CITATION: Wildlands League v. Lieutenant Governor in Council, 2015 ONSC 2942
DIVISIONAL COURT FILE NO.: 400/13
DATE: 20150528

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

J. MACKINNON, D.L. CORBETT and LEDERER JJ.

BETWEEN:	)	
	)	
WILDLANDS LEAGUE and FEDERATION OF ONTARIO NATURALISTS	)	*Anastasia M. Lintner*, *Lara Tessaro* & *Charles Hatt,* for the Applicant
Applicant	)	
– **and** –	)	
	)	*Bill Manuel* & *Sunil Mathai*, for the Respondent
LIEUTENANT GOVERNOR IN COUNCIL and MINISTER OF NATURAL RESOURCES	)	
Respondents	)	
	)	**HEARD at Toronto:** January 14, 2015

LEDERER, J.:

Introduction

[1] This case concerns the promulgation of and authorization for a regulation made pursuant to the *Endangered Species Act, 2007*[1] ("*ESA*").

[2] The applicants, Wildlands League and the Federation of Ontario Naturalists ("Wildlands"), are public interest litigants. Both are non-profit environmental organizations. Their standing to bring the application has not been contested by the respondents (the Lieutenant Governor in Council and the Ministry of Natural Resources). Wildlands challenges the validity of Ontario Regulation 176/13 ("O. Reg. 176/13") made under s. 55(1)(b) of the *ESA* as *ultra vires* for failing to comply with a mandatory condition precedent and for being inconsistent with the purpose of the *ESA*.

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[1] S.O. 2007, c. 6.

The Legislation

[3] The *ESA* provides statutory protection to species at risk. Its stated purposes are to identify those species, to protect them and their habitat and to promote their recovery and stewardship.[2]

[4] The legislation does this, first, by requiring that a regulation be promulgated that lists all species that are classified as extirpated[3], endangered, threatened and of special concern.[4] It then prohibits the killing, harming, capture or taking of any member of any species listed, as well as prohibiting any trade or other commercial activity in such species, living or dead, including any part or thing derived from such species.[5] The *ESA* prohibits the damage and destruction of the habitat of any species listed as threatened or endangered and those extirpated species which have been listed and are prescribed by regulation for habitat protection.[6]

[5] The legislation allows for exceptions. It provides for the issuance of permits that authorize activities that would otherwise be prohibited.[7] There are limitations to the circumstances in which a permit may be issued. Permits may be issued where the activity is necessary for the protection of human health and safety.[8] The *ESA* recognizes that permits may be issued in circumstances where the main purpose of the activity to be authorized will not be to assist in the protection or recovery of species that are at risk. This may occur when the Minister is of the opinion that an overall benefit to the species will be achieved within a reasonable time.[9] It may also happen when, in the opinion of the Minister, the activity will result in significant social or economic benefit to Ontario.[10] This last exception requires that the Minister consult with an expert on the possible effects of the activity on the species to be specified in the permit. The expert is required to prepare a written report as to the possible effects and provide her or his opinion on whether the activity will jeopardize the survival or recovery of those species.[11] For permits to be issued in such a circumstance, the Minister is to be of the opinion that: (1) the activity will not jeopardize the survival or recovery of those species; (2) that reasonable alternatives have been considered, including alternatives that would not adversely affect the species, and the best alternative has been adopted; and (3) that reasonable steps to minimize

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[2] *Endangered Species Act, 2007, supra*, (fn. 1) s. 1.
[3] The Oxford Concise Dictionary, Ninth Edition, Clarendon Press, Oxford 1995 defines "extirpate" as "root out, destroy completely". For the purposes of the *ESA*, a species is extirpated if it lives somewhere in the world, lived at one time in the wild in Ontario but no longer does so (see: *Endangered Species Act, 2007, supra*, (fn. 1) s. 5(1), para. 2.
[4] *Ibid*, ss. 5, 6, 7 and 8.
[5] *Ibid*, s. 9.
[6] *Ibid*, s. 10.
[7] *Ibid*, s. 17(1).
[8] *Ibid*, s. 17(2)(a) and(b).
[9] *Ibid*, s. 17(2)(c).
[10] *Ibid*, s. 17(2)(d)(i).
[11] *Ibid*, s. 17(2)(d)(ii) and (iii).

adverse effects on individual members of the species are required by the conditions of the permit.[12]

[6] Quite apart from the issuance of permits, the *ESA* provides that there may be activities that are exempted from the prohibitions against harming species at risk or their habitat. This would be permitted through the promulgation of appropriate regulations:

> 55(1) Subject to subsection (2) and section 57, the Lieutenant Governor in Council may make regulations,
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> .....
>
> (b) prescribing exemptions from subsection 9(1) or 10(1), subject to any conditions or restrictions prescribed by the regulations.[13]

[7] There are pre-conditions to be satisfied before a regulation putting in place an exemption can be made. Where such a regulation is proposed and the Minister is of the opinion that the regulation is likely to jeopardize the survival, in Ontario, of the species to which it would apply, or to have any other significant adverse effect on the species, the Minister is obligated to consult with a person who is an expert on the possible effects of the proposed regulation on the species.[14] Where an expert is to be consulted, the Minister is not to recommend the regulation nor is the regulation to be made unless: (1) the Minister is of the opinion that the regulation will not result in the species no longer living in the wild in Ontario; (2) the expert consulted by the Minister has prepared a report which includes her or his opinion as to 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 (3) the Minister has considered alternatives to the proposal for a regulation. The Minister is also required to give notice of the proposal for a regulation to the public under s. 16 of the *Environmental Bill of Rights, 1993*[15].

Background to the regulation

[8] O. Reg. 176/13 was proposed and made under the *ESA* to exempt a variety of programs and activities subject to conditions. The conditions were constructed to ensure that, despite the activity being carried out, the endangered and threatened species would be protected.

