. | Reptiles | Common Five-lined Skink (Carolinian population) | <i>Plestiodon fasciatus</i> |
| 80. | Reptiles | Eastern Foxsnake (Carolinian population) | <i>Pantherophis gloydi</i> |
| 81. | Reptiles | Gray Ratsnake (Carolinian population) | <i>Pantherophis spiloides</i> |
| 82. | Reptiles | Lake Erie Watersnake | <i>Nerodia sipedon insularum</i> |
| 83. | Reptiles | Massasauga (Carolinian population) | <i>Sistrurus catenatus</i> |
| 84. | Reptiles | Queensnake | <i>Regina septemvittata</i> |
| 85. | Reptiles | Spotted Turtle | <i>Clemmys guttata</i> |
| 86. | Reptiles | Wood Turtle | <i>Glyptemys insculpta</i> |
| 87. | Birds | Acadian Flycatcher | <i>Empidonax virescens</i> |
| 88. | Birds | Barn Owl | <i>Tyto alba</i> |
| 89. | Birds | Golden Eagle | <i>Aquila chrysaetos</i> |
| 90. | Birds | Henslow's Sparrow | <i>Ammodramus henslowii</i> |
| 91. | Birds | King Rail | <i>Rallus elegans</i> |
| 92. | Birds | Kirtland's Warbler | <i>Setophaga kirtlandii</i> |
| 93. | Birds | Loggerhead Shrike | <i>Lanius ludovicianus</i> |
| 94. | Birds | Northern Bobwhite | <i>Colinus virginianus</i> |
| 95. | Birds | Piping Plover | <i>Charadrius melodus</i> |
| 96. | Birds | Prothonotary Warbler | <i>Protonotaria citrea</i> |
| 97. | Birds | Red Knot rufa subspecies | <i>Calidris canutus rufa</i> |
| 98. | Birds | Yellow-breasted Chat | <i>Icteria virens</i> |
| 99. | Mammals | American Badger (Northwestern Ontario population) | <i>Taxidea taxus taxus</i> |
| 100. | Mammals | American Badger (Southwestern Ontario population) | <i>Taxidea taxus jacksoni</i> |
| 101. | Mammals | Eastern Small-footed Myotis | <i>Myotis leibii</i> |
| 102. | Mammals | Little Brown Myotis | <i>Myotis lucifugus</i> |
| 103. | Mammals | Mountain Lion or Cougar | <i>Puma concolor</i> |
| 104. | Mammals | Northern Myotis | <i>Myotis septentrionalis</i> |

O. Reg. 66/15, s. 1.

Schedule 3 - THREATENED SPECIES

| Column 1 | Column 2 | Column 3 | Column 4 |
|-----------------|-------------------------|---|--------------------------|
| Item | Species Grouping | Common Name | Scientific Name |
| 1. | Vascular Plants | American Water-willow | Justicia americana |
| 2. | Vascular Plants | Branched Bartonia | Bartonia paniculata |
| 3. | Vascular Plants | Colicroot | Aletris farinosa |
| 4. | Vascular Plants | Common Hoptree | Ptelea trifoliata |
| 5. | Vascular Plants | Deerberry | Vaccinium stamineum |
| 6. | Vascular Plants | Dense Blazing Star | Liatris spicata |
| 7. | Vascular Plants | Dwarf Hackberry | Celtis tenuifolia |
| 8. | Vascular Plants | False Rue-anemone | Enemion biternatum |
| 9. | Vascular Plants | Goldenseal | Hydrastis canadensis |
| 10. | Vascular Plants | Hill's Thistle | Cirsium hillii |
| 11. | Vascular Plants | Houghton's Goldenrod | Solidago houghtonii |
| 12. | Vascular Plants | Kentucky Coffee-tree | Gymnocladus dioicus |
| 13. | Vascular Plants | Lakeside Daisy | Tetraneuris herbacea |
| 14. | Vascular Plants | Pitcher's Thistle | Cirsium pitcheri |
| 15. | Vascular Plants | Purple Twayblade | Liparis liliifolia |
| 16. | Vascular Plants | Round-leaved Greenbrier | Smilax rotundifolia |
| 17. | Vascular Plants | Showy Goldenrod (Boreal population) | Solidago speciosa |
| 18. | Vascular Plants | Small-flowered Lipocarpha | Lipocarpha micrantha |
| 19. | Vascular Plants | White Wood Aster | Eurybia divaricata |
| 20. | Vascular Plants | Wild Hyacinth | Camassia scilloides |
| 21. | Vascular Plants | Willowleaf Aster | Symphyotrichum praealtum |
| 22. | Molluscs | Lilliput | Taxolasma parvum |
| 23. | Molluscs | Mapleleaf Mussel | Quadrula quadrula |
| 24. | Molluscs | Rainbow Mussel | Villosa iris |
| 25. | Molluscs | Threehorn Wartyback | Obliquaria reflexa |
| 26. | Molluscs | Wavy-rayed Lampmussel | Lampsilis fasciola |
| 27. | Fishes | Black Redhorse | Moxostoma duquesnei |
| 28. | Fishes | Channel Darter | Percina copelandi |
| 29. | Fishes | Cutlip Minnow | Exoglossum maxillingua |
| 30. | Fishes | Lake Chubsucker | Erimyzon sucetta |
| 31. | Fishes | Lake Sturgeon (Great Lakes - Upper St. Lawrence River population) | Acipenser fulvescens |
| 32. | Fishes | Lake Sturgeon (Northwestern Ontario population) | Acipenser fulvescens |

