

COURT FILE NO.: 636/09
(Guelph)
DATE: 20090813

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

**THE CORPORATION OF THE CITY
OF GUELPH and BELMONT EQUITY
(HCBP) HOLDINGS LTD.**

Plaintiffs

Michael Bordin, for the Plaintiffs

- and -

MATTHEW SOLTYS, CAILEY CAMPBELL, NICOLE FREEBORN, JOSH GILBERT, RADE KOVACEVIC, SHABINA LAFLEUR-GANGJI, MATTHEW LOWELL-PELLTIER, Members of LAND IS MORE IMPORTANT THAN SPRAWL (LIMITS) or any agent or person acting under their instructions. JOHN DOE, JANE DOE and other persons unknown.

**Eric K. Gillespie and Julia Croome,
for the Defendants**

Defendants

HEARD: August 10, 2009

REASONS FOR JUDGMENT

GRAY J.

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[1] It is likely that most citizens will not have heard of the Jefferson Salamander. As it happens, the Jefferson Salamander is a "threatened species", within the meaning of the *Endangered Species Act, 2007*. The issue before me is what effect, if any, this has on the right of the City of Guelph to proceed with the development of a project known as the Hanlon Creek Business Park.

Background

[2] The City of Guelph and Belmont Equity (HCBP) Holdings Ltd. are the owners of about 271 hectares of land, bordered, in part, by Downey Road, Forestell Road and Hanlon Parkway, in the City of Guelph. It is bisected, from east to west, by Laird Road. The plaintiffs intend to develop these lands as a corporate and industrial business park. The development of the park is divided into three phases, Phase 1 of which consists of the lands to the north of Laird Road, with the exception of an existing residential property. Phase 2 and Phase 3 are comprised of the lands to the south of Laird Road. Currently, it is the plaintiffs' intention to proceed with work on Phase 1. All necessary assessments, approvals, certificates and permits to develop Phase 1 of the park have been obtained. An environment impact study was completed in August, 2000. Further environmental impact studies have been done. An appeal to the Ontario Municipal Board was resolved, as a result of which the OMB ordered that a draft plan of subdivision be approved, subject to certain conditions arrived at during the settlement process. Approximately \$20 million has been spent on the project so far.

[3] In the past, the lands had been used for agricultural purposes. There are areas of uncleared forest and wetlands, and a tributary of Hanlon Creek runs through the property. As part of the approved draft plan of subdivision, a

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roadway will be built that crosses the creek. The creek crossing will be by way of a culvert that crosses the creek in an east-west direction. Due to time constraints, the culvert must be built first, with the rest of the infrastructure for Phase 1 of the project to follow. The culvert is likely to take six weeks to build, and the plaintiffs suggest that it must be completed on or before September 15, 2009. It is said that if this date is missed the entire project must be delayed at least one year.

[4] In early 2009, the City was contacted by individuals who expressed concern about environmental issues regarding development of the park. Some of these people belonged to a group called Land Is More Important Than Sprawl (LIMITS). One of the main supporters of LIMITS is the defendant Matthew Soltys. Representatives of the City had a number of discussions with Mr. Soltys about environmental issues relating to the park. The City has had other meetings, including participation in a public forum.

[5] On April 20, 2009, a dead hybrid salamander was discovered along Laird Road, within the park. This specimen was collected and provided to Dr. James Bogart at the University of Guelph.

[6] Dr. Bogart has provided an affidavit in these proceedings. There is no doubt that he is eminently qualified to discuss issues surrounding the Jefferson Salamander; indeed, from 2002 to the present, he has been Chair of the Jefferson Salamander Recovery Team (Canadian Species at Risk).

[7] In the spring of 2009, the City retained Natural Resource Solutions Inc. (NRSI) to provide an opinion on the existence of the Jefferson Salamander on the property. NRSI performed various tests, and, in substance, has concluded

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that it is likely that the habitat of the Jefferson Salamander does not exist within the vicinity of the location where it is proposed that the culvert be installed.