[9] The first step in its preparation and promulgation was a notice posted to the *Environmental Bill of Rights* Registry. This "Regulation Proposal Notice" bore the title: "Proposed approaches to the implementation of the Endangered Species Act which could include regulatory amendments to authorize activities to occur subject to conditions set out in the

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[12] *Ibid*, s. 17(2)(c) (i), (ii), (iii) and 17(2)(d) (iv), (v), (vi).
[13] *Ibid*, s. 55.
[14] *Ibid*, s. 57(1).
[15] 1993, S.O. 1993, c. 28.

regulation consistent with MNR's Modernization of Approvals". It provided, among other things, the following advice:

> This proposal provides suggested approaches that derive from MNR'S experience on the ground and could include amendments to Ontario Regulation 242/08 under the Endangered Species Act. *The following proposals would balance the protection and recovery of species at risk…*
>
> …
>
> The Ministry is proposing potential policy and regulatory approaches to streamline the implementation of the ESA through the establishment of rules in the form of a regulation….
>
> …
>
> The Ministry is considering approaches, which could include regulatory amendments that consider the protection of species at risk while providing certainty to a range of sectors, including forestry, renewable energy, development, mineral exploration and aggregates. These changes would preserve socio-economic vitality relating to both existing and planned activities on the landscape….
>
> …
>
> Through experience in administering the ESA, MNR has identified certain activities that follow standard procedures, have predictable effects, and require common approaches for minimizing adverse effects and achieving benefits for species. For these types of activities, shifting from an application and review approach to an approach where individuals or businesses would follow rules aimed at benefiting species at risk established in the form of a regulation, which may include registration with MNR, provides a more efficient method for delivery of government services.
>
> …
>
> For certain types of activities, where overall benefit permit conditions have been well-established, activities could proceed without an ESA approval, provided that individuals or businesses follow rules established in regulation, which may include registration with MNR, that are designed to benefit the species and to draw on the experience MNR has had with standard overall benefit permit conditions.[16]

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[16] Regulation Proposal Notice, initially published December 5, 2012, Exhibit "O" to the *Affidavit of Caroline Schulz.*

[Emphasis added]

[10] There was a further posting to the *Environmental Bill of Rights* Registry on January 24, 2013. This posting outlined sixteen proposed "approaches" for the modernization of approvals under the *ESA*. They were classified in two main categories: (1) Rules in Regulation; and (2) Rules in Regulation with Registration. The sixteen "approaches" reviewed were (1) Activities that are Approved or Planned but not Completed or Operating (*Rules in Regulation with Registration*); (2) Forest Operations (*Rules in Regulation*); (3) Operation of Existing Water Power Facilities (*Rules in Regulation with Registration*); (4) Operation of Existing Aggregate Pits/Quarries (*Rules in Regulation with Registration*); (5) Existing Drainage Infrastructure (*Rules and Regulation with Registration*); (6) Activities to Protect or Recover Species at Risk (*Rules and Regulation with Registration*); (7) Protection, Maintenance, Enhancement or Restoration of Ecosystems (*Rules in Regulation and Registration*); (8) Butternut (*Rules in Regulation with Registration*); (9) Specific Aquatic Species (*Rules in Regulation with Registration*); (10) Bobolink & Eastern Meadowlark (*Rules and Regulation with Registration*); (11) Built Structures-Barn Swallow and Chimney Swift (*Rules and Regulation with Registration*); (12) Safe Harbour (*Rules in Regulation with Registration*); (13) Human Health or Safety (*Rules in Regulation with Registration*); (14) Incidental Trapping (*Rules in Regulation with Registration*); (15) Possession of Species at Risk (some *Rules in Regulation* and others *Rules in Regulation with Registration*); and, (16) Commercial Cultivation of Vascular Plants (*Rules and Regulation*).

[11] The proposal in respect of each of the 16 "approaches" was considered. By way of example with respect to Operation of Existing Water Power Facilities (Approach 3 above), the posting noted:

> This proposal would amend the existing regulatory provisions relating to water power facilities in the ESA. Rules in the regulation would include requirements for a person to register with the Ministry and the development and implementation of a mitigation plan that would be made available to MNR upon request. Monitoring measures would be required in order to assess the effects of the operation on the species and the effectiveness of techniques adopted to minimize adverse effects on the species. The regulation would also include but not be limited to requirements to take measures to minimize adverse effects on the species and their habitat.
>
> The proponent would be required to comply with conditions in the regulation once the activity is registered with the Ministry.
>
> In the case of newly listed species, new habitat protection coming into effect or species found at the site, the person would have 3 years to develop and implement a mitigation plan from the date of registration. Monitoring measures would be required to assess the effects of the operation on the species and the effectiveness of techniques adopted to minimize adverse effects on the species. The mitigation plan would be maintained by the proponent and amended as required. Rules in the regulation may also be structured to describe a desired outcome relating to the life history of the affected species. Some species specific outcome-based

> measures would be included within the rules in the regulation to reduce the risk to the species.
>
> Existing water power agreements would be offered the opportunity to transition to the conditions under this proposed regulatory change over a fixed period of time. The agreement for the R. H. Saunders Station on the St. Lawrence River near Cornwall relative to American eels would not be eligible for transition to rules in [the] regulation.
>
> The construction of a new water power facility would not be eligible for the provisions of this regulation.[17]

[12] What is demonstrated is an explanation of what was being considered. Drawing on what was known about the effect of these activities, suggesting conditions to protect against any negative effects and requiring work that would identify and require the mitigation of any additional detrimental impacts, the posting proposed the basis on which the activities referred to could proceed and the species at risk be protected.

[13] On April 29, 2013, a "Minister's Explanatory Note" was prepared. The purpose of this document was to analyze and provide the Minister with information to assist him to meet his obligations under s. 57(1) of the *ESA*. It is this section which requires the Minister to come to an opinion as to whether the proposed regulation would jeopardize the survival or have a significant adverse effect on the species, in which case he or she is required to consult with an expert.[18] The Explanatory Note reviewed the same 16 activities as on the posting to the *Environmental Bill of Rights* Registry and added one more: "Operation of a Wind Facility". Generally, the Explanatory Note referred to the experience with each of the stated activities, considered their impact and outlined conditions that would be included in the regulation. The conditions were said to be intended to "minimize the impact on species at risk, increase efficiencies and provide clear direction when applied to a specific set of circumstances".[19] The conditions were intended to lead to one of three desired outcomes: "[1] A beneficial action to a specific species; [2] A mitigation of adverse effects to species or habitat created by existing activities or newly proposed activities; and [3] an increased ability for individuals/organizations to undertake actions which will benefit the species".[20]

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[17] *Additional Detail to accompany Environmental Registry notice* (EBR Registry Number 011-7696), pp. 4-5.
[18] See: (fn. 46) below.