| | | | |
|-----|----------|--|----------------------------------|
| 33. | Fishes | Pugnose Minnow | <i>Opsopoeodus emiliae</i> |
| 34. | Fishes | Pugnose Shiner | <i>Notropis anogenus</i> |
| 35. | Fishes | Shortjaw Cisco | <i>Coregonus zenithicus</i> |
| 36. | Fishes | Silver Chub | <i>Macrhybopsis storeriana</i> |
| 37. | Fishes | Silver Shiner | <i>Notropis photogenis</i> |
| 38. | Fishes | Spotted Gar | <i>Lepisosteus oculatus</i> |
| 39. | Reptiles | Blanding's Turtle | <i>Emydoidea blandingii</i> |
| 40. | Reptiles | Eastern Foxsnake (Georgian Bay population) | <i>Pantherophis gloydi</i> |
| 41. | Reptiles | Eastern Hog-nosed Snake | <i>Heterodon platirhinus</i> |
| 42. | Reptiles | Gray Ratsnake (Frontenac Axis population) | <i>Pantherophis spiloides</i> |
| 43. | Reptiles | Massasauga (Great Lakes - St. Lawrence population) | <i>Sistrurus catenatus</i> |
| 44. | Reptiles | Spiny Softshell | <i>Apalone spinifera</i> |
| 45. | Birds | American White Pelican | <i>Pelecanus erythrorhynchos</i> |
| 46. | Birds | Bank Swallow | <i>Riparia riparia</i> |
| 47. | Birds | Barn Swallow | <i>Hirundo rustica</i> |
| 48. | Birds | Bobolink | <i>Dolichonyx oryzivorus</i> |
| 49. | Birds | Cerulean Warbler | <i>Setophaga cerulea</i> |
| 50. | Birds | Chimney Swift | <i>Chaetura pelagica</i> |
| 51. | Birds | Eastern Meadowlark | <i>Sturnella magna</i> |
| 52. | Birds | Eastern Whip-poor-will | <i>Antrostomus vociferus</i> |
| 53. | Birds | Least Bittern | <i>Ixobrychus exilis</i> |
| 54. | Mammals | Grey Fox | <i>Urocyon cinereoargenteus</i> |
| 55. | Mammals | Polar Bear | <i>Ursus maritimus</i> |
| 56. | Mammals | Wolverine | <i>Gulo gulo</i> |
| 57. | Mammals | Woodland Caribou (Forest-dwelling boreal population) | <i>Rangifer tarandus caribou</i> |

O. Reg. 66/15, s. 1

...

Securities Act, RSO 1990, c S5

Authority in extraordinary circumstances

Order to suspend trading

s. 2.2(3) The Commission may, without notice or a hearing, make an order under this subsection to suspend trading in a security or related derivative or to suspend all trading on a recognized exchange or otherwise,

(a) if, in the opinion of the Commission, there are extraordinary circumstances requiring immediate action to be taken in the public interest; and

(b) if, in the opinion of the Commission, the order is necessary to maintain or restore fair and orderly securities markets, to ensure prompt, accurate and safe clearance and settlement of transactions in securities or to assist in doing so in another jurisdiction. 2009, c. 18, Sched. 26, s. 2; 2010, c. 26, Sched. 18, s. 2.

...

