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Ontario Divisional Court Reverses Minister's Revocation of Approval of Wind Farm Project

By David Stevens

As we previously wrote, in December 2019, Ontario's Minister of the Environment, Conservation and Parks granted an appeal overturning the Environmental Review Tribunal's (ERT) approval of the Nation Rise Wind Farm in North Stormont, Ontario. The main basis for the decision was the Minister's finding that the project will result in localized harm to bats and this should be considered to be serious and irreversible harm to animal life because of the relatively small bat species population in the local area. The decision was notable because the 100MW wind project had been under construction since May 2019.

In a decision issued on May 14, 2020, Ontario's Divisional Court granted the project proponent's judicial review application and quashed the Minister's decision and restored the project approval.

The Divisional Court reached its decision on two bases. First, the Court found that the Minister's determination was not reasonable. In reaching that conclusion, the Court noted that the Minister had added issues (including the bat issue) not considered by the ERT and this was not permitted by legislation. The Court further found that the Minister applied the wrong legal test and made factual conclusions not supported by the record. Second, the Court found that the Minister had breached his duty of procedural fairness by failing to provide the developer with the opportunity to be heard on important matters, including remedy.

Taking into account the issues identified in the Minister's decision, the Court decided to reinstate the ERT's approval, rather than sending the matter back to the Minister for redetermination. This means that the project approval stands unless the Minister successfully appeals to the Ontario Court of Appeal.

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