[8] The information regarding the finding of the dead salamander, and other information in the City's possession, has been shared with the Ministry of Natural Resources. The Ministry's recommendation has been that development of the road that will cross the creek, and the building of the culvert, be postponed due to the unknown location of Jefferson Salamander breeding points on the property.

[9] Dr. Bogart identified the dead salamander as an LJJ unisexual salamander, that exists with Jefferson Salamander and uses that species for reproduction. Dr. Bogart has expressed the view that it is very difficult to document the absence of breeding in particular ponds, especially when the individual salamanders are few in number. Because the majority of LJJ females remain within 800 metres of a breeding pond, the particular breeding pond is expected to be within an 800 metre circumference of the collected specimen. Also, there is the possibility that successful breeding does not occur every year. Dr. Bogart has expressed the view that additional survey work should be performed at the site prior to environmental disturbance in order to find the breeding pond or ponds that are being used. Additional survey work could take up to three years.

[10] With leave, Dan Hagman was called to give *viva voce* evidence. He is the Guelph District Manager of the Ministry of Natural Resources. He is familiar with the project, has visited the site, and is familiar with the issue involving the Jefferson Salamander. He testified that no formal approval of the MNR is required to proceed with the work, and that the MNR has taken no formal steps to prevent the work being done. He testified that the City has been working with the MNR in an attempt to address the Jefferson Salamander issue. The MNR's

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preference is that work on the culvert, and the road leading up to it, be suspended until further study has been done regarding the habitat of the Jefferson Salamander in the area. However, he recently attended a meeting in which it apparently was acknowledged that the City would proceed with the culvert work. When asked how this is consistent with the MNR's view that the work should be suspended, he said the MNR did not have the power to issue a stop work order under s. 27 of the *Act* because a regulation had not been promulgated defining the area of habitat of the Jefferson Salamander.

[11] Commencing on or about July 27, 2009, a number of individuals, including the defendants, entered the property and shut down construction of the culvert. Some of these people wore bandanas and sunglasses that hid their facial features. Demands that they leave the property have been ignored. Since that date, the blockading has continued, so that the contractor retained by the City has been unable to do any work on the culvert and the roadway leading to it.

[12] The plaintiffs bring this motion for an injunction, effectively to restrain the defendants from trespassing on the lands and impeding the construction activities.

[13] In opposition to the plaintiffs' injunction, the defendants have filed a number of affidavits, including one from Mr. Soltys. It is fair to observe that in many of the affidavits complaint is made about the development itself, and the overall impact on the environment, rather than any specific complaint about the impact on the Jefferson Salamander. However, by the time the matter was argued before me, counsel for the defendants had narrowed his argument to the impact that the proposed development, and specifically the creek crossing, may have on the habitat of the Jefferson Salamander. Shortly before the argument of the plaintiffs' motion, counsel for the defendants served a separate motion for an

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injunction, to restrain the plaintiffs from continuing construction activities, based on the potential impact of those activities on the habitat of the Jefferson Salamander.

Submissions

[14] Counsel for the plaintiffs submits that an injunction should issue, restraining the defendants from trespassing on lands owned by the plaintiffs, and from impeding lawful construction activities on those lands.

[15] Counsel for the plaintiffs submits that the well-known tests for an interlocutory injunction, discussed in *R.J.R. MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, have been satisfied. Under those tests, the plaintiffs must show:

- (a) that there is a serious issue to be tried;
- (b) that the plaintiffs will suffer irreparable harm if the injunction is not granted; and
- (c) the balance of convenience favours the plaintiffs.

[16] Counsel for the plaintiffs submits that where the conduct complained of consists of trespass to property owned by the plaintiff, the tests in (b) and (c) are less important. In essence, a property owner is *prima facie* entitled to an injunction where trespass occurs, even if the plaintiff cannot demonstrate irreparable harm. Reliance is placed on Sharpe J.A.'s text, *Injunctions and Specific Performance* (Canada Law Book, 2001), Chapter 4, and *Hamilton (City) v. Loucks* (2003), 232 D.L.R. (4th) 362 (Ont. S.C.J.).