[19] Minister's Explanatory Note-Changes to Ontario Regulation 242/08 under the *ESA* related to Modernization of Approvals (April 29, 2013), at p. 2.
[20] *Ibid*, at p. 2.

[14] The Explanatory Note stated that for a majority of the regulatory proposals, the exemption would require the proponent to prepare a mitigation plan that identified the steps in which the proponent would engage to minimize adverse effects on the species at risk. Where a mitigation plan was to be required, it would have to be accompanied by monitoring requirements and be updated periodically to reflect the information obtained through monitoring.[21]

[15] To follow through with the example of Operation of Existing Water Power Facilities, re-named as "Operation of Hydro-electric generating stations (Waterpower Operations)", the Explanatory Note says:

> This proposal provides a regulatory exemption from the protection provisions of the ESA for the operation of waterpower facilities. The construction of new waterpower facilities will require an approval under the ESA if impacts to species at risk could not be avoided, and the proposed exemption would only apply to the operation of the station.
>
> Alteration of water flows and levels resulting from the operation of hydro-electric generating stations may affect aquatic species migration and spawning requirements. Additionally, fish passage up and downstream may be impeded or result in species mortality as they pass through the turbines or are prevented from accessing habitat beyond the station.
>
> To address the risks the operation of hydro-electric generating stations may pose to species at risk, this proposal employs a suite of requirements and conditions as summarized in Summary Table 1 and further detailed below.
>
> The section includes conditions that:
>
> - Require the operator to take reasonable steps to minimize adverse effects on the species. These steps include:
>
> o informing employees and contractors of the presence of the species and steps required to minimize adverse effects;
>
> o establishing a protective buffer around nests or hibernacula and avoiding impacts within that area when the species is likely to be carrying out its life processes;
>
> o undertaking maintenance activities during a period of time where adverse effects to the species will be minimal (e.g., during inactive periods) or will result in a benefit to the species either through timing (e. g., altering water levels as they are needed for a critical life process) if it is feasible to do so; and,

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[21] *Ibid*, at pp. 2-5.

o if any steps are discovered to be ineffective, new or enhanced measures must be undertaken to ensure adverse effects are minimized.

- Require a mitigation plan prior to impacting most species that are currently listed or exist at the station that include information about the station, details of the steps above, along with the following further requirements to minimize the effects of the station on the species:

  o steps to avoid killing, harming or harassing individuals;

  o actions to provide suitable conditions to enable members of the species to carry out its life processes that are adversely affected by the station, or alternatively, an explanation as to why such activities are not feasible at the time;

  o measures to replace or restore habitat damaged by the operation of the station;

  o training for employees, agents and contractors; and,

  o steps that will be taken if a species is encountered.

- Require [an] annual report to be developed that provides the results of monitoring the effects of the operations on the species and fitness of mitigation measures.

- Hungerford's crawling water beetle and pygmy snaketail are excluded.

In addition, this section would not apply to the American Eel at the R. H. Saunders Station in the St. Lawrence River and a provision will remain in the regulation to require an agreement with the Ministry to better manage the risk to eels at that site.

The combination of conditions in this section is targeted to address the main impacts that the operation of hydro-electric generating stations have on species listed on the SARO List. The requirement to prepare an annual report on the impacts of the activity on species at risk and the efficacy of mitigation measures undertaken enables MNR to request information and determine compliance. This provides the basis on which to conclude that this proposed exemption will not jeopardize the survival of any of the species at risk to which it applies, or have any other significant adverse effect on the species to which it applies.[22]

[16] The Explanatory Note ends with the following recommendation:

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[22] *Ibid*, at pp. 13-14.

> Having considered the detailed provisions of the proposed regulation with respect to the requirements of section 57(1) of the ESA, MNR Species at Risk Branch advises the Minister that it is our opinion that the effect of the proposed regulation is not likely to jeopardize the survival of the affected endangered or threatened species in Ontario or to have any other significant adverse effects on these species at risk.
>
> Therefore subsections 57(2) and (3) do not apply to this proposal, and the Minister may recommend the proposed regulation to the Lieutenant Governor for approval.[23]

[17] On May 1, 2013, the Minister added to the Explanatory Note. Under the heading, "Minister's Opinion and Decision", he endorsed this statement:

> Having considered section 57 of the *Endangered Species Act,* 2007 and the information above, I approve the recommended course of action.

[18] It is this endorsement that is relied on to demonstrate compliance with the requirement that, before promulgating a regulation that prescribes an exemption from the prohibitions against harming species at risk or damaging the habitat of such species,[24] the Minister must form an opinion as to whether the proposed regulation will jeopardize the survival of a species at risk or have any other significant adverse effect on the species. In substance, it is said that the Minister formed the opinion that there was no jeopardy and there would be no significant adverse effect. Accordingly, there was no need to consult with an expert. The Minister proceeded to recommend the regulation to the Lieutenant Governor in Council.

The regulation

[19] O. Reg 176/13 was made on May 15, 2014. It includes 5 species specific exemptions: (Bobolink and Eastern Meadowlark (s. 23.6); Barn Swallow (s. 23.5); Chimney Swift (s. 23.8); Butternut (s. 23.7); and, Aquatic Species (s. 23.4)) and 14 activity-based exemptions (a total of 19 exemptions). The 14 activity-based exemptions can be divided into three general categories:

> Administrative Efficiencies: Possession for science and education (s. 23.15); Trapping incidental catch (s. 23.19); Commercial cultivation of vascular plants (s. 12); and Human Health and Safety Activities (s. 23.18).
>
> Ecosystem Protection and Activities to Benefit Species at Risk: Ecosystem protection (s. 23.11); Species protection and recovery (s. 23.17) and Safe harbour habitat (s. 23.16).
>
> Industrial and Development Activities: Transition for Activities that are Approved or Planned, but not Completed or Operating (s. 23.13); Early Mineral

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[23] *Ibid*, at p. 36.
[24] *Endangered Species Act, supra*, (fn. 1) at s. 9 and s. 10 (fns. 5 and 6).

