COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Consolidated Homes Ltd., 2025 ONCA 41
DATE: 20250121
DOCKET: COA-24-OM-0300

Dawe J.A. (Motions Judge)

BETWEEN

His Majesty the King

Moving Party

and

Consolidated Homes Ltd.

Responding Party

Nicholas Adamson, Brian Wilkie and Victoria Kacer, for the moving party

Gabrielle K. Kramer, Franz Lopez and Rick Coburn, for the responding party

Heard: December 17, 2024

ENDORSEMENT

[1] Consolidated Homes Ltd. (“CHL”) was convicted at trial of an offence under the *Endangered Species Act*, *2007*, S.O. 2007, c. 6 (the *ESA*), which was prosecuted under the *Provincial Offences Act,* R.S.O. 1990, c. P.33 (the *POA*). CHL appealed to the Ontario Court of Justice, which allowed the appeal and entered an acquittal. The Crown now seeks leave to appeal the first-level appeal decision to this court.

[2] For the following reasons, I would deny leave.

A. FACTUAL AND PROCEDURAL BACKGROUND

(1) The charge

[3] Consolidated Homes Ltd. (“CHL”) is a home builder in the North Bay area. It was charged with breaching s. 10(1)(a) of the *ESA,* which makes it an offence to damage or destroy the habitat of an endangered or threatened species.

[4] The charge against CHL was based on an allegation that between June and August 2018 it damaged the habitat of Blanding’s turtle, a threatened species, by using an excavator to “grub” land adjacent to Circle Lake, in the City of North Bay. The charge was prosecuted by information under Part III of the *POA*, and CHL was tried before a justice of the peace (“the trial justice”) between March and October 2022.

[5] The main focus at trial was on whether the evidence proved that the land where CHL had dug was the habitat of Blanding’s turtle. “Habitat” is defined in s. 2(1) of the *ESA* to mean:

> (a) with respect to a species of animal, plant or other organism for which a regulation made under clause 56(1)(a) is in force, the area prescribed by that regulation as the habitat of the species, or
>
> (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; (“habitat”)

Since there are no regulations prescribing the habitat of Blanding's turtle clause (a) did not apply, leaving clause (b) as the relevant branch of the definition. Section 2(2) of the *ESA* provides further that:

> For greater certainty, clause (b) of the definition of "habitat" in subsection (1) does not include an area where the species formerly occurred or has the potential to be reintroduced unless existing members of the species depend on that area to carry on their life processes.

(2) The judgments below

(a) The trial decision

[6] At trial, CHL did not dispute that it had dug within 30 metres of the Circle Lake wetland boundary. The Crown called expert evidence from a biologist, Shamus Snell, who gave his opinion that the land where CHL had dug was habitat of Blanding's turtle. He relied in part on a document called the "General Habitat Description for the Blanding's Turtle" (the "GHD"), and on reports that Blanding's turtles had previously been sighted in the vicinity. Another witness testified that these prior sightings had been in 2007 and 2017. A local resident, Ms. Badilla, also testified that she had observed and photographed a Blanding's turtle near the digging site in 2020, two years after the alleged offence dates. CHL did not call any defence evidence.

[7] In her reasons, delivered on October 12, 2022, the trial justice stated:

> I accept the evidence of Mr. Shamus Snell who found the grubbing work at the location in question in June 2018

> damaged the habitat of an endangered species, the Blanding's turtle. It is clear from his evidence that the area in question is turtle habitat, Blanding's turtle habitat.

The trial justice rejected CHL's defences of due diligence and officially induced error, based on it having dug outside an area that had been mapped as Blanding's turtle habitat by Ministry of Natural Resources and Forestry ("MNRF") officials in March 2017. She ordered CHL to pay a $1 fine and donate $200,000 to a nature conservancy organization.

(b) The appeal decision

[8] CHL appealed its conviction to the Ontario Court of Justice pursuant to s. 116 of the *POA*. On August 20, 2024, the appeal judge overturned the conviction and entered an acquittal.

