

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

BETWEEN:

TRANSALTA GENERATION PARTNERSHIP and  
TRANSALTA GENERATION (KEEPHILLS 3)

Appellants  
(Appellants)

– and –

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ALBERTA and  
THE MINISTER OF MUNICIPAL AFFAIRS FOR THE PROVINCE OF ALBERTA

Respondents  
(Respondents)

– and –

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF BRITISH COLUMBIA,  
ATTORNEY GENERAL OF QUÉBEC, ATTORNEY GENERAL FOR SASKATCHEWAN,  
ADVOCATES FOR THE RULE OF LAW, CANADIAN ASSOCIATION OF REFUGEE  
LAWYERS, WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA,  
ASSOCIATION QUÉBÉCOISE DES AVOCATS ET AVOCATES EN DROIT DE  
L'IMMIGRATION, CHICKEN FARMERS OF CANADA, EGG FARMERS OF CANADA,  
TURKEY FARMERS OF CANADA AND CANADIAN HATCHING EGG PRODUCERS  
("THE SM-4"), THE NATIONAL ASSOCIATION OF PHARMACY REGULATORY  
AUTHORITIES, HIV & AIDS LEGAL CLINIC ONTARIO AND HEALTH JUSTICE  
PROGRAM, and TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA

Interveners

~AND~

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

BETWEEN:

ROLAND NIKOLAUS AUER

Appellant  
(Appellant)

– and –

AYSEL IGOREVNA AUER and ATTORNEY GENERAL OF CANADA

Respondents  
(Respondents)

*Style of Cause Continued on Next Page*

– and –

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF BRITISH COLUMBIA,  
ATTORNEY GENERAL OF QUÉBEC, ATTORNEY GENERAL FOR SASKATCHEWAN,  
ADVOCATES FOR THE RULE OF LAW, CANADIAN ASSOCIATION OF REFUGEE  
LAWYERS, WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA,  
ASSOCIATION QUÉBÉCOISE DES AVOCATS ET AVOCATES EN DROIT DE  
L'IMMIGRATION, CHICKEN FARMERS OF CANADA, EGG FARMERS OF CANADA,  
TURKEY FARMERS OF CANADA AND CANADIAN HATCHING EGG PRODUCERS  
("THE SM-4"), THE NATIONAL ASSOCIATION OF PHARMACY REGULATORY  
AUTHORITIES, HIV & AIDS LEGAL CLINIC ONTARIO AND HEALTH JUSTICE  
PROGRAM, TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA,  
ECOJUSTICE CANADA SOCIETY, THE CITY OF CALGARY and  
CANADIAN COUNCIL FOR REFUGEES

Interveners

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**FACTUM OF THE INTERVENER,  
ATTORNEY GENERAL OF ONTARIO**

(Pursuant to Rules 37 and 42 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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**Ministry of the Attorney General**

Crown Law Office – Civil  
720 Bay Street, 8<sup>th</sup> Floor  
Toronto, ON M7A 2S9

**Judie Im****Michele Valentini**

Tel: 416.427.4611

Fax: 416.326.4181

Email: [judie.im@ontario.ca](mailto:judie.im@ontario.ca) |  
[michele.valentini3@ontario.ca](mailto:michele.valentini3@ontario.ca)

Counsel for the Proposed Intervener,  
Attorney General of Ontario

**Borden Ladner Gervais LLP**

World Exchange Plaza  
1300 – 100 Queen Street  
Ottawa, ON K1P 1J9

**Nadia Effendi**

Tel: 613.787.3562

Fax: 613.230.8842

Email: [neffendi@blg.com](mailto:neffendi@blg.com)

Agent for the Proposed Intervener,  
Attorney General of Ontario

ORIGINAL TO: **Registrar**  
 Supreme Court of Canada  
 301 Wellington Street  
 Ottawa, ON K1A 0J1

**COPY TO | SCC 40570:**

**Lawson Lundell LLP**  
 1100 Brookfield Place  
 225 – 6th Avenue SW  
 Calgary, AB T2P 1N2

**Michael J. Donaldson, K.C. | Katie Sykes**  
 Tel: 403.269.6900  
 Fax: 403.269.9494  
 Email: [mdonaldson@lawsonlundell.com](mailto:mdonaldson@lawsonlundell.com) |  
[ksykes@lawsonlundell.com](mailto:ksykes@lawsonlundell.com)

Counsel for the Appellants,  
 TransAlta Generation Partnership and  
 TransAlta Generation (Keephills 3)

**Brownlee LLP**  
 2200 – 10155 102<sup>nd</sup> Street  
 Edmonton, AB T5J 4G8

**Alvin R. Kosak | Greg G. Plester |  
 Rebecca L. Kos**  
 Tel: 780.497.4800  
 Fax: 780.424.3254  
 Email: [akasak@brownleelaw.com](mailto:akasak@brownleelaw.com) |  
[gplester@brownleelaw.com](mailto:gplester@brownleelaw.com) |  
[rkos@brownlee.com](mailto:rkos@brownlee.com)

Counsel for the Respondents,  
 His Majesty the King in Right of the Province  
 of Alberta and the Minister of Municipal  
 Affairs for the Province of Alberta

**Michael J. Sobkin**  
 331 Somerset Street West  
 Ottawa, ON K2P 0J8

Tel: 613.282.1712  
 Fax: 613.228.2860  
 Email: [msobkin@sympatico.ca](mailto:msobkin@sympatico.ca)

Agent for the Appellants,  
 TransAlta Generation Partnership and  
 TransAlta Generation (Keephills 3)

**Supreme Advocacy LLP**  
 100 – 340 Gilmour Street  
 Ottawa, ON K2P 0R3

**Marie-France Major**  
 Tel: 613.695.8855 Ext 102  
 Fax: 613.695.8580  
 Email: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

Agent for the Respondents,  
 His Majesty the King in Right of the Province  
 of Alberta and the Minister of Municipal  
 Affairs for the Province of Alberta

**Ministry of Attorney General (BC)**  
1301 – 865 Hornby Street  
Vancouver, BC V6Z 2G3

**Emily Lapper | Christine Bant**

Tel: 604.660.6795

Fax: 604.660.3567

Email: [emily.lapper@gov.bc.ca](mailto:emily.lapper@gov.bc.ca) |  
[christine.bant@gov.bc.ca](mailto:christine.bant@gov.bc.ca)

Counsel for the Intervener,  
Attorney General of British Columbia

**Hunter Litigation Chambers**

2100 – 1040 West Georgia Street  
Vancouver, BC V6E 4H1

**Aubin P. Calvert | Devin Eeg**

Tel: 604.891.2400

Fax: 604.647.4554

Email: [calvert@litigationchambers.com](mailto:calvert@litigationchambers.com)

Counsel for the Intervener,  
Trial Lawyers Association of British Columbia

**Paliare Roland Rosenberg Rothstein LLP**

155 Wellington Street West, 35th Floor  
Toronto, ON M5V 3H1

**Andrew Lokan | Mannu Chowdhury**

Tel: 416.646.4324

Fax: 416.646.4301

Email: [andrew.lokan@paliareroland.com](mailto:andrew.lokan@paliareroland.com)

Counsel for the Interveners,  
HIV & AIDS Legal Clinic Ontario and Health  
Justice Program

**Gowling WLG (Canada) LLP**

2600 – 160 Elgin Street  
Ottawa, ON K1P 1C3

**Matthew Estabrooks**

Tel 613.786.0211

Fax: 613.788.3573

Email: [matthew.estabrooks@gowlingwlg.com](mailto:matthew.estabrooks@gowlingwlg.com)