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[17] Counsel for the defendants asserts that the defendants do not intend to continue their occupation of the property. However, counsel submits that if I determine that an injunction in favour of the plaintiffs is appropriate, I should only issue such an injunction, prohibiting the defendants from trespassing or blocking construction, on condition that the plaintiffs are themselves enjoined from engaging in any construction activities, for a reasonable period, that may interfere with the habitat of the Jefferson Salamander, and specifically suspend construction of the culvert over the creek. A reasonable period, in counsel's submission, would be for the duration of the anticipated breeding season, which would run until mid to late fall, 2009. Mr. Gillespie submits, in the alternative, that if I am not persuaded that I should enjoin the plaintiffs in the context of their injunction motion, I should grant the defendants an injunction in the same terms, based on the motion for an injunction that they have brought themselves.

[18] Counsel for the defendants submits that I should have regard for the "precautionary principle", which, simply put, contemplates that where there is a threat of a 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. Reliance in this respect is placed on *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241, at paras. 31 and 32. In this case, the Jefferson Salamander is clearly recognized as a threatened species, as contemplated in the *Endangered Species Act, 2007*. Since a dead salamander was discovered within the lands slated for development, and close to the location of the creek crossing, it is a virtual certainty that breeding grounds for the salamander are somewhere within the park. Just because it is presently unknown where those breeding grounds are is not sufficient reason to decline to take steps to avoid the potential destruction or interference with the habitat of the Jefferson Salamander. To fail to do so would

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be directly contrary to the precautionary principle. Mr. Gillespie notes that Dr. Bogart is of the view that up to three years may be required in order to adequately investigate the matter, and he asserts that an injunction lasting until the end of the breeding season in 2009 would be entirely reasonable in the circumstances.

[19] Mr. Gillespie submits that if construction is allowed to continue, and it develops that breeding grounds have been destroyed as a result, that consequence is irreversible. Any delay in pursuing the construction of the works is, in the circumstances, a small price to pay.

[20] Mr. Gillespie acknowledges that, in the context of the motion for an injunction brought by the defendants, it will be necessary for the defendants to persuade me that they should be granted standing to pursue their injunction as public interest litigants, since they have no personal interest in the matter above that of any other member of the public. However, Mr. Gillespie asserts that, in the circumstances, the defendants satisfy the requirements for granting them standing as public interest litigants.

[21] In reply, counsel for the plaintiff submits that, whether it is done as a condition to the plaintiffs' injunction, or as a separate injunction granted to the defendants, the plaintiffs should not be restrained in continuing their construction activities, specifically the construction of the culvert at the creek crossing. Mr. Bordin submits that the defendants do not qualify as public interest litigants. Further, it is submitted that the Minister of Natural Resources, and her Ministry, are charged with the responsibility of enforcing the *Endangered Species Act, 2007*. The plaintiffs have cooperated with the Ministry, and are continuing to work with the Ministry to proceed carefully with the construction activities, so that any habitat of the salamander can be discovered at the earliest opportunity, and

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means can be taken to ameliorate any potential damage. While it is the Ministry's preference that construction of the culvert be postponed until further study can be done, most recently the Ministry has signalled its acceptance of the construction of the culvert, provided it is done carefully and in consultation with the Ministry.

[22] Mr. Bordin submits that the enforcement mechanisms conferred on the Ministry and the Minister under the *Act* are exclusive, and accordingly the Court is deprived of jurisdiction to grant an injunction to the defendants, even if they are granted standing as public interest litigants. Since the Minister and/or the Ministry have not issued orders under the *Act*, the Court should not do so.

Analysis

[23] I will consider the matter in two stages. First, I will consider whether the plaintiffs should be granted the injunction they seek, to prevent trespassing and interference with the construction activities in the park. Second, I will consider the defendants' request for an injunction to restrain the plaintiffs from continuing construction activities, at least for some period.

[24] In my view, the plaintiffs must be granted an injunction to restrain trespassing and interference with construction activities.