[9] The appeal judge accepted CHL's argument that the evidence at trial did not properly prove that the land where it had dug was the habitat of Blanding's turtle. She explained:

> The appellant also submits that Her Worship erred by relying on two sightings of Blanding's turtles proximate to the site in 2007 which is 10 years before the offence date and in 2017 by an MNRF staff, and then lastly by Maria Badilla who took a photo on June 22nd, 2022 [*sic*], at Circle Lake and her Worship did accept Ms. Badilla's evidence.
>
> This Court would find this an error in considering habitat as defined under the *Endangered Species Act* s. 2 and more specifically s. 2(2). The Scope Site Environmental Impact Study Report for the Wallace Road Condominium

> Application part of broken lot 16 Concession D at page nine references “none of the above noted species or any other SAR were observed or heard on or within the 120 meters of the study area during our investigation nor was there use...” It is highly likely Blanding’s turtles are using the area. “While onsite anecdotal evidence was provided by a local resident that Blanding’s turtles were using this lake.”
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> This Court sitting as an appeal court would also find that Her Worship erred in accepting the evidence of Maria Badilla, a homeowner of a property close to Circle Lake. She had taken a photo of a Blanding’s turtle on June 11th, 2020, at Circle Lake itself, not at the site. The Court would agree that in reference to s. 2(2) of the *Endangered Species Act* which states,
>
> > For greater certainty, clause (b) of the definition of “habitat” in subsection (1) does not include an area where [the] species formerly occurred or has the potential to be re-introduced unless existing members of the species depend on that area to carry out their life processes.
>
> This is evidence after the fact.

[10] The appeal judge noted that the area where CHL had dug lay outside the area mapped as Blanding’s turtle habitat by MNRF officials in the winter of 2017. She also referred to Mr. Snell’s agreement in cross-examination that he did not have “any confirmation or proof” that the land where CHL had dug “was utilized for travel purposes, nesting, or thermogenic activities by Blanding’s turtles”.

[11] The appeal judge concluded:

> I would allow the appeal on behalf of Consolidated Homes for the reasons as I have stated and would find that the errors that were set out, I have highlighted a

> number of errors that occurred with Her Worship's decision and therefore would allow the appeal and enter an acquittal on behalf of Consolidated Homes finding that the property was not properly proven to be Blanding's turtles habitat at the time.

B. THE TEST FOR LEAVE

[12] Section 131(1) of the *POA* allows second-level appeals to this court "with leave of a judge of the Court of Appeal on special grounds, upon any question of law alone or as to sentence." Section 131(2) provides further that:

> No leave to appeal shall be granted under subsection (1) unless the judge of the Court of Appeal considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted.

[13] Section 131 applies in cases prosecuted by information under Part III of the *POA*, while s. 139 provides a nearly identically worded right of appeal, with leave, in cases prosecuted by certificate under Parts I or II. Since the tests for granting leave in appeals from conviction or acquittals under ss. 131 and 139 are identical, leave decisions under one provision are "equally applicable" to leave decisions under the other: *R. v. Hicks*, 2014 ONCA 756, at para. 21.

(1) "Question of law alone"

[14] The first requirement of s. 131 is that the proposed appeal involve "a question of law alone". This is the same language used in s. 676(1)(a) of the *Criminal Code,* R.S.C. 1985, c. C-46, which governs Crown appeals from acquittals in indictable criminal matters.

[15] As Doherty J.A. noted in *R. v. Luedecke*, 2008 ONCA 716, 93 O.R. (3d) 89, at para. 48, "[i]t can be difficult to distinguish between errors of law alone and errors of mixed fact and law. At times, the distinction seems purely semantic". In *R. v. Ul-Rashid*, 2013 ONCA 782, 309 C.C.C. (3d) 468, at para. 20, Weiler J.A. explained:

> [A] holistic approach should be taken to the leave requirements in *POA* matters. What constitutes a question of law must be considered concurrently with the requirement that it be essential that the matter be resolved in the public interest or for the due administration of justice. The two parts of the test for leave under s. 139 of the *POA* are inextricably linked: questions that raise issues requiring resolution in the public interest or for the due administration of justice can properly be viewed as raising questions of law.

[16] Some guidance on the meaning of "question of law alone" can be found in the case law dealing with jurisdictional limits in criminal appeals. In *R. v. J.M.H.*, 2011 SCC 45, [2011] 3 S.C.R. 197, at paras. 24-32, Cromwell J. explained that there are at least four established situations "when the trial judge's alleged shortcomings in assessing the evidence constitute an error of law giving rise to a Crown appeal of an acquittal", namely:

i) When the trial judge makes a finding of fact for which there is no evidence;

ii) When the trial judge fails to give proper legal effect to findings of fact or to undisputed facts;

iii) When the trial judge assesses evidence based on a wrong legal principle; and

iv) When the trial judge fails to consider all of the evidence on the ultimate issue of guilt or innocence.