Agent for the Intervener,  
Attorney General of British Columbia

**Olthuis Van Ert**

66 Lisgar Street  
Ottawa, ON K2P 0C1

**Dahlia Shuhaibar**

Tel: 613.501.5350

Fax: 613.651.0304

Email: [dshuhaibar@ovcounsel.com](mailto:dshuhaibar@ovcounsel.com)

Agent for the Intervener,  
Trial Lawyers Association of British Columbia

**Olthuis Van Ert**

66 Lisgar Street  
Ottawa, ON K2P 0C1

**Dahlia Shuhaibar**

Tel: 613.501.5350

Fax: 613.651.0304

Email: [dshuhaibar@ovcounsel.com](mailto:dshuhaibar@ovcounsel.com)

Agent for the Interveners,  
HIV & AIDS Legal Clinic Ontario and Health  
Justice Program

**Procureur général du Québec**  
1200, Route de l'Église, 8e étage  
Québec, QC G1V 4M1

**Stéphane Rochette | Francesca Boucher**  
Tel: 418.643.6552 Ext. 20734  
Fax: 418.643.9749  
Email: [stephane.rochette@justice.gouv.qc.ca](mailto:stephane.rochette@justice.gouv.qc.ca)

Counsel for the Intervener,  
Attorney General of Québec

**Conway Baxter Wilson LLP**  
400 – 411 Roosevelt Avenue  
Ottawa, ON K2A 3X9

**M. Alyssa Holland | David K. Wilson |  
Julie Mouris**  
Tel: 613.288.0149  
Fax: 613.688.0271  
Email: [aholland@conwaylitigation.ca](mailto:aholland@conwaylitigation.ca)

Counsel for the Interveners,  
Chicken Farmers of Canada, Egg Farmers of  
Canada, Turkey Farmers of Canada and  
Canadian Hatching Egg Producers (“the SM-4”)

**Workers' Compensation Board of British  
Columbia**  
6951 Westminster Hwy  
Richmond, BC V6C 1C6

**Johanna Goosen**  
Tel: 604.279.7569  
Fax: 604.279.8116  
Email: [johanna.goosen@worksafebc.com](mailto:johanna.goosen@worksafebc.com)

Counsel for the Intervener,  
Workers' Compensation Board of British  
Columbia

**Noël et Associés, s.e.n.c.r.l.**  
225, montée Paiement, 2e étage  
Gatineau, QC J8P 6M7

**Sylvie Labbé**  
Tel: 819.503.2174  
Fax: 819.771.5397  
Email: [s.labbe@noelassociés.com](mailto:s.labbe@noelassociés.com)

Agent for the Intervener,  
Attorney General of Québec

**Supreme Law Group**  
1800 – 275 Slater Street  
Ottawa, ON K1P 5H9

**Moira Dillon**  
Tel: 613.691.1224  
Fax: 613.691.1338  
Email: [mdillon@supremelawgroup.ca](mailto:mdillon@supremelawgroup.ca)

Agent for the Intervener,  
Workers' Compensation Board of British  
Columbia

**Refugee Law Office**

201 – 20 Dundas Street West  
Toronto, ON M5G 2H

**Andrew J. Brouwer**

Tel: 416.435.3269 Ext. 7139  
Fax: 416.977.5567  
Email: [andrew.grouwer@lao.on.ca](mailto:andrew.grouwer@lao.on.ca)

Counsel for the Intervener,  
Canadian Association of Refugee Lawyers

**Hasa Avocats Inc.**

600 – 2000 McGill College Avenue  
bureau 682  
Montréal, QC H3A 3H3

**Lawrence David | Gjergji Hasa**

Tel: 514.849.7311  
Fax: 514.849.7313  
Email: [l.davit@havocats.ca](mailto:l.davit@havocats.ca)

Counsel for the Intervener,  
Association québécoise des avocats et  
avocates en droit de l'immigration

**Henein Hutchison Robitaille LLP**

235 King Street East  
Toronto, ON M5A 1J

**Peter Joseph Henein | Ewa Krajewska |  
Brandon Chung**

Tel: 416.368.5000  
Fax: 416.368.6640  
Email: [phenein@hhllp.ca](mailto:phenein@hhllp.ca)

Counsel for the Intervener,  
Advocates for the Rule of Law

**Goldblatt Partners LLP**

1400 – 270 Albert Street  
Ottawa, ON K1P 5G8

**Colleen Bauman**

Tel: 613.482.2463  
Fax: 613.235.3041  
Email: [cbauman@goldblattpartners.com](mailto:cbauman@goldblattpartners.com)

Agent for the Intervener,  
Canadian Association of Refugee Lawyers

**Ministry of Justice Saskatchewan**

1874 Scarth Street, 9th Floor  
Regina, SK S4P 4B3

**Kyle McCreary**

Tel: 306.798.1422  
Fax: 306.787.0581  
Email: [kyle.mccreary@gov.sk.ca](mailto:kyle.mccreary@gov.sk.ca)

Counsel for the Intervener,  
Attorney General for Saskatchewan

**Shores Jardine LLP**

2250 – 10104 103 Avenue  
Edmonton, AB T5J 0H8

**William W. Shores, K.C. |****Annabritt N. Chisholm**

Tel: 780.448.9275  
Fax: 780.423.0163  
Email: [bill@shoresjardine.com](mailto:bill@shoresjardine.com)

Counsel for the Intervener,  
The National Association of Pharmacy  
Regulatory Authorities

**Dentons Canada LLP**

1420 – 99 Bank Street  
Ottawa, ON K1P 1H4

**David R. Elliott**

Tel: 613.783.9699  
Fax: 613.783.9690  
Email: [david.elliott@dentons.com](mailto:david.elliott@dentons.com) |  
[corey.villeneuve@dentons.com](mailto:corey.villeneuve@dentons.com)

Agent for the Intervener,  
The National Association of Pharmacy  
Regulatory Authorities

**COPY TO: SCC 40582**

**Jensen Shaawa Solomon Duguid  
Hawkes LLP**  
800 – 304 8<sup>th</sup> Avenue SW  
Calgary, AB T2P 1C2

**Laura Warner | Ryan Phillips |  
Matthew Scott**  
Tel: 403.571.1507  
Fax: 403.571.1528  
Email: [warnerl@jssbarristers.ca](mailto:warnerl@jssbarristers.ca) |  
[phillipsr@jssbarristers.ca](mailto:phillipsr@jssbarristers.ca) |  
[scottm@jssbarristers.ca](mailto:scottm@jssbarristers.ca)

~ AND ~

**Paul Daly Law Professional Corporation**  
57 Louis Pasteur Private  
Ottawa, ON K1N 6N5

**Paul Daly**  
Tel: 343.987.0733  
Fax: n/a  
Email: [paul.daly@uottawa.ca](mailto:paul.daly@uottawa.ca)

~ AND ~

**Ronald Robinson**  
305 15<sup>th</sup> Street NW  
Calgary, AB T2B 2B1

Tel: 403.571.4482  
Fax: n/a  
Email: [ron.robinson@rjrprivatelaw.com](mailto:ron.robinson@rjrprivatelaw.com)

Counsel for the Appellant,  
Roland Nikolaus Auer

**Gowling WLG (Canada) LLP**  
2600 – 160 Elgin Street  
Ottawa, ON K1P 1C3

**Jeffrey W. Beedell**  
Tel: 613.786.1071  
Fax: 613.788.3587  
Email: [jeff.beedell@gowlingwlg.com](mailto:jeff.beedell@gowlingwlg.com)