[25] Fundamentally, the defendants have no right to take the law into their own hands. If the defendants believe that they have the right, either on their own behalf or as public interest litigants, to stop the plaintiffs from developing the park or any aspect of it, their proper course is to apply to the Court for relief. Belief in the rightness of one's cause does not confer any right to bypass the courts and do what one pleases. The courts look with disfavour on self-help of this nature.

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[26] The case before me is similar, in many respects, to that dealt with by Henderson J. in *Hamilton (City)*, *supra*, in which he granted an injunction to prevent demonstrators from blocking construction of a road, and, essentially for the reasons given by him, an injunction should issue. Mr. Gillespie submits that that case is distinguishable, on the ground that the municipality had passed a specific bylaw declaring that the property in question was private, and that the City of Guelph has not done so here. In my view, that distinction is of no relevance. The plaintiffs are the owners of the property, and there is no evidence that it has traditionally been designated for public use, such as a public park. As property owners, the plaintiffs are entitled to assert the ordinary rights of property owners. That includes the right to exclude from the property those whom they wish to exclude, and certainly includes the right to prevent people from impeding or obstructing lawful activities on the property. To the extent that the defendants refer to the rights of assembly and expression, protected in s. 2(b) of the *Charter of Rights and Freedoms*, they have no relevance here. Whatever else might be encompassed within the freedoms of assembly and expression, they do not include the right to physically impede or blockade lawful activities.

[27] Mr. Gillespie argues that the plaintiffs' injunction is not necessary, because the defendants do not intend to continue their occupation and blockage in any event. I disagree. The apparent position of the defendants is not binding, and cannot be enforced: see *Toronto (Metropolitan) Police Force v. Bromell*, [2000] O.J. No. 1674 (S.C.J.), at para. 15.

[28] For the foregoing reasons, an Order will issue, restraining the defendants and any person having notice of the order, until trial or other final disposition of the action, from engaging in the conduct described in paragraphs 4(a), (b) (c), (d) and (e) of the plaintiffs' Notice of Motion. In addition to the named defendants, it

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is prudent to specifically make the order applicable to "any person having notice of the Order". Because contempt proceedings can be brought against non-parties in any event, it is better to add this sort of terminology to avoid confusion: see *MacMillan Bloedel Ltd. v. Simpson*, [1996] 2 S.C.R. 1048.

[29] That brings me to the defendants' motion for an injunction.

[30] I do not intend to entertain the defendants' request for injunctive relief within the context of the plaintiffs' motion. I doubt that, as a condition of granting an injunction to the plaintiffs, I could grant a corresponding injunction to the defendants. However, even if I could, I am not prepared to allow the defendants to do so as a convenient way of allowing them to sidestep the requirement that they establish their right to pursue an injunction as public interest litigants. If the defendants are entitled to injunctive relief, they must persuade me that they are entitled to such relief in the context of their own motion. As part of the analysis, I must consider whether they should be granted standing as public interest litigants.

[31] In order to succeed in obtaining an interlocutory injunction, the defendants must satisfy the three-part test discussed in *R.J.R. MacDonald, supra*. I do not see why the issue of public interest standing cannot be considered as part of the requirement to show that there is a serious issue to be tried. If the moving parties can show that there is a serious issue to be tried as to whether they qualify as public interest litigants, that may be sufficient to justify an interlocutory injunction, depending on the circumstances. If it is necessary for me to make a final determination as to whether the defendants qualify as public interest litigants in this case, for the reasons discussed hereafter I conclude that they do, at least for the purpose of the very limited injunction that I will be granting, and having regard to the reasons I will be granting it.

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[32] Fundamentally, the defendants argue that it is necessary to grant an injunction in order to preserve the ability to determine whether the construction activities will adversely impact on the habitat of the Jefferson Salamander. In order to appreciate the defendants' submissions, it is necessary to have regard for certain of the provisions of the *Endangered Species Act, 2007*. I have reproduced the relevant parts of that Act as Appendix "A" to these reasons.

[33] Certain of the provisions of the Act require comment.