[17] In *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381, at paras. 19-27, the Supreme Court of Canada held further that when a criminal conviction is set aside by an appellate court on the basis that it is "unreasonable or cannot be supported by the evidence" pursuant to s. 686(1)(a)(i) of the *Criminal Code*, this decision is deemed to be a "question of law" for the purpose of determining whether the Crown has a further right of appeal. As Arbour J. explained at paras. 22-23, this rule is based on policy considerations, even though the question of whether a verdict is properly supported by the evidence will very often depend on the particular facts of that case:

> The sole purpose of the exercise here, in identifying the reasonableness of a verdict as a question of fact, law or both, is to determine access to appellate review. One can plausibly maintain, on close scrutiny of any decision under review, that the conclusion that a verdict was unreasonable was reached sometimes mostly as a matter of law, in other cases predominantly as a matter of factual assessment. But when that exercise is undertaken as a jurisdictional threshold exercise, little is gained by embarking on such a case-by-case analysis. Rather, it is vastly preferable to look at the overall nature of these kinds of decisions, and of their implications. Ideally, threshold jurisdictional issues should be as straightforward and free of ambiguity as possible. Otherwise, as these and many similar cases illustrate, courts spend an inordinate amount of time and effort attempting to ascertain their jurisdiction, while their resources would be better employed dealing with the issues on their merits.
>
> Whether a conviction can be said to be unreasonable, or not supported by the evidence, imports in every case the application of a legal standard. The process by which this

> standard is applied inevitably entails a review of the facts of the case. I will say more about the review process below. As a jurisdictional issue of appellate access, the application of that legal standard is enough to make the question a question of law. It is of no import to suggest that it is not a "pure question of law", or that it is not a "question of law alone".

(2) "Special grounds" and the requirement that granting leave be "essential in the public interest or for the due administration of justice"

[18] As noted above, even when a proposed *POA* appeal to this court presents a question of law alone, the party seeking leave must also establish "special grounds" and show that it is "essential in the public interest or for the due administration of justice that leave be granted": see ss. 131(1) and (2); see also ss. 139(1) and (2). The focus is not on whether the subject-matter of the case is of interest or importance to the public, but whether the proposed appeal raises significant legal issues that should be resolved by this court: see *R. v. Rankin*, 2007 ONCA 127*,* 216 C.C.C. (3d) 481, at para. 30; *Ontario (Ministry of the Environment and Climate Change) v. Sunrise Propane Energy Group Inc.*, 2018 ONCA 461, 17 C.E.L.R. (4th) 174, at para. 16.

[19] This court's jurisprudence holds that first-level *POA* appeal judgments "are intended to be final", and that leave to appeal to this court should be granted "only in exceptional cases raising issues of broad public importance": *Rankin,* at para. 26; *Sunrise Propane Energy Group Inc.,* at para. 15. The threshold for granting leave is "very high": *Antorisa Investments Ltd. v. Vaughan (City)*, 2012 ONCA 586,

1 M.P.L.R. (5th) 240, at para. 8; *Hicks,* at para. 21. It is not enough for a party seeking leave to demonstrate that it has a strong argument that the decision below was wrong. As Carthy J.A. explained in *R. v. Zakarow* (1990), 74 O.R. (2d) 621 (C.A.), at pp. 625-26:

> There must be special grounds on a question of law and it must be essential in the public interest or for the due administration of justice that leave be granted. No matter how wrong the judgment under appeal may be, these other criteria must be met.

Similarly, in *Ontario (Labour) v. Enbridge Gas Distribution Inc*., 2011 ONCA 13, 328 D.L.R. (4th) 343, at para. 35, Watt J.A. explained:

> Demonstration of error in the judgment below, without more, does not satiate the demands of ss. 131(1) and (2). The other criteria of the subsections must be met. The error must involve a question of law alone, not a question of fact or of mixed fact and law. The resolution of the questions of law in the circumstances must be *essential* in the public interest (not merely the interest of the litigants), or for the due administration of justice. [Citations omitted; emphasis in original.]