Commission regulation

s. 2.2(9) Subject to the approval of the Minister, the Commission may make a regulation relating to any matter governed by Ontario securities law, despite any other provision of this Act,

(a) if, in the opinion of the Commission, there are extraordinary circumstances requiring immediate action to be taken in the public interest; and

(b) if, in the opinion of the Commission, the regulation is necessary to maintain or restore fair and orderly securities markets, to ensure prompt, accurate and safe clearance and settlement of transactions in securities or to assist in doing so in another jurisdiction. 2009, c. 18, Sched. 26, s. 2.

...

Regulation of the L.G. in C.

s. 2.2(16) The Lieutenant Governor in Council may make a regulation relating to any matter governed by Ontario securities law, despite any other provision of this Act,

(a) if, in the opinion of the Lieutenant Governor in Council, there are extraordinary circumstances requiring immediate action to be taken in the public interest; and

(b) if, in the opinion of the Lieutenant Governor in Council, the regulation is necessary to maintain or restore fair and orderly securities markets, to ensure prompt, accurate and safe clearance and settlement of transactions in securities or to assist in doing so in another jurisdiction. 2009, c. 18, Sched. 26, s. 2.

Occupational Health and Safety Act, RSO 1990, c O1

If Minister proposes change

22.4 (1) If the Minister is considering a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases, the Minister shall determine whether the proposed change would be a significant change. 2011, c. 11, s. 8 (1).

If proposed change significant

(2) If the Minister determines that the proposed change is significant, the Minister shall seek advice from the Chief Prevention Officer with respect to the proposed change. 2011, c. 11, s. 8 (1).

If Chief Prevention Officer advising on change

(3) If the Chief Prevention Officer is considering providing advice to the Minister concerning a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases, the Chief Prevention Officer shall determine whether the proposed change would be a significant change. 2011, c. 11, s. 8 (1).

Prevention Council endorsement

(4) If the Minister asks the Chief Prevention Officer for advice under subsection (2) or if the Chief Prevention Officer determines under subsection (3) that a proposed change would be a significant change, the Chief Prevention Officer shall,

(a) ask the chair of the Prevention Council to state whether the Council endorses the proposed change; and

(b) include that statement in the advice to the Minister. 2011, c. 11, s. 8 (1).

Matters to consider in determining if change is significant

(5) The Minister and the Chief Prevention Officer shall consider such matters as may be prescribed when determining whether a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases would be a significant change. 2011, c. 11, s. 8 (1).

Regulation

(6) On the recommendation of the Minister, the Lieutenant Governor in Council may make regulations prescribing matters to be considered when determining whether a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases would be a significant change. 2011, c. 11, s. 8 (1).

Same

(7) Before recommending to the Lieutenant Governor in Council that a regulation be made under subsection (6), the Minister shall seek the advice of the Chief Prevention Officer and require the Chief Prevention Officer to seek the advice of the Prevention Council with respect to the matters to be prescribed. 2011, c. 11, s. 8 (1).

Fire Protection and Prevention Act, SO 1997, c 4

Failure to provide services

s. 2(8) If a municipality fails to adhere to the recommendations made by the Fire Marshal under subsection (7) or to take any other measures that in the opinion of the Fire Marshal will remedy or reduce the threat to public safety, the Minister may recommend to the Lieutenant Governor in Council that a regulation be made under subsection (9).

Regulation

(9) Upon the recommendation of the Minister, the Lieutenant Governor in Council may make regulations establishing standards for fire protection services in municipalities and requiring municipalities to comply with the standards.

Quality of Care Information Protection Act, 2004, SC 2004, c 3, Schedule B

Regulations

9. (1) Subject to section 10, the Lieutenant Governor in Council may make regulations,

- (a) defining any term used in this Act that is not defined in this Act;
- (b) specifying information for the purpose of clause (f) of the definition of “quality of care information” in section 1;
- (c) specifying a provision of another Act or its regulations that prevails over this Act or its regulations for the purpose of section 2;
- (d) prescribing information for the purpose of clause 10 (2) (e). 2004, c. 3, Sched. B, s. 9 (1).

Minister's regulations

(2) The Minister may make regulations prescribing anything that the definition of “health care” or “quality of care committee” in section 1 mentions as being prescribed. 2004, c. 3, Sched. B, s. 9 (2).