Agent for the Appellant,  
Roland Nikolaus Auer



**Huizinga Di Topa Coles & Layton**  
12225 – 105 Avenue NW, 2nd Floor  
Edmonton, AB T5N 0Y3

**Tina Huizinga, K.C.**

Tel: 587.520.8229  
Fax: 587.520.8215  
Email: [huizinga@hdlaw.ca](mailto:huizinga@hdlaw.ca) |  
[thassistant@hdlaw.ca](mailto:thassistant@hdlaw.ca)

Counsel for the Respondent,  
Aysel Igorevna Auer

**Department of Justice Canada**  
Ontario Regional Office  
400 – 120 Adelaide Street West  
Toronto, ON M5H 1T1

**Michael H. Morris | Joseph Cheng |  
Amy Martin-Leblanc**

Tel: 416.471.4093  
Fax: 416.973.0809  
Email: [michael.morris@justice.gc.ca](mailto:michael.morris@justice.gc.ca) |  
[joseph.cheng@justice.gc.ca](mailto:joseph.cheng@justice.gc.ca) |  
[amy.martin-leblanc@justice.gc.ca](mailto:amy.martin-leblanc@justice.gc.ca)

Counsel for the Respondent,  
Attorney General of Canada

**Ministry of Attorney General (BC)**  
1301 – 865 Hornby Street  
Vancouver, BC V6Z 2G3

**Emily Lapper | Christine Bant**

Tel: 604.660.6795  
Fax: 604.660.3567  
Email: [emily.lapper@gov.bc.ca](mailto:emily.lapper@gov.bc.ca) |  
[christine.bant@gov.bc.ca](mailto:christine.bant@gov.bc.ca)

Counsel for the Intervener,  
Attorney General of British Columbia

**Attorney General of Canada**  
50 O'Connor Street, 5<sup>th</sup> Floor  
Ottawa, ON K1A 0H8

**Christopher M. Rupar**

Tel: 613.670.6290  
Fax: 613.954.1920  
Email: [christopher.rupar@justice.gc.ca](mailto:christopher.rupar@justice.gc.ca)

Agent for the Respondent,  
Attorney General of Canada

**Gowling WLG (Canada) LLP**  
2600 – 160 Elgin Street  
Ottawa, ON K1P 1C3

**Matthew Estabrooks**

Tel: 613.786.0211  
Fax: 613.788.3573  
Email: [matthew.estabrooks@gowlingwlg.com](mailto:matthew.estabrooks@gowlingwlg.com)

Agent for the Intervener,  
Attorney General of British Columbia

**Hunter Litigation Chambers**  
2100 – 1040 West Georgia Street  
Vancouver, BC V6E 4H1

**Aubin P. Calvert | Devin Eeg**  
Tel: 604.891.2400  
Fax: 604.647.4554  
Email: [calvert@litigationchambers.com](mailto:calvert@litigationchambers.com)

Counsel for the Intervener,  
Trial Lawyers Association of British Columbia

**Paliare Roland Rosenberg Rothstein LLP**  
155 Wellington Street West, 35th Floor  
Toronto, ON M5V 3H1

**Andrew Lokan | Mannu Chowdhury**  
Tel: 416.646.4324  
Fax: 416.646.4301  
Email: [andrew.lokan@paliareroland.com](mailto:andrew.lokan@paliareroland.com)

Counsel for the Interveners,  
HIV & AIDS Legal Clinic Ontario and Health  
Justice Program

**Lehal & Company**  
200 – 6905 120th Street  
Delta, BC V4E 2A8

**Kamaljit Kaur Lehal | Jamie Liew**  
Tel: 604.596.1321  
Fax: 604.596.1320  
Email: [kklehal@lehallaw.com](mailto:kklehal@lehallaw.com)

Counsel for the Intervener,  
Canadian Council of Refugees

**Olthuis Van Ert**  
66 Lisgar Street  
Ottawa, ON K2P 0C1

**Dahlia Shuhaibar**  
Tel: 613.501.5350  
Fax: 613.651.0304  
Email: [dshuhaibar@ovcounsel.com](mailto:dshuhaibar@ovcounsel.com)

Agent for the Intervener,  
Trial Lawyers Association of British Columbia

**Olthuis Van Ert**  
66 Lisgar Street  
Ottawa, ON K2P 0C1

**Dahlia Shuhaibar**  
Tel: 613.501.5350  
Fax: 613.651.0304  
Email: [dshuhaibar@ovcounsel.com](mailto:dshuhaibar@ovcounsel.com)

Agent for the Interveners,  
HIV & AIDS Legal Clinic Ontario and Health  
Justice Program

**Goldblatt Partners LLP**  
1400 – 270 Albert Street  
Ottawa, ON K1P 5G8

**Colleen Bauman**  
Tel: 613.482.2463  
Fax: 613.235.3041  
Email: [cbauman@goldblattpartners.com](mailto:cbauman@goldblattpartners.com)

Agent for the Intervener,  
Canadian Council of Refugees

**City of Calgary**

Law | Legal Services and Security  
P.O Box 2100, Station M  
Calgary, AB T2P 2M5

**Henry Chan**

Tel: 403.268.5535  
Fax: 403.268.4634  
Email: [henry.chan@calgary.ca](mailto:henry.chan@calgary.ca)

Counsel for the Intervener,  
The City of Calgary

**Conway Baxter Wilson LLP**

400 – 411 Roosevelt Avenue  
Ottawa, ON K2A 3X9

**M. Alyssa Holland | David K. Wilson |  
Julie Mouris**

Tel: 613.288.0149  
Fax: 613.688.0271  
Email: [aholland@conwaylitigation.ca](mailto:aholland@conwaylitigation.ca)

Counsel for the Interveners,  
Chicken Farmers of Canada, Egg Farmers of  
Canada, Turkey Farmers of Canada and  
Canadian Hatching Egg Producers (“the SM-4”)

**Shores Jardine LLP**

2250 – 10104 103 Avenue  
Edmonton, AB T5J 0H8

**William W. Shores, K.C. |  
Annabritt N. Chisholm**

Tel: 780.448.9275  
Fax: 780.423.0163  
Email: [bill@shoresjardine.com](mailto:bill@shoresjardine.com)

Counsel for the Intervener,  
The National Association of Pharmacy  
Regulatory Authorities

**Champ and Associates**

43 Florence Street  
Ottawa, ON K2P 0W6

**Bijon Roy**

Tel: 613.237.4740  
Fax: 613.232.2680  
Email: [broy@champlaw.ca](mailto:broy@champlaw.ca)

Agent for the Intervener,  
The City of Calgary

**Dentons Canada LLP**

1420 – 99 Bank Street  
Ottawa, ON K1P 1H4

**David R. Elliott**

Tel: 613.783.9699  
Fax: 613.783.9690  
Email: [david.elliott@dentons.com](mailto:david.elliott@dentons.com) |  
[corey.villeneuve@dentons.com](mailto:corey.villeneuve@dentons.com)

Agent for the Intervener,  
The National Association of Pharmacy  
Regulatory Authorities

**Hasa Avocats Inc.**

600 – 2000 McGill College Avenue  
bureau 682  
Montréal, QC H3A 3H3

**Lawrence David | Gjergji Hasa**

Tel: 514.849.7311  
Fax: 514.849.7313  
Email: [l.davit@havocats.ca](mailto:l.davit@havocats.ca)

Counsel for the Intervener,  
Association québécoise des avocats et avocates  
en droit de l'immigration