C. ANALYSIS

(1) The proposed grounds of appeal

[20] The Crown seeks leave to appeal on four grounds, which it frames in its factum as follows:

> (i) The Appeal Judge erred in finding that the Trial Justice should not have relied on evidence of a sighting of a Blanding's Turtle very near to the Site because the

> sighting was “evidence after the fact” made two years after the alleged offence.
>
> (ii) The Appeal Judge erred in finding that the Trial Justice should not have relied on two sightings of Blanding’s Turtles close to the location of the alleged offence, apparently on the basis that the sightings occurred before the alleged offence in 2007 and 2017.
>
> (iii) The Appeal Judge erred by failing to consider or give effect to the part of the statutory definition of “habitat” that includes within the scope of a species’ habitat not only areas on which a species depends directly, but also areas on which it depends indirectly to carry on its life processes.
>
> (iv) The Appeal Judge erred by finding that it was an error for the Trial Justice to rely on the GHD because that document “is not a legal instrument” and “not a legal document.” [Emphasis in original.]

[21] The Crown argues these grounds raise important questions that meet both requirements for granting leave: namely, that (i) they involve a “question of law alone”, and (ii) they raise issues of broader importance such that it “is essential in the public interest or for the due administration of justice that leave be granted.”

[22] CHL joins issue on both points, arguing that the proposed grounds do not raise questions of law alone, and in any case do not present “special grounds” of broader public importance.

(2) The first and second proposed grounds of appeal

[23] The Crown’s first and second proposed grounds of appeal both focus on the appeal judge’s treatment of Mr. Snell’s reliance on sightings of Blanding’s turtles

in the Circle Lake area in 2007 and 2017, and the evidence that a local resident also saw a Blanding's turtle nearby in 2020. Since there is some overlap between these grounds, I will address them together.

(a) Do these grounds present "questions of law"?

[24] In my view, the main thrust of the appeal judge's judgment, reading her reasons as a whole, is that she was not satisfied that the evidence presented by the Crown at trial properly supported the conclusion that Blanding's turtles were using the land where CHL dug as "habitat" in the summer of 2018, when the digging occurred. This reading of her reasons is supported by (i) her repeated references to s. 2(2) of the *ESA,* which excludes from the s. 2(1)(b) definition of "habitat" land that is not currently being used by "existing members of the species" who "depend on that area to carry on their life processes", and (ii) by her concluding statement that she was allowing the appeal and entering an acquittal based on her "finding that the property was not properly proven to be Blanding's turtles habitat at the time" (emphasis added).

[25] I agree with CHL that the appeal judge's decision can best be understood as reflecting her determination that the conviction was "unreasonable or cannot be supported by the evidence", pursuant to s. 120(1)(a)(i) of the *POA*.

[26] However, I do not agree with CHL that this means that any error the appeal judge made was one of mixed fact and law, and thus not a "question of law alone"

for the purposes of s. 131 of the *POA*. In criminal cases, *Biniaris* holds that when an appellate court finds a guilty verdict at trial to be unreasonable or not supported by the evidence under s. 686(1)(a) of the *Criminal Code*, this is deemed to be a "question of law" for the purpose of determining further Crown rights of appeal. I see no reason to take a different approach in *POA* appeals, particularly since the powers of an appellate court under s. 120(1)(a) of the *POA* are identical to the powers in s. 686(1)(a) of the *Criminal Code*.

[27] The Crown's first two proposed grounds of appeal both seek to challenge the appeal judge's conclusion that the evidence at trial did not support CHL's conviction. I am satisfied that these grounds raise issues which *Biniaris* deems to be questions of law, such that the first requirement for granting leave under s. 131 of the *POA* is satisfied.

[28] That said, I do not accept the Crown's argument in its factum that the appeal judge's alleged error can be characterized as her improperly "excluding" evidence of sightings of Blanding's turtles. I read her reasons as focusing on the weight this evidence could bear, not its admissibility.

[29] I also do not agree with CHL that the appeal judge's conclusion regarding the 2007 and 2017 turtle sightings was "based on well-established principle that hearsay evidence is not admissible". While it is true that the people who made these sightings did not testify at trial, as an expert witness Mr. Snell was still entitled

to rely on these reported observations to form his opinion that the land where CHL dug was Blanding's turtle habitat: see e.g., *R. v. Abbey*, [1982] 2 S.C.R. 24, at pp. 42-43; *Ontario (Attorney General) v. 855 Darby Road, Welland (In Rem)*, 2019 ONCA 31, 431 D.L.R. (4th) 243, at para. 36. In my view, the appeal judge's reasons reveal that her concern was not that the evidence of the pre-2018 turtle observations was hearsay, but that these observations were not proximate in time to the offence dates in the summer of 2018.