[34] First, it is apparent from the Preamble to the Act, and from the purposes of the Act described in s. 1, that the policy reflected in the Act is considered, by the legislators, to be of importance. The balance of the Act's provisions are considered to be those that are necessary to carry the important principles of the Act into effect.

[35] Second, the term "habitat" has both a geographical and non-geographical component. Where a regulation has been made defining a specific area, that area is deemed to be the habitat of the species in question. However, where no such regulation is made, the area is undefined, and is simply defined as "an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding."

[36] Third, the Jefferson Salamander is specifically defined, by statute, as a threatened species.

[37] Fourth, it is clear that, while the destruction or damage of habitat of an endangered or threatened species is prohibited, wherever it may occur, the treatment of habitat for enforcement purposes before the making of a regulation defining the habitat's area is different. The combined effect of s. 10(1) and (3) of

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the *Act* is to create a prohibition on the damaging or destruction of habitat, but to suspend that prohibition until a regulation defining the area is made, subject only to the power of the Minister of Natural Resources to make a stop work order in some circumstances. That becomes clear when one examines the enforcement provisions, particularly sections 27, 28, 29 and 30.

[38] Under s. 27 an "enforcement officer" of the Ministry can make an order requiring a person to stop engaging in an activity if a person is contravening s. 10 of the *Act*. However, pursuant to s. 10(3), there is no contravention if a regulation defining the area of habitat is not in force. In that circumstance, s. 28 applies. While the relevant provision is reproduced in the Appendix to these reasons, I will reproduce it here:

28. (1) The Minister may make an order described in subsection (2) if he or she has reasonable grounds to believe that a person is engaging in or is about to engage in an activity that is destroying or seriously damaging or is about to destroy or seriously damage an important feature of an area described in clause (b) of the definition of "habitat" in subsection 2(1) for a species and one or more of the following criteria are satisfied:

* * * * *

4. The species is listed on the Species at Risk in Ontario List as an endangered or threatened species under clause 7(7)(c) or (d), and, pursuant to subsection 10(3), clause 10(1)(a) does not apply to the species.

(2) The order may include any one or more of the following orders:

1. An order requiring the person to stop engaging in or not to engage in the activity.
2. An order prohibiting the person from engaging in the activity except in accordance with directions set out in the order.
3. An order directing the person to take steps set out in the order to rehabilitate any area damaged or destroyed by the activity.

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To paraphrase, these provisions authorize the Minister to make an order requiring a person to stop engaging in an activity if that person is about to engage in an activity that is destroying or is about to destroy or seriously damage an important feature of an area used as habitat, even if s. 10(3) would otherwise neutralize the prohibition in s. 10(1).

[39] Thus, the statutory scheme of enforcement is complete: an enforcement officer can make a stop work order if a regulation defining the area of habitat is in force, and if there is no such regulation, the Minister can make an order pursuant to the terms of s. 28. Section 30 of the *Act* provides an opportunity for the holding of a hearing, but it is noteworthy that the requirement for the hearing does not stay the order.

[40] Where the Legislature has specified a tribunal having jurisdiction to adjudicate matters of a specified nature, it is generally understood that the jurisdiction of such a tribunal is exclusive, and the jurisdiction of the ordinary courts is ousted. This is particularly so where the jurisdiction of the tribunal is defined under the specific statute under which the rights being adjudicated are created or governed: see *Seneca College v. Bhadauria*, [1981] 2 S.C.R. 181; and *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929.

[41] In this case, as part of the public policy considerations reflected in the substantive provisions of the *Act* itself, the Legislature has chosen to confer enforcement powers on the Ministry of Natural Resources and, in some respects, on the Minister. Specifically, the Minister has power to determine the very matter in issue in the defendants' motion for an injunction: namely, whether work on the project should be stopped, and if so, to what degree and for how long, because of some anticipated negative impact on the habitat of the Jefferson Salamander. The Minister can make that assessment on an ongoing basis, and is in a much

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better position to assess the competing policy considerations, as well as legal considerations, than is the Court. Thus, in my view, the Court is deprived of jurisdiction to grant an injunction.