**Workers' Compensation Board of British  
Columbia**

6951 Westminster Hwy  
Richmond, BC V6C 1C6

**Johanna Goosen**

Tel: 604.279.7569  
Fax: 604.279.8116  
Email: [johanna.goosen@worksafebc.com](mailto:johanna.goosen@worksafebc.com)

Counsel for the Intervener,  
Workers' Compensation Board of British  
Columbia

**Refugee Law Office**

201 – 20 Dundas Street West  
Toronto, ON M5G 2H

**Andrew J. Brouwer**

Tel: 416.435.3269 Ext. 7139  
Fax: 416.977.5567  
Email: [andrew.grouwer@lao.on.ca](mailto:andrew.grouwer@lao.on.ca)

Counsel for the Intervener,  
Canadian Association of Refugee Lawyers

**Supreme Law Group**

1800 – 275 Slater Street  
Ottawa, ON K1P 5H9

**Moira Dillon**

Tel: 613.691.1224  
Fax: 613.691.1338  
Email: [mdillon@supremelawgroup.ca](mailto:mdillon@supremelawgroup.ca)

Agent for the Intervener,  
Workers' Compensation Board of British  
Columbia

**Goldblatt Partners LLP**

1400 – 270 Albert Street  
Ottawa, ON K1P 5G8

**Colleen Bauman**

Tel: 613.482.2463  
Fax: 613.235.3041  
Email: [cbauman@goldblattpartners.com](mailto:cbauman@goldblattpartners.com)

Agent for the Intervener,  
Canadian Association of Refugee Lawyers

**Henein Hutchison Robitaille LLP**

235 King Street East  
Toronto, ON M5A 1J

**Peter Joseph Henein | Ewa Krajewska |  
Brandon Chung**

Tel: 416.368.5000  
Fax: 416.368.6640  
Email: [phenein@hhlip.ca](mailto:phenein@hhlip.ca)

Counsel for the Intervener,  
Advocates for the Rule of Law

**Ecojustice Canada Society**

1910 – 777 Bay Street  
P.O. Box 106  
Toronto, ON M5G 2C8

**Lindsay Beck | Sean Nixon**

Tel: 416.368.7533 Ext. 551  
Fax: 416.363.2746  
Email: [lbeck@ecojustice.ca](mailto:lbeck@ecojustice.ca)

Counsel for the Intervener,  
Ecojustice Canada Society

**Ministry of Justice Saskatchewan**

1874 Scarth Street, 9th Floor  
Regina, SK S4P 4B3

**Kyle McCreary**

Tel: 306.798.1422  
Fax: 306.787.0581  
Email: [kyle.mccreary@gov.sk.ca](mailto:kyle.mccreary@gov.sk.ca)

Counsel for the Intervener,  
Attorney General for Saskatchewan

**Procureur général du Québec**  
1200, Route de l'Église, 8e étage  
Québec, QC G1V 4M1

**Stéphane Rochette | Francesca Boucher**  
Tel: 418.643.6552 Ext. 20734  
Fax: 418.643.9749  
Email: [stephane.rochette@justice.gouv.qc.ca](mailto:stephane.rochette@justice.gouv.qc.ca)

Counsel for the Intervener,  
Attorney General of Québec

**Noël et Associés, s.e.n.c.r.l.**  
225, montée Paiement, 2e étage  
Gatineau, QC J8P 6M7

**Sylvie Labbé**  
Tel: 819.503.2174  
Fax: 819.771.5397  
Email: [s.labbe@noelassocies.com](mailto:s.labbe@noelassocies.com)

Agent for the Intervener,  
Attorney General of Québec

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## PART I – OVERVIEW

1. This appeal is in respect of the *vires* or validity of the *Federal Child Support Guidelines*<sup>1</sup> in *Auer v Auer*<sup>2</sup> and the *2017 Alberta Linear Property Assessment Minister’s Guidelines*<sup>3</sup> in *TransAlta Generation Partnership v Alberta (Minister of Municipal Affairs)*.<sup>4</sup> At issue is the appropriate analytical approach to be employed by the court when reviewing the *vires* or validity of Cabinet<sup>5</sup> or ministerial regulations (“regulations”). In both matters, the Court of Appeal of Alberta found that this Court’s decision in *Katz Group Canada Inc v Ontario (Health and Long-Term Care)*<sup>6</sup> (“*Katz*”) set out the applicable analytical approach which has not been modified or replaced by *Canada (Minister of Citizenship and Immigration) v Vavilov* (“*Vavilov*”).<sup>7</sup> The Attorney General of Ontario (“Ontario”) intervenes to submit that the analytical approach in *Katz* should continue to apply post-*Vavilov*.<sup>8</sup>

2. In Ontario, the determination of the *vires* or validity of regulations is governed by the principles set out in *Katz*. The focus of such reviews is limited to assessing the regulation’s consistency with statutory purpose and the scope of authority to which a presumption of validity and a high threshold is applied. Reasons or justification for regulation-making are not required and any inquiry into the merits of government policy are not permitted. Ontario submits that the separation of powers, respect for the legislature’s authority to delegate regulation-making power to statutory delegates, and established principles of statutory interpretation support this limited and focused assessment.

3. The rule of law requires courts to review the validity of regulations but not in a manner that second-guesses government policy decisions and undermines the separation of powers. Making

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<sup>1</sup> [SOR/97-175](#).

<sup>2</sup> [2022 ABCA 375](#) [*Auer*].

<sup>3</sup> *2017 Alberta Linear Property Assessment Minister’s Guidelines*, Ministerial Order No. MAG: [021/17](#).

<sup>4</sup> [2022 ABCA 381](#) [*TransAlta*].

<sup>5</sup> Governor in Council (“GIC”) or Lieutenant Governor in Council (“LGC”).

<sup>6</sup> [2013 SCC 64](#) [*Katz*].

<sup>7</sup> [2019 SCC 65](#) [*Vavilov*]; *Auer*, *supra* note 2 at para [7](#); *TransAlta*, *supra* note 4 at para [46](#).

<sup>8</sup> Ontario takes no position on the validity of the *Federal Child Support Guidelines* in *Auer* and the *2017 Alberta Linear Property Assessment Minister’s Guidelines* in *TransAlta*.



policy choices that engage social, political and economic considerations falls within the authority of elected officials who are accountable to the ballot box. Judicial review of the merits of such policies undermines our democratic form of government, parliamentary sovereignty, and ultimately undermines the legitimacy of judicial review.

### PART III – STATEMENT OF ARGUMENT

4. Consistent with Ontario’s jurisprudence, Ontario submits that the judicial review of regulations should continue to be governed by the principles set out by this Court in *Katz*.

#### **The *Vires* of Regulations in Ontario is Governed by *Katz***

5. In Ontario, the judicial review of the validity of regulations has thus far been governed by the principles articulated by this Honourable Court in *Katz*. Pre-*Katz* jurisprudence approached the review of the validity of regulations on limited and narrow grounds.<sup>9</sup> Similarly, post-*Katz*<sup>10</sup> and post-*Vavilov*,<sup>11</sup> courts in Ontario have consistently followed *Katz*, calling for limited grounds and deference when reviewing the validity of regulations.

6. In pre-*Katz* jurisprudence, judicial review of the validity of regulations was narrowly focused and described in *Ontario Federation of Anglers & Hunters v Ontario (Ministry of Natural Resources)* by Abella J.A. (as she then was), as follows:

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<sup>9</sup> *Apotex Inc v Ontario (Office of the Lieutenant Governor)*, [2007 ONCA 570](#) at paras [32-33](#) [*Apotex*]; *Ontario Federation of Anglers & Hunters v Ontario (Ministry of Natural Resources)* (2002), [211 DLR \(4th\) 741 \(ON CA\)](#) at para [41](#) [*OFAH*].