Public consultation before making regulations

10. (1) Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under section 9 unless,

(a) the Minister has published a notice of the proposed regulation in *The Ontario Gazette* and given notice of the proposed regulation by all other means that the Minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;

(b) the notice complies with the requirements of this section;

(c) the time periods specified in the notice, during which members of the public may exercise a right described in clause (2) (b) or (c), have expired; and

(d) the Minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (2) (b) or (c) and has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the Minister considers appropriate. 2004, c. 3, Sched. B, s. 10 (1).

Contents of notice

(2) The notice mentioned in clause (1) (a) shall contain,

(a) a description of the proposed regulation and the text of it;

(b) a statement of the time period during which members of the public may submit written comments on the proposed regulation to the Minister and the manner in which and the address to which the comments must be submitted;

(c) a description of whatever other rights, in addition to the right described in clause (b), that members of the public have to make submissions on the proposed regulation and the manner in which and the time period during which those rights must be exercised;

(d) a statement of where and when members of the public may review written information about the proposed regulation;

(e) all prescribed information; and

(f) all other information that the Minister considers appropriate. 2004, c. 3, Sched. B, s. 10 (2).

Time period for comments

(3) The time period mentioned in clauses (2) (b) and (c) shall be at least 60 days after the Minister gives the notice mentioned in clause (1) (a) unless the Minister shortens the time period in accordance with subsection (4). 2004, c. 3, Sched. B, s. 10 (3).

Shorter time period for comments

(4) The Minister may shorten the time period if, in the Minister's opinion,

(a) the urgency of the situation requires it;

(b) the proposed regulation clarifies the intent or operation of this Act or the regulations;
or

(c) the proposed regulation is of a minor or technical nature. 2004, c. 3, Sched. B, s. 10 (4).

Discretion to make regulations

(5) Upon receiving the Minister's report mentioned in clause (1) (d), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the Minister's report. 2004, c. 3, Sched. B, s. 10 (5).

No public consultation

(6) The Minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 9 if, in the Minister's opinion,

(a) the urgency of the situation requires it;

(b) the proposed regulation clarifies the intent or operation of this Act or the regulations;
or

(c) the proposed regulation is of a minor or technical nature. 2004, c. 3, Sched. B, s. 10 (6).

Same

(7) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 9,

(a) those subsections do not apply to the power of the Lieutenant Governor in Council to make the regulation; and

(b) the Minister shall give notice of the decision to the public as soon as is reasonably possible after making the decision. 2004, c. 3, Sched. B, s. 10 (7).

Contents of notice

(8) The notice mentioned in clause (7) (b) shall include a statement of the Minister's reasons for making the decision and all other information that the Minister considers appropriate. 2004, c. 3, Sched. B, s. 10 (8).

Publication of notice

(9) The Minister shall publish the notice mentioned in clause (7) (b) in *The Ontario Gazette* and give the notice by all other means that the Minister considers appropriate. 2004, c. 3, Sched. B, s. 10 (9).

Temporary regulation

(10) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 9 because the Minister is of the opinion that the urgency of the situation requires it, the regulation shall,

(a) be identified as a temporary regulation in the text of the regulation; and

(b) unless it is revoked before its expiry, expire at a time specified in the regulation, which shall not be after the second anniversary of the day on which the regulation comes into force. 2004, c. 3, Sched. B, s. 10 (10).

No review

(11) Subject to subsection (12), a court shall not review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the Minister under this section. 2004, c. 3, Sched. B, s. 10 (11).

Exception

(12) Any person resident in Ontario may make an application for judicial review under the *Judicial Review Procedure Act* on the grounds that the Minister has not taken a step required by this section. 2004, c. 3, Sched. B, s. 10 (12).

Time for application

(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,

(a) the Minister publishes a notice with respect to the regulation under clause (1) (a) or subsection (9), where applicable; or

(b) the regulation is filed, if it is a regulation described in subsection (10). 2004, c. 3, Sched. B, s. 10 (13).

Wildlands League and
Federation of Ontario Naturalists
Applicants/Moving Parties

and

Lieutenant Governor in Council and
Minister of Natural Resources
Respondents/Responding Parties

File No: M45222

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT Toronto

Factum of the Moving Parties

Lara Tessaro, LSUC# 67052M
Charles Hatt, LSUC# 64418I

550 Bayview Ave, Suite 401
Centre for Green Cities
Toronto, ON M4W 3X8
T: 416-368-7533 ext. 531
F: 416-363-2746

Lawyers for the Moving Parties