(b) Is it essential in the public interest or for the due administration of justice that leave be granted on these grounds?

[30] In its factum, the Crown argued that the appeal judge's decision establishes a legal precedent that evidence of sightings of animals on or near land alleged to be their habitat must be "excluded" from evidence if the sightings are not contemporaneous with the offence date. According to the Crown:

> This would be profoundly detrimental to Ontario's ability to accurately define the scope of the habitat of species at risk and, consequently, its ability to protect those habitats. The Crown submits that it is essential for the protection of endangered and threatened species and their habitats that the Appeal Judge's ruling be reviewed by this Court.

[31] As I have already explained, I do not read the appeal judge's reasons as treating the evidence of Blanding's turtle sightings in the area before and after CHL's digging in 2018 as inadmissible. Rather, she appears to have concluded that the evidence that Blanding's turtles had been seen in the vicinity in both earlier

and later years did not reasonably support the inference that turtles were also present in the area during the summer of 2018. It is undisputed that the land where CHL dug would only fall within the definition of "habitat" if "existing members of the species depend[ed] on that area to carry on their life processes" at the time of the alleged offence: see *ESA,* s. 2(2).

[32] In my view, the Crown has a strong argument that the appeal judge erred by reversing the trial justice's factual findings on this basis. Even though there was no direct evidence that Blanding's turtles were living in the Circle Lake area during the summer of 2018, Mr. Snell formed his opinion that the land where CHL dug was nevertheless Blanding's turtle habitat based on both the record of verified sightings of Blanding's turtles in the area in previous years and his knowledge of the longevity of the species, explaining that the life expectancy of a Blanding's turtle "range[s] from 70 to 80 years."

[33] When the reported Blanding's turtle sightings from 2007 and 2017 that Mr. Snell relied on are bookended by the later 2020 turtle sighting by Ms. Badilla, it strikes me as a reasonably available circumstantial inference that Blanding's turtles were living in in the Circle Lake area throughout, including during the summer of 2018. At the very least, a strong argument can be made that the trial justice was entitled to draw this circumstantial inference, and that she made no palpable and overriding errors that would justify appellate interference with her factual findings.

[34] However, as I have already noted, it is not enough for the Crown to show that it has a strong argument that the decision it seeks leave to appeal is wrong. Rather, the Crown must also demonstrate that it is essential to the public interest or the due administration of justice that this court intervene to correct the error.

[35] I am not persuaded that the Crown has met this second branch of the test. The Crown's concern is that the appeal judge's decision will establish a precedent, binding on lower courts, that land can only be found to be "habitat" of a species within the meaning of ss. 2(1)(b) and 2(2) of the *ESA* when there is direct evidence that the species was using the land at the time of the alleged offence. However, the appeal judge's decision is highly fact-specific, and it would be difficult for a reader who does not have access to the full transcript to determine exactly why she found the evidence in this case was insufficient. She also gave her decision orally, and it does not yet appear to have been reported. For both of these reasons, the prospect of trial courts treating her decision as establishing a legal requirement that direct evidence is always required in s. 10(1) *ESA* prosecutions strikes me as remote.

[36] In any event, I am not persuaded that lower courts are likely to interpret the appeal judge's reasons as creating a rule that s. 10(1) *ESA* prosecutions involving the ss. 2(1)(b) and (2) *ESA* definition of "habitat" always require direct evidence. Read together, these provisions do require the Crown to prove beyond a reasonable doubt that at the time of the alleged offence, members of the species

in question depended on the land at issue either “directly or indirectly, to carry on [their] life processes”. However, nothing in the statutory language suggests that the legislature meant to create an exception to the well-established general principle that facts can be proved circumstantially: see e.g., *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000.

[37] If lower courts begin treating the appeal judge’s decision as establishing a special rule that contemporaneous direct evidence is always required in s. 10(1) *ESA* prosecutions, it might become “essential in the public interest or for the due administration of justice” that we correct this error. However, I am not satisfied that intervention is necessary at this time.

(3) The third proposed ground of appeal

[38] As noted previously, the Crown’s third proposed ground of appeal is that the appeal judge erred:

> [B]y failing to consider or give effect to the part of the statutory definition of “habitat” that includes within the scope of a species’ habitat not only areas on which a species depends directly, but also areas on which it depends <u>indirectly</u> to carry on its life processes. [Emphasis in original.]