<sup>10</sup> *Wildlands League v Ontario (Lieutenant Governor in Council)*, [2016 ONCA 741](#) at paras [39-48](#), leave to appeal to SCC refused, [2017 CanLII 25784](#) [*Wildlands*]; *Royal Demaria Wines Co Ltd v Lieutenant Governor in Council*, [2018 ONSC 7525 \(Div Ct\)](#) at para [57](#) (for the regulation). See also: *R v Maclellan*, [2014 ONSC 2946 \(Div Ct\)](#) at para [9](#) and *Grain Farmers of Ontario v Ontario Ministry of the Environment and Climate Change*, [2015 ONSC 6581](#) at paras [31-32](#), aff’d [2016 ONCA 283](#) [*Grain Farmers*] (confirming *Katz* for reviewing the validity of regulations in *obiter*).

<sup>11</sup> *Hudson’s Bay Company ULC v Ontario (Attorney General)*, [2020 ONSC 8046 \(Div Ct\)](#) at paras [37-40](#) [*HBC*]; *Friends of Simcoe Forests Inc v Minister of Municipal Affairs and Housing*, [2021 ONSC 3813 \(Div Ct\)](#) at paras [26-27](#) [*Friends of Simcoe*]; *Toronto District School Board v Ontario*, [2021 ONSC 4348 \(Div Ct\)](#) at paras [19-25](#); *TransCanada Pipelines Ltd v Ontario (Minister of Finance)*, [2022 ONSC 4432 \(Div Ct\)](#) at paras [5-8](#) [*TransCanada Pipelines*]. See also: *Entité de planification des services de santé en français #4 Centre Sud-Ouest v Ontario (Lieutenant-Gouverneur en Conseil de l’Ontario)*, [2023 ONSC 4657 \(Div Ct\)](#) at paras [47-49](#) (confirming *Katz* for reviewing the validity of regulations but not the ministerial recommendation at issue).

... I start with the observation that 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.<sup>12</sup> [Emphasis added]

7. A key guiding principle was that deference must be accorded to the policy choices reflected in regulations made by statutory delegates. Ontario’s Superior Court of Justice, in *Grain Farmers of Ontario v Ontario Ministry of the Environment and Climate Change*, stated, “[i]t is clear that great deference is to be accorded to regulations and legislation passed by the government and legislature of this province.”<sup>13</sup>

8. Post-*Vavilov*, in *Hudson’s Bay Company ULC v Ontario (Attorney General)*, Ontario’s Divisional Court described the test for challenging the validity of a regulation as set out in *Katz* as “well settled,”<sup>14</sup> and summarized the following considerations:

- i. Whether the regulation is within the scope of the delegated authority, including any conditions precedent to the valid exercise of authority;
- ii. Whether the regulation is consistent with the purpose of the enabling statute, and it will only be found to be inconsistent if “irrelevant”, “extraneous” or “completely unrelated” as the threshold for inconsistency with statutory purpose is high;
- iii. Whether the applicant has met its burden to prove invalidity which is the first aspect of the presumption of validity that regulations enjoy; and
- iv. The reviewing court must interpret the regulation and its enabling statute broadly and purposively, and in a manner that reconciles them, rendering the regulation *intra vires*, wherever possible. This is the second aspect of the presumption of validity that regulations enjoy.<sup>15</sup>

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<sup>12</sup> *OFAH*, *supra* note 9 at para [41](#), citing *Reference re Validity of Regulations in Relation to Chemicals*, [1943] SCR 1 at [12](#).

<sup>13</sup> *Grain Farmers*, *supra* note 10 at para [31](#).

<sup>14</sup> *HBC*, *supra* note 11 at para [37](#).

<sup>15</sup> *HBC*, at para [37](#), citing *Katz*, at paras [24-28](#).

9. Ontario’s Divisional Court in *HBC* also agreed with a key guiding principle in *Katz* that judicial review of the validity of regulations does not involve assessments of the policy merits of regulations to determine whether they are “necessary, wise, or effective in practice”.<sup>16</sup> Review for validity is neither an “inquiry into the underlying ‘political, economic, social or partisan considerations’” of the regulation, nor an assessment of whether the regulation will achieve statutory objectives.<sup>17</sup> In *HBC*, the court held that: “the focus of judicial review of a regulation is narrow” and “[i]t is not the role of the court to decide whether [a regulation] is effective, overly broad or unduly restrictive. These are policy choices made by the Ontario government...”.<sup>18</sup> This was echoed in *TransCanada Pipelines* where the same court wrote that, “[r]egulations are subordinate legislation that reflect the policy choices of government.”<sup>19</sup> Finally, in *Friends of Simcoe*, the court observed that, “governing is not the role of the courts, hence the strong presumption in favour of the *vires* of a regulation.”<sup>20</sup>

10. In Ontario, regulations are not accompanied by reasons or any similar publication from which a “reasoned explanation” for their making can be discerned,<sup>21</sup> nor are reasons currently required.<sup>22</sup>

11. *Katz* has also been followed by Ontario courts reviewing the validity of other subordinate legislation not at issue in these appeals.<sup>23</sup>

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<sup>16</sup> *HBC*, *supra* note 11 at para [37](#), citing *Katz*, at para [27](#). See also *Jafari v Canada (Minister of Employment and Immigration)*, [\[1995\] 2 FC 595](#) at p [604](#) [*Jafari*].

<sup>17</sup> *Katz*, *supra* note 6 at para [28](#), citing *Thorne’s Hardware Ltd v The Queen*, [\[1983\] 1 SCR 106](#) at [112-113](#) [*Thorne’s Hardware*] and *CKOY Ltd v The Queen*, [\[1979\] 1 SCR 2](#) at p [12](#).

<sup>18</sup> *HBC*, *supra* note 11 at para [4](#).

<sup>19</sup> *TransCanada Pipelines*, *supra* note 11 at para [5](#).

<sup>20</sup> *Friends of Simcoe*, *supra* note 11 at para [68](#).

<sup>21</sup> *Portnov v Canada (Attorney General)*, [2021 FCA 171](#) at para [34](#); *Vavilov*, *supra* note 7 at para [103](#).

<sup>22</sup> See generally *Thorne’s Hardware*, *supra* note 12 at [112-113](#); *Apotex*, *supra* note 9 at para [34](#).

<sup>23</sup> *Covant v College of Veterinarians of Ontario*, [2021 ONSC 8193 \(Div Ct\)](#) at paras [25-28](#), *aff’d* on other grounds, [2023 ONCA 564](#) (College regulation); *Yuan, Li v Transitional Council of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario*, [2014 ONSC 351 \(Div Ct\)](#), at paras [3-8](#) (College regulation); *Toscani and Holland v AGCO*, [2024 ONSC 1718](#) at paras [57-59](#) (rule).