> Exploration (s. 23.10); Waterpower Operations (s. 23.13)[25]; Aggregate Operations (s. 23.14); Operation of a Wind Facility (s. 23.20); Drainage (s. 23.9); and, Forest Operations (s. 22.1).

[20] It is the view of the respondents that the regulation remains dedicated to the protection of species at risk. It does this, not by relying on absolute prohibitions or specific permits, but by requiring activities and actions that, relying on past experience along with ongoing monitoring and mitigation, will continue to meet the goals of the *ESA*. Generally, it is said that the exempted activities are limited in scope. In all but two activities (Forest Operations and the Commercial Cultivation of Vascular Plants), O. Reg. 176/13 requires the person engaging in the exempted activity to give notice of the activity on the Ministry's Registry.[26] In the majority of the provisions, the proponent must register prior to engaging in anything that would be prohibited by the *ESA*.[27] Registration allows the Ministry to conduct monitoring, compliance and enforcement activities.

[21] In the majority of activity exemptions, O. Reg. 176/13 requires that the proponent prepare a species-specific mitigation plan for each endangered or threatened species that is affected by its activities before it engages in the exempted activity.[28] With the exception of the Forest Operations exemption, all exemptions within the Industrial and Development Activities category include a requirement to prepare such a plan and to take steps to minimize the adverse effects of the activity on endangered or threatened species.

[22] Additionally, in a majority of the exemptions (15 of 19), conditions necessary to satisfy the exemption, require the proponent to take reasonable steps to minimize the adverse effects the activity will have on each endangered or threatened species while the activity is occurring. Where applicable, O. Reg. 176/13 includes a number of activities, species or geographical area specific steps that must be included in the steps taken to minimize adverse effects.[29] Adaptive management approaches are built into many of the exemptions requiring proponents to take

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[25] This is the result from the consideration of this activity in the *Environmental Bill of Rights* posting of January 24, 2013 and in the Explanatory Note found, respectively, at paras. [11] and [15], above.

[26] For example: O. Reg. 176/13, at s. 23.4(6), at para. 1, states:

> Before commencing the person must:
>
> i give the minister notice of the activity by submitting a notice activity form available on the Registry to the Minister through the Registry, and
>
> ii prepare in accordance with subsection (7) a mitigation plan that meets the requirements of subsection (8).

[27] In the case of the Trapping exemption (s. 23.19), the person has to give notice promptly after the species is killed (if it is not a furbearing mammal) (see: 23.19 (1)(f)) . In the case of the Transition exemption (s. 23.13), if the activity had already begun prior to June 30, 2013, then the person must give notice promptly after that date (s. 23.13 (7), para. 3).

[28] One exception to this requirement is the operation of a hydro-electric generating station (see: s. 23.12(2)).

[29] For example, see O. Reg 176/13, s. 23(12(5), para. 5, "Hydro-electric generating stations".

additional measures to minimize adverse effects if the results of monitoring demonstrate steps that have been taken have not been effective.

[23] It should be said that these requirements are not present for all of the exempted activities. Neither mitigation plans nor steps to minimize adverse effects are required for: Forest Operations, Incidental Trapping of Species at Risk, and Possession of Species at Risk Specimens for Scientific or Educational Purposes. The Forest Operations exemption does not include these conditions because the activities subject to the exemption, pursuant to the *Crown Forest Sustainability Act, 1994*[30], are subject to a forest management plan. Consideration of Species at Risk is a component of forest management planning. The provisions related to Incidental Trapping of Species at Risk and possession for Scientific or Educational Purposes are excluded from these conditions because there is limited risk involved in both activities.[31]

[24] In all but a few cases, the exemption conditions require the proponent to monitor the effectiveness of the steps taken to minimize the adverse effects on each of the endangered or threatened species and, in some cases, to prepare an annual report or similar record detailing the monitoring results.[32] Many of the species and activity exemptions include a requirement to report information related to Species at Risk to the Natural Heritage Information Centre and periodically (most often annually) to prepare reports related to the steps that have been taken to minimize adverse effects to, or provide benefits for, Species at Risk.

[25] Finally, there are sanctions. If a condition is not satisfied, the proponent is not in compliance with O. Reg. 176/13 and is not exempt from the prohibitions. Pursuant to the *ESA*, s. 36[33], a person in contravention of the prohibitions is guilty of an offence and subject to prosecution under Part III of the *Provincial Offences Act.*[34] An enforcement officer who has

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[30] S.O. 1994, c. 25.

[31] Minister's Explanatory Note-Changes to Ontario Regulation 242/08 under the *ESA* related to Modernization of Approvals (April 29, 2013), at pp. 33-35.

[32] For example, see O. Reg. 176/13, s. 23.13(1), para.7, "Hydro-electric generating station".

[33] S. 36 of the *ESA* states:

> 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.
>
> (2) A person who attempts to do anything that would be an offence under this Act is guilty of that offence.

[34] R.S.O. 1990, c. P. 33.

reasonable grounds to believe that O. Reg. 176/13 is not being complied with can, under the *ESA* s. 27[35], issue a stop work order.

The Issues

[26] It is the view of Wildlands that O. Reg. 176/13 is not valid and cannot stand. In support of this proposition, it placed two issues before the court:

1. Did the Minister err in law by failing to meet a mandatory condition precedent in s. 57(1) of the *ESA* by failing to determine whether the proposed regulation was likely to jeopardize the survival of, or have any other significant adverse effect on, each listed species to which the regulation would apply?

2. Is O. Reg. 176/13 inconsistent with the objects and purposes of the *ESA*?

Scope of Review

[27] A challenge to the *vires* (legal power or authority) of the Lieutenant Governor in Council in making a regulation stands apart from the review of an administrative decision. A regulation is a form of subsidiary legislation. Generally, the authority for its promulgation comes from legislation (in this case, s. 55(1)(b) of the *ESA*).[36] The scope of such a review is narrow:

> A successful challenge to the *vires* of regulations requires that they be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate.[37]

[28] It is not concerned with assessing the policy merits of a regulation to determine if it is "...necessary, wise, or effective in practice"[38]:

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[35] S. 27 of the *ESA* states:

> **27.** (1) An enforcement officer may make an order requiring a person to stop engaging in or not to engage in an activity if the enforcement officer has reasonable grounds to believe that the person is engaging in the activity, has engaged in the activity or is about to engage in the activity and, as a result, is contravening, has contravened or is about to contravene any of the following provisions:
>
> 1. Section 9 or 10.
>
> 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.