[42] An exception to the general principle exists where it is sought to enjoin an activity until the statutory tribunal can exercise the statutory decision-making power: see *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd.*, [1996] 2 S.C.R. 495.

[43] In this case, Mr. Hagman testified that the Ministry's preference is that work on the culvert, and the road leading up to it, be suspended until further investigation can be done as to the habitat of the Jefferson Salamander. When asked why a stop work order has not been made, he testified that one could not be issued because a regulation defining the area of habitat has not yet been made. To this extent, Mr. Hagman's evidence is consistent with s. 27(1), which limits the power of an enforcement officer to make an order to those circumstances where a regulation defining the area of habitat has been made.

[44] There is no evidence before me, however, that the Minister has even considered making an order under s. 28 of the Act. If the construction activity commences immediately, it may prevent, or at least seriously limit, any opportunity for the Minister to consider making such an order.

[45] In this context, the defendants have satisfied the three-part test for an injunction, at least to allow the Minister to make a decision one way or the other. If necessary, I will grant standing to the defendants as public interest litigants for this purpose: see *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607. There is obviously a serious question to be tried, at least by the Minister, as to whether a stop work order should be issued. If the injunction is not granted, the

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work is commenced, and habitat is destroyed, the harm will be irreparable. I am persuaded that the balance of convenience favours an injunction of short duration.

[46] It is for the Minister to decide whether the circumstances are such that an order under s. 28(1) of the *Act* is justified, and if so, whether her discretion should be exercised to grant one. She may decide that the informal monitoring by the MNR is sufficient. These considerations are for the Minister, and it is not for the Court to usurp the Minister's authority. The residual jurisdiction of the Court to grant injunctive relief should be sparingly exercised, and should be exercised in aid of, rather than in substitution for, the jurisdiction of the Minister.

[47] I will grant an injunction to prevent any further work on the culvert and the road leading up to it for a period of up to 30 days. That will give the Minister enough time to decide whether she will make an order pursuant to s. 28 of the *Act*. If the Minister issues an order under s. 28, or if she signifies, in writing, that she does not intend to issue such an order, my order will terminate. If the Minister does nothing, my order will expire 30 days from today.

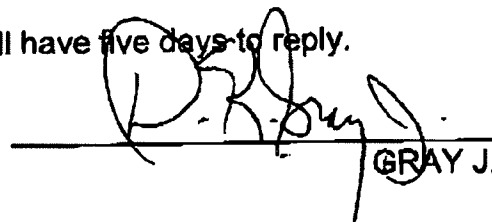
[48] I am not persuaded that the deadline for finishing the culvert work, said to be September 15, 2009, is immutable. I expect that, if necessary, the work can be speeded up, or the City can live with an extension of the deadline, or both. If that is not the case, and it turns out that the project must be delayed for a year, so be it. The policies enshrined in the *Endangered Species Act, 2007* must prevail in these circumstances.

[49] I request that counsel for both parties apprise the proper officials within the Ministry of Natural Resources of this decision.

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Costs

[50] I will entertain brief written submissions with respect to costs, not to exceed three pages, together with a costs outline. Counsel for the plaintiffs shall have ten days to file submissions, and counsel for the defendants shall have ten days to respond. Counsel for the plaintiffs shall have five days to reply.


_____ GRAY J.

Released: August 13, 2009

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APPENDIX 'A'

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 its 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:

* * * * *

1. The purposes of this Act are:

* * * * *

2. To protect species that are at risk and their habitats, and to promote the recovery of species that are at risk.

- 2(1) In this Act,

* * * * *

"habitat" means,

- (a) with respect to a species of animal, plant or other organism for which a regulation made under clause 55(a)(a) is in force, the area prescribed by that regulation as the habitat of the species, or

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- (b) with respect to any other species of animal, plant or other organism, an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding.

And includes places in the area described in clause (a) or (b), whichever is applicable, that are used by members of the species as dens, nests, hibernacula or other residences;

* * * * *

"Species at Risk in Ontario List" means the regulations made under section 7.

