

SCC NO.

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

**WILDLANDS LEAGUE and FEDERATION OF
ONTARIO NATURALISTS**

**APPLICANTS
(APPELLANTS)**

- and -

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

**RESPONDENTS
(RESPONDENTS)**

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL
(WILDLANDS LEAGUE and FEDERATION OF
ONTARIO NATURALISTS, APPLICANTS)
(Pursuant to R. 25 of the *Rules of the Supreme Court of Canada*)**

TAKE NOTICE that Wildlands League and Federation of Ontario Naturalists apply for leave to appeal to the Court, pursuant to s. 40(1) of the *Supreme Court Act*, from the judgment of the Court of Appeal for Ontario in file number C61016 made October 11, 2016, and for costs of this application, and for any further or other order that the Court may deem appropriate;

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

1. On May 15, 2013, the Lieutenant Governor in Council (“Cabinet”) made Ontario Regulation 176/13 (the “Exemption Regulation”), on the recommendation of the Minister of Natural Resources (the “Minister”). The Exemption Regulation exempts many industrial activities from compliance with the *Endangered Species Act, 2007*, SO 2007, c 6 (“*ESA*”). Specifically, it exempts industrial activities from the *ESA*’s two core prohibitions against killing, harming, harassing, capturing, or taking endangered or threatened species (s. 9); and against damaging or destroying the habitats of endangered or threatened species (s. 10).

2. This proposed appeal raises two questions that, by reason of their broad public importance, warrant guidance by this Honourable Court:

Issue 1: Should statutory decisions that serve as conditions precedent to the making of subordinate legislation be reviewed using *Dunsmuir* standard of review analysis? Or should such decisions be carved out of the *Dunsmuir* approach, as done by the courts below, and reviewed by some different and/or less rigorous standard?

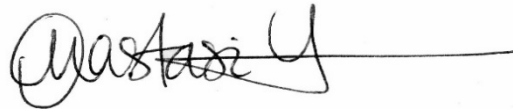
Issue 2: In reviewing whether an exemption regulation is consistent with statutory purpose, should courts assess the exemption regulation against the statute's purpose or should they also review it against the statutory scheme? Should provisions that authorize exemptions from a statute nonetheless be construed purposively?

3. If leave is granted, this Honourable Court will also be asked to resolve, in respect of Issue 1:
- a. Should ministerial decisions made under s. 57(1) of the *ESA* be reviewed using a correctness or reasonableness standard consistent with *Dunsmuir*?
 - b. If so, was the Minister's Opinion under s. 57(1) correct (that is, did he apply the correct legal test in reaching his opinion) and was it reasonable?
4. If leave is granted, this Honourable Court will also be asked to resolve, in respect of Issue 2:
- a. Is subordinate legislation that aims merely at *minimizing harm* to species at risk consistent with a statutory purpose of *protecting and recovering* species at risk?
5. If leave is granted, the appeal will determine whether the Exemption Regulation is *ultra vires*.
6. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Dated at Toronto, Ontario, this 8th day of December, 2016.



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NOTICE TO THE RESPONDENT OR INTERVENER: A respondent or intervener may serve and file a memorandum in response to this application for leave to appeal within 30 days after the day on which a file is opened by the Court following the filing of this application for leave to appeal or, if a file has already been opened, within 30 days after the service of this application for leave to appeal. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration under section 43 of the *Supreme Court Act*.