## **Respect for the Separation of Powers Supports Limited Grounds of Review and a High Threshold for Inconsistency with Statutory Purpose**

12. Respect for the separation of powers between the legislature, executive and the judiciary supports the limited grounds of review and a high threshold for inconsistency with statutory purpose set out in *Katz*. The reviewing court’s focus should be on consistency with statutory purpose and on the scope of statutory authority, and not on whether a government policy is “necessary, wise, or effective in practice.”<sup>24</sup>

13. In Canada, the separation of powers is fundamental to our constitutional order.<sup>25</sup> It is a principle recognizing that “each branch [of government] will be unable to fulfill its role if it is unduly interfered with by the others.”<sup>26</sup> Our constitutional framework sets different roles for the legislative, executive, and judicial branches of government, each having “distinct institutional capacities” and playing “critical and complementary roles in our constitutional democracy.”<sup>27</sup> As this Court described in *Ontario v Criminal Lawyers’ Association*:

The legislative branch makes policy choices, adopts laws and holds the purse strings of government.... The executive implements and administers those policy choices and laws with the assistance of a professional public service. The judiciary maintains the rule of law, by interpreting and applying these laws through the independent and impartial adjudication of references and disputes, and protects the fundamental liberties and freedoms guaranteed under the *Charter*.<sup>28</sup>

14. The constitutional principle of parliamentary sovereignty enables the legislature to “enact laws on its own” and endows the legislature with “the authority to delegate to some other person or body certain administrative or regulatory powers, including the power to make binding but subordinate rules and regulations”.<sup>29</sup> Indeed, the legislature has great latitude in delegating law-

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<sup>24</sup> *Katz*, *supra* note 6 at para [27](#).

<sup>25</sup> *Nelson (City) v Marchi*, [2021 SCC 41](#) at para [43](#) [*Nelson*].

<sup>26</sup> *Ontario v Criminal Lawyers’ Association*, [2013 SCC 43](#) at para [29](#) [*CLA*].

<sup>27</sup> *CLA*, at paras [27](#), [29](#).

<sup>28</sup> *CLA*, at para [28](#).

<sup>29</sup> *References re Greenhouse Gas Pollution Pricing Act*, [2021 SCC 11](#) at para [84](#) [*Greenhouse Gas*], citing *Reference re Pan-Canadian Securities Regulation Reference*, [2018 SCC 48](#) at para [73](#) [*2018 Securities Reference*].

making powers to the executive branch, up to the point of abdicating its legislative role, and the choice and extent of that delegation are “matters for the legislature, not the courts.”<sup>30</sup>

15. The delegate is subordinate in that the delegation can be circumscribed and withdrawn by the legislature.<sup>31</sup> Moreover, in Ontario, parliamentary scrutiny and oversight of regulations are provided for under the *Legislation Act, 2006*, which requires all regulations to be filed with the Registrar of Regulations<sup>32</sup> and to be referred to a standing committee of the Legislature that may examine any Minister or public servant for any regulation under his/her administration.<sup>33</sup>

16. When a statutory delegate – like the Lieutenant Governor in Council or a Minister – is exercising delegated authority to make regulations, it is exercising a delegated “law-making power ... to implement Parliament’s policy choice”,<sup>34</sup> breathing life into Parliament’s policies and objectives by implementing them through regulations. It is a power bestowed by the legislature that is “rooted in and limited by the governing statute.”<sup>35</sup> It is this limit – namely, the requirement for consistency with the objective of the enabling statute and the scope of authorization – which is subject to the court’s supervision, in accordance with the separation of powers and the court’s constitutional role.<sup>36</sup>

17. This narrow and focused review is also consistent with a well-established principle which pre-dates *Katz* and relates to the separation of powers: the role of the court is not to second-guess the legislature and the executive on the wisdom of government policy.<sup>37</sup> This Court has long

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<sup>30</sup> *Greenhouse Gas*, at para [85](#).

<sup>31</sup> *Greenhouse Gas*, at para [85](#).

<sup>32</sup> *Legislation Act, 2006*, [SO 2006, c 21, Schedule F](#), ss [18-21](#), [33](#) [*LA*].

<sup>33</sup> *LA*, s [33\(3\)-\(5\)](#). The administrative responsibility for each current and consolidated statute is assigned to Ministers by the Lieutenant Governor by Order in Council pursuant to the *Executive Council Act*, [RSO 1990, c E.25](#), s [8\(1\)](#).

<sup>34</sup> *Greenhouse Gas*, *supra* note 29 at para [86](#).

<sup>35</sup> *Greenhouse Gas*, at paras [84](#), [87](#), citing *2018 Securities Reference*, at para [74](#) and *Waddell v Canada (Governor in Council)* (1983), [5 DLR \(4th\) 254](#) at para [28](#), respectively. See also *Katz*, at para [24](#).

<sup>36</sup> *Nelson*, *supra* note 25 at para [42](#); *CLA*, *supra* note 24 at para [28](#).

<sup>37</sup> *Thorne’s Hardware*, *supra* note 17 at [112-113](#); *Vriend v Alberta*, [\[1998\] 1 SCR 493](#) at para [136](#) [*Vriend*]; *OFAH*, *supra* note 9 at para [52](#).

recognized, in different contexts, that “[c]ourts are not institutionally designed to review polycentric government decisions.”<sup>38</sup>

18. In *Katz*, this Court merely affirmed that courts reviewing the validity of a regulation should not assess its policy merits nor the underlying “political, economic, social or partisan” motive(s) for making it.<sup>39</sup> Similarly, a reviewing court assessing inconsistency with statutory purpose must take care to avoid those areas of inquiry. A high threshold that a regulation must be “irrelevant”, “extraneous” or “completely unrelated” to the enabling act’s statutory purpose ensures a narrow and focused review that does not risk the court overstepping its constitutional role.<sup>40</sup>

### **Established Principles of Statutory Interpretation Support the Presumption of Validity**

19. Ontario submits that consistency and stability in the law as well as the established principles of statutory interpretation support the presumption of validity set out in *Katz*. The presumption of validity has two aspects: (1) “it places the burden on challengers to demonstrate the invalidity of regulations, rather than on regulatory bodies to justify them”, and (2) “it favours an interpretative approach that reconciles the regulation with its enabling statute so that, *where possible*, the regulation is construed in a manner which renders it *intra vires*.”<sup>41</sup> The first aspect, which is the “burden”, is preserved in *Vavilov*.<sup>42</sup> Ontario submits that the second aspect, which is “interpretive”<sup>43</sup>, should also be preserved.

20. The presumption of validity is a presumption of legislative intent.<sup>44</sup> Presumptions of legislative intent are guides to statutory interpretation “about what policies and values the legislature wishes to respect when it enacts legislation.”<sup>45</sup> More specifically, the interpretive aspect

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<sup>38</sup> *Nelson*, *supra* note 25 at para [1](#) (regulatory negligence). See also: *Vriend*, at para [136](#) (*Charter*); *R v Chouhan*, [2021 SCC 26](#) at para [84](#) (citations omitted) [*Chouhan*] (*Charter*).

<sup>39</sup> *Katz*, *supra* note 6 at paras [27-28](#).

<sup>40</sup> *CLA*, *supra* note 26 at para [29](#); *Chouhan*, *supra* note 38 at paras [130-131](#) (Rowe J. concurring) (citations omitted).

<sup>41</sup> *Katz*, *supra* note 6 at para [25](#) (citations omitted) (emphasis in original).

<sup>42</sup> *Vavilov*, *supra* note 7 at para [100](#).

<sup>43</sup> John Mark Keyes, “Judicial Review of Delegated Legislation: The Long and Winding Road to *Vavilov*” [2020 CanLII Docs 3679](#), p [24](#) [Keyes].

<sup>44</sup> Keyes, at p [22](#).

<sup>45</sup> Ruth Sullivan, *The Construction of Statutes*, 7th ed (LexisNexis Canada Inc: Toronto, 2022), ch 15 at § 15:01, Book of Authorities of the Intervener, the Attorney General of Ontario [BOA], Tab 1.

is a presumption of compliance,<sup>46</sup> meaning that the delegated lawmaker intends to comply with any limits to its scope of statutory authority.