[36] quoted at para. [6], above.

[37] Guy Régimbald, *Canadian Administrative Law* (2008), at p. 132, referred to in *Katz Group Canada Inc. v. Ontario (Health and Long Term Care)*, [2013] 3 S.C.R. 810, at para. 24.

> . . .the judicial review of regulations, as opposed to administrative decisions, is usually restricted to the grounds that they are inconsistent with the purpose of the statute or that some condition precedent in the statute has not been observed. The motives for their promulgation are irrelevant.[39]

[29] This is not an examination of the "political, economic, social or partisan considerations" underlying the regulation.[40] It is not a question of whether the regulation will achieve its statutory objectives.[41] A regulation must be "irrelevant", "extraneous" or "completely unrelated" to the statutory purpose if being inconsistent with that purpose is to be the basis for finding the regulation to be *ultra vires* (beyond or outside the power or authority of the Lieutenant Governor).[42] In effect, although it is possible to strike down regulations as *ultra vires* on this basis, "it would take an egregious case to warrant such action".[43]

[30] In undertaking this sort of review, it should be noted that "[r]egulations benefit from a presumption of validity".[44] The presumption has two aspects: (1) the burden is on the challenger to demonstrate the invalidity of the regulation[45]; and (2) where it is possible, the regulation

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[38] *Jafari v. Canada (Minister of Employment and Immigration)*, [1995] 2 F.C. 595 (C.A.), at p. 604.

[39] *Ontario Federation of Anglers& Hunters v. Ontario (Ministry of Natural Resources)* (2002), 211 D.L.R. (4th) 741 (Ont. C.A.), at para. 41, quoted in *Katz Group Canada Inc. v. Ontario (Health and Long Term Care), supra*, (fn. 35), at para. 27.

[40] *Thorne's Hardware Ltd. v. The Queen*, [1983] 1 S.C.R. 106, at pp. 112-13, referred to in *Katz Group Canada Inc. v. Ontario (Health and Long Term Care), supra*, (fn. 35), at para. 28.

[41] *CKOY Ltd. v. The Queen*, [1979] 1 S.C.R. 2, at p. 12; see also: *Jafari v. Canada (Minister of Employment and Immigration), supra*, (fn. 36), at p. 602; and, Keyes, John Mark, *Executive Legislation*, 2nd ed., Markham, Ont.: LexisNexis, 2010, at p. 266), each referred to in *Katz Group Canada Inc. v. Ontario (Health and Long Term Care), supra*, (fn. 35), at para. 28.

[42] *Alaska Trainship Corp. v. Pacific Pilotage Authority*, [1981] 1 S.C.R. 261; *Re Doctors Hospital and Minister of Health* (1976), 12 O.R. (2d) 164 (Div. Ct.); *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, at p. 280; *Jafari v. Canada (Minister of Employment and Immigration), supra,* (fn. 36), at p. 604; and Brown, Donald J. M., and John M. Evans, with the assistance of Christine E. Deacon, *Judicial Review of Administrative Action in Canada*, vol. 3. Toronto: Canvasback, 1998 (loose-leaf updated August 2012) at 15:3261 each referred to in *Katz Group Canada Inc. v. Ontario (Health and Long Term Care), supra*, (fn. 35), at para. 28.

[43] *Thorne's Hardware Ltd. v. The Queen*, [1983] 1 S.C.R. 106 at p. 111 referred to in *Katz Group Canada Inc. v. Ontario (Health and Long Term Care), supra,* (fn. 35), at para. 28.

[44] Ruth Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at p. 458, referred to in *Katz Group Canada Inc. v. Ontario (Health and Long Term Care), supra*, (fn. 35), at para. 25.

[45] John Mark Keyes, *Executive Legislation* (2nd ed. 2010), *supra*, (fn. 38), at pp. 544-50), referred to in *Katz Group Canada Inc. v. Ontario (Health and Long Term Care), supra*, (fn. 35), at para. 25.

should be construed in a manner which renders it *intra vires* (within the power or authority of the Lieutenant Governor).[46]

[31] In summary: "Both the challenged regulation and the enabling statute should be interpreted using a 'broad and purposive approach.'"[47]

Analysis

(a) Did the Minister fail to meet a condition precedent that was mandatory to the making of O. Reg. 176/13?

[32] Wildlands submitted that the Minister did fail. As counsel for Wildlands sees it, s. 57(1) requires that before a regulation is made, the Minister must separately consider whether the survival of each and every one of the species identified as threatened or endangered (155 in all)[48] would be in jeopardy or whether each of them would be at risk of any other significant adverse effect.[49] In the factum filed in support of Wildlands, it is put this way:

> The correct interpretation of section 57(1) requires the Minister to reach an opinion on <u>each</u> species to which a proposed regulation should apply.

The question is then refined as follows:

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[46] Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada*, vol. 3 (loose-leaf), *supra*, (fn. 39), at 15:3200 and 15:3230, referred to in *Katz Group Canada Inc. v. Ontario (Health and Long Term Care), supra*, (fn. 40), at para. 25.

[47] *Katz Group Canada Inc. v. Ontario (Health and Long Term Care), supra*, (fn. 35), at para. 26, referring to *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485, at para. 8; see also: Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada*, vol. 3 (loose-leaf), *supra*, (fn. 40), at 13:1310; John Mark Keyes, *Executive Legislation* (2nd ed. 2010), *supra*, (fn. 38), at pp. 95-97; *Glykis v. Hydro-Québec*, 2004 SCC 60, [2004] 3 S.C.R. 285, at para. 5; Ruth Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at p. 368; *Legislation Act, 2006*, S.O. 2006, c. 21, Sch. F, s. 64).