* * * * *

3. (1) The committee known in English as the Committee on the Status of Species at Risk in Ontario and in French as Comité de détermination du statut des espèces en péril en Ontario is continued.

(2) COSSARO shall be composed of such number of members as may be appointed by the Lieutenant Governor in Council.

* * * * *

5.(1) For the purposes of this Act, COSSARO shall classify species in accordance with the following rules:

* * * * *

4. A species shall be classified as a threatened species if it lives in the wild in Ontario, is not endangered, but is likely to become endangered if steps are not taken to address factors threatening to lead to its extinction or expiration.

* * * * *

7. (1) The Ministry official who holds the office designated under subsection (6) shall make and file a regulation that lists the following:

* * * * *

3. All the species that are classified by COSSARO as threatened species.

* * * * *

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(7) The Ministry official shall make and file the first regulation under this section not later than the day this section comes into force, and the regulation shall,

* * * * *

(d) list each of the species set out in Schedule 4 as a threatened species; and

* * * * *

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;

* * * * *

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.

* * * * *

(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.

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.

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

* * * * *

3. Recommendations to the Minister and other persons on,

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- 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.

(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.

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.

28. (1) The Minister may make an order described in subsection (2) if he or she has reasonable grounds to believe that a person is engaging in or is about to engage in an activity that is destroying or seriously damaging or is about to destroy or seriously damage an important feature of an area described in clause (b) of the definition of "habitat" in subsection 2(1) for a species and one or more of the following criteria are satisfied:

4. The species is listed on the Species at Risk in Ontario List as an endangered or threatened species under clause 7(7)(c) or (d), and, pursuant to subsection 10(3), clause 10(1)(a) does not apply to the species.

(2) The order may include any one or more of the following orders:

1. An order requiring the person to stop engaging in or not to engage in the activity.
2. An order prohibiting the person from engaging in the activity except in accordance with directions set out in the order.

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3. An order directing the person to take steps set out in the order to rehabilitate any area damaged or destroyed by the activity.

(3) The order shall,

- (a) identify the species that the order relates to;
- (b) briefly describe the nature of the activity and the important feature of the area affected by the activity; and
- (c) state that a hearing on the order may be required in accordance with section 30.

* * * * *

29. (3) An order under section 27 or 28 takes effect when it is served, or at such later time as is specified in the order.

30. (1) A person who is served with an order under section 29 may require a hearing by mailing or delivering to the Minister, within 15 days after service of the order, a written request for a hearing that includes a statement of the reasons for requesting the hearing.

* * * * *

(3) The requirement for the hearing does not stay the order.

* * * * *

(7) After the hearing, the hearing officer shall issue a report to the Minister that contains,

- (a) a summary of the evidence presented at the hearing;
- (b) the hearing officer's opinion on the merits of the order and the hearing officer's recommendations; and
- (c) the reasons for the hearing officer's opinion and recommendations.

(8) After considering the hearing officer's report, the Minister may,

- (a) confirm the order;
- (b) amend the order; or
- (c) revoke the order.

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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;

SCHEDULE 4
TRANSITION – SPECIES TO BE LISTED AS THREATENED SPECIES
(Clause 7(7)(d))

Amphibians

Jefferson Salamander (*Ambystoma jeffersonianum*)

COURT FILE NO.: 636/09
(Guelph)
DATE: 20090813

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

THE CORPORATION OF THE CITY OF
GUELPH and BELMONT EQUITY (HCBP)
HOLDINGS LTD.

Plaintiffs

- and -

MATTHEW SOLTYS, CAILEY
CAMPBELL, NICOLE FREEBORN, JOSH
GILBERT, RADE KOVACEVIC, SHABINA
LAFLEUR-GANGJI, MATTHEW LOWELL-
PELLTIER, Members of LAND IS MORE
IMPORTANT THAN SPRAWL (LIMITS) or
any agent or person acting under their
instructions. JOHN DOE, JANE DOE and
other persons unknown.

Defendants

REASONS FOR JUDGMENT

GRAY J.

Released: August 13, 2009