21. It is a well-established principle that, if legislation is open to two interpretations, one of which would render it valid, the validating interpretation is to be preferred. This presumption has long been applied to subordinate legislation, including regulations and municipal by-laws:

... [I]f an enactment, whether of Parliament or of a legislature or of a subordinate body to which legislative power is delegated, is capable of receiving a meaning according to which its operation is restricted to matters within the power of the enacting body it shall be interpreted accordingly. An alternative form in which the rule is expressed is that if words in a statute are fairly susceptible of two constructions of which one will result in the statute being *intra vires* and the other will have the contrary result, the former is to be adopted.<sup>47</sup>

22. This Court in *Katz* also held that the challenged regulation and the enabling statute are to be interpreted using a “broad and purposive approach ... consistent with this Court’s approach to statutory interpretation generally”.<sup>48</sup> This includes the modern approach to statutory interpretation and the general rule of construction that legislation shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.<sup>49</sup> In Ontario, the *Legislation Act, 2006*, also specifies that regulations (like acts) are to be interpreted as remedial and “shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects ... in the context of the Act under which it is made and to the extent that the regulation is consistent with that Act.”<sup>50</sup>

23. Ontario submits that the presumption of validity in *Katz* is based on the established principles discussed above, and that all of these principles share the same characteristic of supporting the stability of the legal system,<sup>51</sup> and promoting predictability and reliability in the law. There is no principled reason to depart from the well-established principles of statutory

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<sup>46</sup> Halsbury’s Laws of Canada (online), *Legislation*, “Compliance with jurisdictional limits” (VIII.4(3)) at HLG-89 (2021 Reissue), BOA, Tab 2 [Halsbury’s].

<sup>47</sup> *McKay et al v The Queen*, [1965] SCR 798 at 803-804; see also: Halsbury’s, *supra* note 46; *R v Greenbaum*, [1993] 1 SCR 674 at 689.

<sup>48</sup> *Katz*, *supra* note 6 at para 26. See also: *United Taxi Drivers’ Fellowship of Southern Alberta v Calgary (City)*, 2004 SCC 19 at para 8; *Glykis v Hydro-Québec*, 2004 SCC 60 at para 5.

<sup>49</sup> *Rizzo & Rizzo Shoes, Ltd (Re)*, [1998] 1 SCR 27 at paras 21-22.

<sup>50</sup> *LA*, *supra* note 32 s 64(1)-(2).

<sup>51</sup> *Keyes*, *supra* note 43 at pp 23-24.

interpretation that have long been applied to legislation when interpreting regulations in light of their enabling statutes.<sup>52</sup>

### **The *Vires* of Regulations Should Continue to be Governed by *Katz***

24. Consistent with Ontario jurisprudence, and for all the reasons discussed above, the principles articulated in *Katz* should continue to govern the judicial review of the validity of regulations.

25. Alternatively, if the *Vavilov* standard of review framework, and, specifically, the presumptive reasonableness standard,<sup>53</sup> is to be applied to law-making by delegated lawmakers, it must respect the legislature’s choice to delegate and the manner of delegation. Ontario submits that this may be achieved by maintaining the limited grounds of review endorsed by this Court in *Katz*: inconsistency with the objective of the enabling statute and with the scope of the statutory mandate.<sup>54</sup> Thus, the *Katz* principles and approach, which includes the presumption of validity and the high threshold to find inconsistency, as well as its focus on interpreting the governing statutory scheme, are the relevant factual and legal constraints.<sup>55</sup> The only relevant question is whether the regulation is a “reasonable exercise of the delegated power”, and it would be answered through purposive statutory interpretation<sup>56</sup> rather than justified by reasons.<sup>57</sup>

26. Reasons for regulation-making would not be required. Requiring reasons, particularly for Cabinet regulations, would infringe on Cabinet confidentiality.<sup>58</sup> This Court has recognized that

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<sup>52</sup> This Court has validated the existence of the presumption of validity with respect to regulations most recently in *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, [2023 SCC 17](#) at para [54](#).

<sup>53</sup> *Vavilov*, *supra* note 7 at paras [16](#), [85](#), [101](#), [143](#).

<sup>54</sup> *Katz*, *supra* note 6 at para [24](#); *West Fraser Mills Ltd v British Columbia (Workers’ Compensation Appeal Tribunal)*, [2018 SCC 22](#) at para [12](#) [*West Fraser Mills*].

<sup>55</sup> *Vavilov*, *supra* note 7 at paras [105](#), [108-110](#).

<sup>56</sup> *West Fraser Mills*, *supra* note 54 at para [12](#).

<sup>57</sup> *Vavilov*, *supra* note 7 at paras [2](#), [83-85](#), [86](#), [99](#), [137](#).

<sup>58</sup> *Ontario (Attorney General) v Ontario (Information and Privacy Commissioner)*, [2024 SCC 4](#) at paras [3](#), [27-36](#); *British Columbia (Attorney General) v Provincial Court Judges’ Association of British Columbia*, [2020 SCC 20](#) at paras [95-98](#), [101](#); *British Columbia (Lieutenant Governor in Council) v Canada Mink Breeders Association*, [2023 BCCA 310](#), leave to appeal to SCC requested; see also *Carey v Ontario*, [\[1986\] 2 SCR 637](#).



“[g]overnments do not publish reasons for their decisions” and “governments may be moved by any number of political, economic, social or partisan considerations.”<sup>59</sup>

27. Further, while *Vavilov* instructs that the analysis will “focus on the outcome rather than on the ... reasoning process” when there are no reasons or record,<sup>60</sup> Ontario submits that this focus should be limited to interpreting the regulation and the enabling statute purposively to determine whether there is consistency with statutory purpose and scope of authority. It cannot be a disguised attempt to review the efficacy of regulations in achieving statutory objectives, or their wisdom.<sup>61</sup>

28. Limiting the grounds of review of regulations as established in *Katz* within the *Vavilov* framework respects the separation of powers and parliamentary sovereignty, and accounts for the practical difficulties associated with the absence of a record or reasons on reasonableness review.

#### **PART IV – COSTS**

29. Ontario does not seek its costs and requests that no additional costs be ordered against it.

#### **PART V – ORDER SOUGHT**

30. Ontario has been granted oral arguments not exceeding five minutes at the hearing. Ontario seeks no further orders.

#### **PART VI – SUBMISSIONS ON PUBLICATION**

31. N/A.

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<sup>59</sup> *Thorne’s Hardware*, *supra* note 17 at [112-113](#); see also *Apotex*, *supra* note 9 at para [34](#).

<sup>60</sup> *Vavilov*, *supra* note 7 at paras [136-138](#).

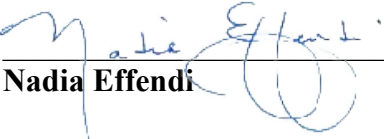
<sup>61</sup> *Katz*, *supra* note 6 at paras [27-28](#); *Wildlands*, *supra* note 10 at para [45](#); *OFAH*, *supra* note 9 at para [49](#); see *British Columbia (Attorney General) v Le*, [2023 BCCA 200](#) at paras [133](#), [158](#) (an example of assessing merits).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 5<sup>th</sup> day of April 2024.