[48] Schedule 2 and Schedule 3 to the *ESA*, respectively, 99 "Endangered Species" and 56 "Threatened Species (O. Reg. 25/13, s.1).

[49] Insofar as it is relevant to this case, s. 57(1) of the *ESA* states:

> 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....

> [Wildlands] say that the correct legal question that the Minister must ask, under s. 57(1), is whether the proposed regulation is likely to affect ***each listed species to which the regulation applies.*** The Minister may not lawfully ask whether the regulation will affect only *a few* such species, or if it will affect *any and all* listed species...
>
> First, the text of s. 57(1) requires this interpretation. The Minister's duty under section 57(1) is triggered where regulatory proposal would apply to 'a species' in the singular – not to 'species generally' or 'any and all species'. Once this is triggered, s. 57(1) imposes a duty to determine the effects of the regulation on 'the species'. This definite article refers back to a noun already identifiable to the reader – namely, singular species already identified. [50]
>
> [Emphasis in the original]

[33] As put, there is a single question to be asked in respect of each of the threatened or endangered species. This was not done. To Wildlands, this demonstrates that the Minister failed to follow s. 57(1), failed to follow the condition precedent it sets and that, as a result, O. Reg. 176/13 was not validly promulgated and cannot stand.

[34] Compliance with the direction found in s. 57(1) consists of two questions. These questions are not to be asked together or as one. The answer for the second, if it is necessary at all, follows from the first. The first question asks whether or not "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". If the proposed regulation would not apply to any of the species on the list, there is no need to go further. Of course, a proposed regulation could apply to one, two or more of the species listed. In this case, the Explanatory Note states that "[a]ll endangered species and threatened species on the Species at Risk [List] were considered in this assessment".[51] As a result, some species were excluded from particular activity exemptions.[52] (It may be obvious, but an American Eel, like other fish, will not affected by the operation of a wind facility or other terrestrial activities.) The criteria used for this analysis was provided (for example: "There are fewer than 20 occurrences (i.e. areas in which the species is/was present) in Ontario" and "The species has been ranked as *Possibly Extirpated, Critically Imperiled or Imperiled in Ontario,* following the Nature Serve methodology..."[53]).

[35] Where there are Species at Risk to which the proposed regulation would apply, the Minister is obliged to answer the second question. He or she must come to an opinion as to whether the proposed regulation is likely to jeopardize the survival of those species or whether it will have any other significant adverse effect on them. If, in the opinion of the Minister. the

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[50] *Factum of the Applicants*, at pp. 21-22 (sub-title (iii), para.79 and para. 80).
[51] Minister's Explanatory Note-Changes to Ontario Regulation 242/08 under the *ESA* related to Modernization of Approvals (April 29, 2013), at p. 5.
[52] *Ibid*, at p. 5.
[53] *Ibid*, at p. 5.

answer to the second question is affirmative, he or she has to consult with an expert. There 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. There could be a program, approach or other condition that, in the opinion of the Minister, demonstrates there will be no jeopardy to the survival of any of them and no risk of other significant adverse effects. While it may not be independent and separate, this could be said to be a means by which each of the species at risk, to which the regulation would apply, was considered. Whether it is or is not, it is enough to satisfy the condition precedent imposed by s. 57(1) of the *ESA*. It is what happened in this case. The Explanatory Note reviewed "the detailed provisions of the proposed regulation", which included the suggested conditions and offered the opinion that the regulation was not likely to jeopardize the survival of any of the affected endangered or threatened species or to have any other significant adverse effect on these species at risk.

[36] It is from this that the Minister came to arrive at his opinion that there was no jeopardy or risk to any threatened species. There was no need to consult. The regulation could be and was recommended to the Lieutenant Governor in Council. The requirement of the condition precedent was met.

[37] Finally, as to this issue, it should not be forgotten that there are limits to the review this court can undertake. In respect of whether the condition precedent found in s. 57(1) of the *ESA* has been met, the question is whether the record demonstrates that the required steps were taken. In its factum, Wildlands proposed that, in the circumstances, "it is premature to review the reasonableness of any opinion of whether the regulation is likely to 'jeopardize the survival' or have 'any other significant adverse effect'"[54] on any Species at Risk. Such an examination is not only premature, it would be beyond what can properly be asked. It is not for this court to examine and determine whether the opinion is correct or reasonable (that, in fact, O. Reg. 176/13 is not likely to threaten the survival of any Species at Risk). To do so would conflict with the injunction of the Supreme Court of Canada that a review is not concerned with assessing whether the regulation will prove to be "...necessary, wise, or effective in practice".[55]

(b) Is the regulation inconsistent with the objects and the purposes of the *ESA*?

[38] It is well-established that the authority of the Lieutenant Governor in Council (Cabinet) to enact subordinate legislation is circumscribed by the purposes of the enabling legislation. A regulation that is inconsistent with the object and purpose of its enabling statute is invalid.[56]

[39] The submissions made on behalf of Wildlands to the effect that O. Reg. 176/13 is inconsistent with the purposes of the *ESA* are rooted in the idea that the protection and recovery of Species at Risk is the single and only purpose behind the *ESA*. Any regulation that allows for

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[54] *Factum of the Applicants*, at para. 89.
[55] See para. [28], above.
[56] *Katz Group Canada Inc. v. Ontario (Health and Long Term Care), supra*, (fn. 35), at para. 24, citing *Wadell v. Canada*, (1983), 8 Admin. L.R., at p. 292, also found at [1983] B.C.J. No. 2017, at para. 29.

any other consideration to be accounted for or balanced against this is inconsistent with the purpose of the *ESA*. In taking this position, Wildlands relied on comments made in the legislature at the time of its passing. At the time, the [then] Minister of Natural Resources said that 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.[57]

[40] The Minister observed that the *ESA* created a "presumption of protection"[58] for all listed species.