In oral submissions, Crown counsel explained that this ground is based on the appeal judge’s repeated reference to evidence given in cross-examination by the Crown’s expert biologist, Mr. Snell.

[39] Specifically, Mr. Snell agreed in cross-examination that he did not "have any confirmation or proof" that the land where CHL had dug "was utilized for travel purposes, nesting, or thermogenic activities by Blanding's turtles". The Crown points out that this concession was narrower than the s. 2(1)(b) *ESA* definition of habitat, since it only referred to examples of the *direct* use of land by Blanding's turtles, whereas the s. 2(1)(b) definition includes the *indirect* use of land to support the turtles' life processes (for example, by providing habitat for other creatures that the turtles rely on as a food).

[40] I agree that the question Mr. Snell was asked did not capture the full scope of the s. 2(1)(b) definition of habitat. However, although the appeal judge quoted this passage from Mr. Snell's testimony twice in her reasons, it is not clear from her reasons as a whole what use, if any, she ultimately made of this evidence. As I have already explained, the main thrust of her reasons indicates that she was not satisfied that the evidence at trial established that there were Blanding's turtles anywhere in the vicinity of Circle Lake in the summer of 2018, not merely that there was insufficient evidence that Blanding's turtles were making direct use of the land dug by CHL.

[41] In these circumstances, I am not persuaded that the appeal judge's repeated reference to this aspect of Mr. Snell's testimony supports the conclusion that she misinterpreted the statutory definition of "habitat" in s. 2(1)(b) of the *ESA*, despite correctly reciting it earlier in her reasons. Equally, I am not persuaded that the

possibility that she might have made such an error gives rise to an issue of public importance that warrants this court's intervention. Section 2(1)(b) clearly states that the definition of habitat includes land that a species depends on "directly or indirectly, to carry on its life processes". Even if the appeal judge misread or misunderstood this provision – which I agree would be an error "of law alone" – it is unlikely that other justices or judges will make a similar mistake. I am accordingly not persuaded that it is "essential in the public interest or for the due administration of justice" that leave be granted on this ground.

(4) The fourth proposed ground of appeal

[42] As noted previously, the Crown's fourth proposed ground of appeal is that the appeal judge erred by "finding that it was an error for the Trial Justice to rely on the GHD because that document 'is not a legal instrument' and 'not a legal document.'"

[43] This ground is based on the following comment by the appeal judge:

> [T]hese are the findings of my review on appeal that Her Worship also relied heavily on the GHD document which is the General Habitat Description for Blanding's turtles which is not a legal instrument and generic description of sites.
>
> So, sitting as an appeal court, this Court would agree with that comment, while this Court is mindful that the GHD of Blanding's turtles is a document produced by the Province of Ontario to provide greater clarity on the area of habitat protected for species as set out in the three categories of habitat it is not a legal document.

[44] As I read it, neither this passage nor the appeal judge's reasons as a whole support the conclusion that she made the error the Crown alleges. There was nothing incorrect about her statements that the GHD is "not a legal instrument" and "not a legal document". Moreover, I do not understand the appeal judge to have concluded that the trial justice erred by placing any weight on the GHD. The GHD provided information about the types of wetlands and other areas that Blanding's turtles *might* use as habitat, but it did not on its own conclusively prove that this species *was* using the land at issue as habitat at the time of CHL's alleged offence.

[45] I am accordingly not persuaded that this proposed ground of appeal raises issues on which leave ought to be granted.

D. DISPOSITION

[46] In the result, I would dismiss the Crown's application for leave to appeal.

[47] I would also deny CHL's request for costs. The general rule is that "in proceedings under the [*POA*] … no costs are awarded either against the Crown or the defendant": *R. v. Felderhof* (2003), 68 O.R. (3d) 481 (C.A.), at para. 100. This court does not normally award costs on motions for leave under the *POA*: see e.g., *Ontario (Labour) v. Bondfield Construction Company Limited*, 2023 ONCA 813, at para. 30. Moreover, judges of this court have held that there is no jurisdiction to order costs on motions brought under s. 131: see *R. v. Laundry* (1996), 93 O.A.C. 100 (C.A.); *R. v. Rankin*, 2007 ONCA 426, 86 O.R. (3d) 399, at para. 3. Even if I

had jurisdiction to order costs, I see no reason here to depart from the general rule that there are ordinarily no costs awarded in *POA* matters.

"J. Dawe J.A."