Per:

  
\_\_\_\_\_  
**Judie Im**  
**Michele Valentini**  
Counsel for the Intervener,  
Attorney General of Ontario

Per:

  
\_\_\_\_\_  
**Nadia Effendi**  
Agent for the Intervener,  
Attorney General of Ontario

## PART VII – TABLE OF AUTHORITIES

## Caselaw

No.	Authority	Paragraph Reference
1.	<i>Apotex Inc v Ontario (Office of the Lieutenant Governor)</i> , <a href="#">2007 ONCA 570</a>	5, 10, 26
2.	<i>Auer v Auer</i> , <a href="#">2022 ABCA 375</a>	1
3.	<i>British Columbia (Attorney General) v Le</i> , <a href="#">2023 BCCA 200</a>	27
4.	<i>British Columbia (Attorney General) v Provincial Court Judges' Association of British Columbia</i> , <a href="#">2020 SCC 20</a>	26
5.	<i>British Columbia (Lieutenant Governor in Council) v Canada Mink Breeders Association</i> , <a href="#">2023 BCCA 310</a>	26
6.	<i>Canada (Minister of Citizenship and Immigration) v Vavilov</i> , <a href="#">2019 SCC 65</a>	1, 5, 8, 10, 19, 25, 27, 28
7.	<i>Canadian Council for Refugees v Canada (Citizenship and Immigration)</i> , <a href="#">2023 SCC 17</a>	23
8.	<i>Carey v Ontario</i> , <a href="#">[1986] 2 SCR 637</a>	26
9.	<i>CKOY Ltd v The Queen</i> , <a href="#">[1979] 1 SCR 2</a>	9
10.	<i>Covant v College of Veterinarians of Ontario</i> , <a href="#">2021 ONSC 8193 (Div Ct)</a>	11
11.	<i>Covant v College of Veterinarians of Ontario</i> <a href="#">2023 ONCA 564</a>	11
12.	<i>Entité de planification des services de santé en français #4 Centre Sud-Ouest v Ontario (Lieutenant-Gouverneur en Conseil de l'Ontario)</i> , <a href="#">2023 ONSC 4657 (Div Ct)</a>	5
13.	<i>Friends of Simcoe Forests Inc v Minister of Municipal Affairs and Housing</i> , <a href="#">2021 ONSC 3813 (Div Ct)</a>	5, 9
14.	<i>Glykis v Hydro-Québec</i> , <a href="#">2004 SCC 60</a>	22
15.	<i>Grain Farmers of Ontario v Ontario Ministry of the Environment and Climate Change</i> , <a href="#">2015 ONSC 6581</a> , aff'd <a href="#">2016 ONCA 283</a>	5, 7

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16.	<i>Hudson's Bay Company ULC v Ontario (Attorney General)</i> , <a href="#">2020 ONSC 8046 (Div Ct)</a>	5, 8, 9
17.	<i>Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)</i> , <a href="#">2013 SCC 64</a>	1, 2, 4, 5, 6, 8, 9, 11, 12, 16, 17, 18, 19, 22, 23, 24, 25, 27, 28
18.	<i>McKay et al v The Queen</i> , <a href="#">[1965] SCR 798</a>	21
19.	<i>Nelson (City) v Marchi</i> , <a href="#">2021 SCC 41</a>	13, 16, 17
20.	<i>Ontario (Attorney General) v Ontario (Information and Privacy Commissioner)</i> , <a href="#">2024 SCC 4</a>	26
21.	<i>Ontario Federation of Anglers &amp; Hunters v Ontario (Ministry of Natural Resources)</i> (2002), <a href="#">211 DLR (4th) 741 (ON CA)</a>	5, 6, 17, 27
22.	<i>Ontario v Criminal Lawyers' Association</i> , <a href="#">2013 SCC 43</a>	13, 16, 18
23.	<i>Portnov v Canada (Attorney General)</i> , <a href="#">2021 FCA 171</a>	10
24.	<i>R v Chouhan</i> , <a href="#">2021 SCC 26</a>	17, 18
25.	<i>R v Greenbaum</i> , <a href="#">[1993] 1 SCR 674</a>	21
26.	<i>R v Maclellan</i> , <a href="#">2014 ONSC 2946 (Div Ct)</a>	5
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28.	<i>Reference re Validity of Regulations in Relation to Chemicals</i> , <a href="#">[1943] SCR 1</a>	6
29.	<i>References re Greenhouse Gas Pollution Pricing Act</i> , <a href="#">2021 SCC 11</a>	14, 15, 16
30.	<i>Rizzo &amp; Rizzo Shoes, Ltd (Re)</i> , <a href="#">[1998] 1 SCR 27</a>	22
31.	<i>Royal Demaria Wines Co Ltd v Lieutenant Governor in Council</i> , <a href="#">2018 ONSC 7525 (Div Ct)</a>	5
32.	<i>Thorne's Hardware Ltd v The Queen</i> , <a href="#">[1983] 1 SCR 106</a>	9, 10, 17, 26

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34.	<i>Toscani and Holland v AGCO</i> , <a href="#">2024 ONSC 1718</a>	11
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37.	<i>United Taxi Drivers' Fellowship of Southern Alberta v Calgary (City)</i> , <a href="#">2004 SCC 19</a>	22
38.	<i>Vriend v Alberta</i> , <a href="#">[1998] 1 SCR 493</a>	17
39.	<i>Waddell v Canada (Governor in Council)</i> (1983), <a href="#">5 DLR (4th) 254</a>	16
40.	<i>West Fraser Mills Ltd v British Columbia (Workers' Compensation Appeal Tribunal)</i> , <a href="#">2018 SCC 22</a>	25
41.	<i>Wildlands League v Ontario (Lieutenant Governor in Council)</i> , <a href="#">2016 ONCA 741</a> , leave to appeal to SCC refused, <a href="#">2017 CanLII 25784</a>	5, 27
42.	<i>Yuan, Li v Transitional Council of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario</i> , <a href="#">2014 ONSC 351 (Div Ct)</a>	11

### Secondary Sources

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1.	Halsbury's Laws of Canada (online), <i>Legislation</i> , "Compliance with jurisdictional limits" (VIII.4(3)) at HLG-89 (2021 Reissue)	20, 21
2.	John Mark Keyes, "Judicial Review of Delegated Legislation: The Long and Winding Road to Vavilov" <a href="#">2020 CanLIIDocs 3679</a> , pp <a href="#">22-24</a>	19, 23

No.	Secondary Source	Paragraph Reference
3.	Ruth Sullivan, <i>The Construction of Statutes</i> , 7th ed (LexisNexis Canada Inc: Toronto, 2022), ch 15 at § 15:01	20

### Statutes, Regulations, Rules, etc.

No.	Statute, Regulation, Rule, etc.	Section, Rule, Etc.
1.	<i>2017 Alberta Linear Property Assessment Minister's Guidelines</i> , Ministerial Order No. MAG: <a href="#">021/17</a>	<a href="#">Generally</a>
2.	<i>Executive Council Act</i> , <a href="#">RSO 1990, c E.25</a>	<a href="#">s 8(1)</a>
	<i>Loi sur le Conseil exécutif</i> , <a href="#">LRO 1990, c E.25</a>	<a href="#">art 8(1)</a>
3.	<i>Federal Child Support Guidelines</i> , <a href="#">SOR/97-175</a>	<a href="#">Generally</a>
	<i>Lignes directrices fédérales sur les pensions alimentaires pour enfants</i> , <a href="#">DORS/97-175</a>	<a href="#">En général</a>
4.	<i>Legislation Act</i> , <a href="#">2006, SO 2006, c 21, Schedule F</a>	<a href="#">ss 18-21</a> <a href="#">s 33</a> <a href="#">s 33(3)-(5)</a>
	<i>Loi de 2006 sur la législation</i> , <a href="#">LO 2006, c 21, annexe F</a>	<a href="#">arts 18-21</a> <a href="#">art 33</a> <a href="#">art 33(3)-(5)</a>