[41] From this foundation, it was said that O. Reg. 176/13 is inconsistent with purposes of the *ESA*. The factum filed on Wildlands' behalf puts this in the following ways:

> ... the Regulation functions so as to deprive almost all listed endangered and threatened species of the protections of the ESA's key operative prohibitions in ss. 9(1) and 10(1)[59] and the associated authorized scheme in ss. 17 and 18[60],

and

> Put another way, the Regulation puts an end to the ESA's core statutory protections for almost all of Ontario's most seriously at-risk species,

and

> ... In its place, the Regulation supplants the scheme with a parallel Exemptions Regime that enables many activities dangerous to species and their habitats. ...[61]

[42] In furtherance of this submission, counsel for Wildlands relied on a special report prepared by the Environmental Commissioner of Ontario. The report was entitled, "*Laying Siege*

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[57] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl. 2nd Sess., No. 143, (20 March 2007) at 1401 (Hon. David Ramsay, Minister of Natural Resources).
[58] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl. 2nd Sess., No. 148, (28 March 2007), at 1530, (Hon. David Ramsay, Minister of Natural Resources).
[59] ss. 9 and 10 deal with the prohibitions against harming species at risk and damaging their habitat (see: para. [4], above, and fns. 5 and 6 herein)
[60] s. 17 deals with permits that authorize activities that would otherwise be prohibited (see: para. [5], above and fns. 7, 8 and 9 herein). Section 18 provides another means of authorizing a person to engage in an activity that would otherwise be prohibited ("Minister's instruments").

[61] *Factum of the Applicants*, at paras. 97, 98 and 99.

to the Last Line of Defence: A review of Ontario's Weakened Protections of Species at Risk.[62] The Report takes the view that O. Reg 176/13 "thwarts the very purposes of the Act"[63]. In a press release that accompanied the publication of the report, the Commissioner suggested that the regulatory amendments "threaten the protection of the province's species at risk" and "undermine what the Ontario legislature set out in law".[64]

[43] In Wildlands' view, the problem does not stop there. It suggested that the Explanatory Note, which the Minister endorsed as the basis for the opinion the *ESA* required that he come to, referred to regulatory changes encompassed in O. Reg. 176/13 as intended to:

- '...increase administrative efficiency and reduce burden on individuals and businesses engaged in activities that affect species at risk and their habitat while providing for the protection of species at risk';
- '...address fairness issues for proponents of activities that have long approval proposal processes'; and,
- ...address that 'issuance of these permits was often time and resource intensive'.[65]

[44] These statements are taken to be a demonstration that the purpose of O. Reg. 176/13 is to "reduce perceived administrative and financial burdens on the MNR and on industry proponents. Thus, its purpose is "unrelated, extraneous and contrary to the ESA's purpose."[66]

[45] Wildlands goes on to point out that the Explanatory Note states that the conditions to be imposed were to "*minimize the impact* on species at risk, *increase administrative efficiencies* and provide clear direction when applied to a specific set of circumstances that are intended to result in one of three desired outcomes."[67] It is said that, for the proposals "... to exempt forestry, mining, hydro, aggregate, wind energy and other industrial activities, the only applicable outcome is 'mitigation of adverse effects' to species or habitat"[68]. To Wildlands, mitigation of impacts is inconsistent with protection and recovery which it understands to be the only purpose of the *ESA*.

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[62] *Affidavit of Anna M. Baggio,* sworn December 6, 2013, at paras. 69 and 70, and Exhibit EE.
[63] *Ibid,* (the special report, Exhibit EE), at p. 39.
[64] *Affidavit of Anna M. Baggio,* sworn December 6, 2013, at para 71, and Exhibit FF: The second quotation was quoted in the news release as a quote of the Commissioner.
[65] *Factum of the Applicants*, at para. 109, quoting from Minister's Explanatory Note-Changes to Ontario Regulation 242/08 under the *ESA* related to Modernization of Approvals (April 29, 2013), at pp. 2, 8, and 32.
[66] *Ibid,* (*Factum*), at para. 107.
[67] *Ibid,* (*Factum*), at para. 110, quoting from Minister's Explanatory Note-Changes to Ontario Regulation 242/08 under the *ESA* related to Modernization of Approvals (April 29, 2013), at p. 2. The emphasis is found in the factum, but not in the Explanatory Note.
[68] *Ibid,* (Factum), at para. 110.

[46] In furtherance of this position, Wildlands relies on *Re: Doctors Hospital v. Minister of Health.*[69] It takes the case as standing for the proposition that, when a regulation is enacted with the "ultimate purpose of improving fiscal prudence", it follows that, unless such improvement is the underlying purpose of the authorizing legislation, the regulation cannot be valid. "Put simply 'reducing administrative burdens' is not one of the legislated objectives of the ESA..."[70] and so O. Reg. 176/13 should not stand.

[47] I start by pointing out that the words of the Minister, the report of the Environmental Commissioner and the accompanying news release are not helpful. In this case, it is the words of the statute that drive an understanding of its intention. What becomes apparent from a review of those words is that the *ESA* is not one-sided in its purpose as proposed by Wildlands. The preamble to the legislation contains the following:

> 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.

[48] This is said while recognizing that biological diversity has "ecological, social, economic, cultural and intrinsic value". Even understanding the contribution that biological diversity makes to our economy, the *ESA* sets out to protect that diversity while not forgetting our more general concern for other considerations (social, economic and cultural) that play an important role and have a significant impact on our society and way of life.

[49] This suggests something more balanced than the reliance on protection and restoration of species at risk as the singular purpose behind the *ESA*. This is confirmed in the words of the statute where they deal with the considerations that bear on the issuance of a permit. A permit may be issued for an activity, the main purpose of which is not directed to the protection or recovery of the species specified in the permit, where the Minister believes the activity "will result in a significant social or economic benefit to Ontario"[71]. In other words, the harm to the species may be accepted in light of the social or economic benefits that will accrue. That these considerations may be brought to bear in the preparation and making of a regulation is made apparent by the direction that, where the Minister gives notice to the public of the proposal for a regulation, pursuant to s. 16 of the *Environmental Bill Of Rights, 1993*, it shall set out "... the reasons for making the proposed regulation, including any significant social or economic benefit to Ontario"[72]. Under the *ESA*, the Minister may establish a committee to make recommendations "...on any matter specified by the Minister that relates to approaches that may be used under [the ESA] to promote sustainable social and economic activities that assist in the protection or recovery of species".[73] Presumably, "any matter" includes the cost. These requirements are consistent with the injunction found in the preamble of the *ESA* that activities undertaken in furtherance of the protection and restoration of species at risk, will have appropriate regard "for

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[69] (1976) 12 O.R. (2d) 164 (HCJ-Div. Ct.).
[70] *Factum of the Applicants*, at para. 112.
[71] *ESA, supra*, (fn. 1), at s. 17(2)(d)(i).
[72] *Ibid*, at s. 57(2)(e)(vi).
[73] *Ibid*, at s. 48(h).

social, economic and cultural considerations." The preamble and these statutory provisions run contrary to the position advanced by Wildlands that every other consideration falls in the face of concern for a Species at Risk in Ontario. Balancing these competing concerns is part of the rationale for O. Reg. 176/13. This is consistent with what was said in the "Regulation Proposal Notice" that initiated its preparation and promulgation. It called for the balancing of the protection and recovery of species at risk while either:

- helping existing or planned activities proceed without additional approvals where new species or habitat protection comes about after their approval;
- enabling a streamlined alternative to authorizing new activities that benefit species;
- enabling activities necessary for human health and safety; and/or
- achieving administrative efficiencies.[74]

[50] It follows that *Re: Doctors Hospital v. Minister of Health* does not assist Wildlands. In that case, the hospitals of concern were governed by the *Public Hospitals Act*[75]. Each was approved as a public hospital under the authority of s. 4(3) of that legislation.[76] The Minister of Health determined that, as a result of the need to reduce expenditures, the hospitals should be closed. Regulations purporting to authorize the closings were made. The authority for the closings was said to be s. 4 (5):

> ...any approval given or deemed to have been given under this Act in respect of a hospital may be suspended by the Minister or revoked by the Lieutenant Governor in Council.

[51] The Orders in Council were challenged. The Divisional Court issued declarations that they were invalid. It examined s. 4(5) in the context of the history of the legislation and concluded that "... the subsection could never have been intended to be used as a means of exercising financial control over hospitals; that is to say, to revoke the hospitals' approval not for inefficiency say, but for lack of funds."[77] Accordingly, the parameters of the decision were restricted. It was accepted that the hospitals were operated in an efficient and competent manner[78]. It was the narrow requirement to reduce expenditures that was extraneous to the purposes of the *Public Hospitals Act.* This limited constraint is not apparent in the case we are to decide. In this case, it is not the cost to the government in operating the scheme the *ESA* puts in

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[74] See: para [9], above.
[75] R.S.O. 1970, c. 378.
[76] *Re: Doctors Hospital v. Minister of Health, supra,* (fn. 69), at p. [168], quoting from Order in Council ostensibly revoking the approval of The Doctors Hospital.
[77] *Ibid,* at p. [173].
[78] *Ibid,* at pp. [166], and [167].

place that is the concern. It is the cost to those who wish to operate in the context of industries that may, or projects that could, impact on the species at risk that are the concern. The *ESA* provides for the consideration of, if not a balancing of, these costs against the concern for the protection and restoration of these species. It was the opinion of the Minister that the regulation would not jeopardize the survival of any species at risk in Ontario or cause any significant adverse effect. O. Reg. 176/13 is directed to balancing the protection and restoration of Species at Risk with the economics of the industries required to operate under the auspices of the *ESA*. On this basis, O. Reg. 176/13 is authorized by the provisions of the *ESA*.

[52] This conclusion does not change in the face of *Heppner v. Alberta.*[79] In that case, a series of regulations were made: first, to establish and then to extend the "Edmonton Restricted Development Area", which formed "...a narrow strip of land almost encircling the City of Edmonton".[80] One of the regulations included lands owned by the appellants. The stated purpose was to establish a transportation corridor. This was a use not authorized by the controlling legislation. The judge who had heard the matter "in chambers" was unprepared to declare the regulation invalid. He found that it was authorized because, while its principle purpose was outside the prescribed legislative parameters, it accomplished, as a peripheral result, the satisfaction of a purpose that was valid under the legislation. The protection of the transportation corridor was an invalid purpose, but the general advantage to the environment as a whole that occurred while peripheral brought the regulation within the purposes of the legislation. This position was not sustained on appeal. The court found:

> I repeat that in my judgment the primary purpose and the motivating force behind the promulgation of the Order-in-Council being impugned in this appeal was the creation of 'a transportation and utility corridor,' a purpose not authorized by the Act and therefore the Order-in-Council and the regulations purported to be issued thereunder are invalid. The fact that in accomplishing this invalid purpose, a peripheral purpose following within the strict terms of the Act may be accommodated does not render valid what would otherwise be invalid subordinate legislation.[81]

[53] The economic considerations brought to bear on the making of O. Reg. 176/13 are not a peripheral purpose. They are a consideration which, pursuant to the *ESA*, is to be part of the efforts undertaken in acting to protect and restore species at risk. Even if this were not so, it would not be open to this court to look behind this regulation and conclude that it will not accomplish that protection or restoration. To do so would require an evaluation of the substance of the scheme the regulation puts in place to determine whether it can accomplish those goals.

Conclusion

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[79] [1977] A.J. No. 523, 80 D.L.R. (3d) 112, (Alta S.C. (A.D.).
[80] *Heppner v. Alberta, ibid,* (fn. 75), at para. 17.
[81] *Ibid,* at para. 43, at 1977 ALTASCAD 206 (CanLii) this is shown as para. 48.

[54] The application is dismissed.

Costs

[55] Pursuant to an agreement between the parties, in the event that the application failed, there were to be no costs awarded to the respondents. None being requested; none are awarded.

LEDERER J.

J. MACKINNON J.

D. L. CORBETT J.

Released: 201505 28

CITATION: Wildlands League v. Lieutenant Governor in Council, 2015 ONSC 2942
DIVISIONAL COURT FILE NO.: 400/13
DATE: 20150528

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

J. MACKINNON, D.L. CORBETT and LEDERER JJ.

BETWEEN:

WILDLANDS LEAGUE and FEDERATION OF ONTARIO NATURALISTS

Applicant

– and –

LIEUTENANT GOVERNOR IN COUNCIL and MINISTER OF NATURAL RESOURCES

Respondents

REASONS FOR JUDGMENT

LEDERER J.

Released: 20150528