

CITATION: Valero Energy Inc. v. Minister of the Environment, 2026 ONSC 4044
DIVISIONAL COURT FILE NO.: 717/25
DATE: 20260721

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: VALERO ENERGY INC., Applicant/Moving Party

AND:

MINISTER OF THE ENVIRONMENT, CONSERVATION AND PARKS AND
THE ATTORNEY GENERAL OF ONTARIO, Respondents

BEFORE: Matheson J.

COUNSEL: *Jennifer King and Caitlin Schropp*, for the Applicant/Moving Party

Susan Keenan, Valerie Crystal and Padraic Ryan, for the Respondents

HEARD: July 14, 2026, by videoconference

ENDORSEMENT

[1] The applicant/moving party Valero Energy Inc. seeks an order compelling the respondents to produce a record of proceedings or record of decision in this application for judicial review. The respondents have produced a record, which Valero submits is insufficient.

[2] Although Valero acknowledges that it is not entitled to “discovery of documents” from the respondents, it has put forward numerous arguments to attempt to show that it should nonetheless have an order to produce documents from the respondents beyond the record that has already been provided.

[3] The underlying notice of application for judicial review describes Valero as owning and operating a refinery in Quebec that supplies diesel and gasoline to the Ontario market via a petroleum product terminal in Ontario, as well as selling fuel to Ontario customers through other fuel suppliers.

[4] In its application for judicial review, Valero challenges O. Reg. 163/25, a regulation that amended O.Reg. 663/20 (*Cleaner Transportation Fuels: Renewable Content Requirements for Gasoline and Diesel Fuels*) to require that gasoline and diesel fuels include minimum percentages of bio-based content that is produced in Canada.

[5] Valero's application asserts that this regulation is *ultra vires* the grant of provincial legislative authority conferred by s. 92 of the *Constitution Act, 1867*, and of no force and effect. The application further asserts that the regulation is *ultra vires* the regulation-making authority in the *Environmental Protection Act*, R.S.O. 1990, c. E.19 (*EPA*).

[6] The application also asserts that there were two other decisions: (1) a decision by the Minister of the Environment, Conservation and Parks to proceed with the domestic renewable content requirements under the above O. Reg. 663/20; and, (2) a decision by the Minister not to comply with a mandatory public notice and comment process under s. 16(1) of the *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28 (*EBR*) and not to publish a regulatory impact analysis under the *Modernizing Ontario for People and Businesses Act, 2020*, S.O. 2020, c. 18, Sched. 11 (*MOPBA*).

[7] The record already provided by the respondents contains the entire public record, including the proposal and rationale for the impugned regulation, public notice, the public consultation, and other documents regarding the impugned regulation. However, Valero submits that it should receive all the internal materials that were before the Cabinet when the Cabinet made the impugned regulation and all of the documents that were before the Minister in relation to the other two alleged decisions, subject only to proper claims of privilege. Valero further seeks an affidavit or other certification as proof that the record is complete.

[8] The respondents submit that Valero is essentially seeking documentary discovery regarding the impugned regulation, which is neither required nor desirable. With respect to the alleged decision by the Minister to implement the regulation, and alleged statutory breaches, the respondents submit that there were no separate reviewable decisions as shown in the legislation itself.

[9] As discussed below, there is no statutory entitlement to all the documents that were before the Cabinet or the Minister. This is a request that I exercise an inherent jurisdiction to control the process for this application for judicial review, outside the normal process, and order the production of documents when there is no statutory obligation to do so.

Brief Background

[10] Section 16(1) of the *EBR* provides for public notice of proposals for a regulation that could have a significant effect on the environment. In turn, in June 2025, the Ministry of the Environment, Conservation and Parks posted a proposal to introduce domestic renewable content requirements for fuel placed in the Ontario market. The Ministry posting explained the rationale, to help maintain and sustain the Ontario economy and support Ontario's biodiesel industry in light of threats posed by American subsidies for U.S. biofuel producers.

[11] The impugned regulation, O. Reg. 163/25, requires Canadian content minimums with a phase-in period.

[12] In response to the posting, there were numerous submissions, which are part of the respondents' record.

[13] In July 2025, the Lieutenant Governor in Council made the impugned regulation and the details of the final regulation were posted, including the rationale for the regulation after the consultation process.

[14] There is no issue that this was a Cabinet decision, not a decision of the Minister. The other alleged decisions arise from a misapprehension of the statutory requirements and some general non-legal wording in one of the public documents, which is discussed further below.

[15] The entire public record is included in the respondents' record for this application for judicial review (about two hundred pages of material). These materials are properly put before the Court under s. 25 of the Ontario *Evidence Act*, R.S.O. 1990, c. E.23.

Analysis

[16] The applicant submits that it should have a further and better record of proceedings or record of decision.¹ Essentially, the applicant submits that there may be a right to a record of proceedings under the *Judicial Review Procedure Act*, R.S.O. 1990, c J.1 (*JRPA*) and, if not, there should be production under this Court's inherent jurisdiction, the common law and r. 68 of the *Rules of Civil Procedure*.

[17] As set out in the notice of application, the primary challenge is to the impugned regulation, which was made by the Lieutenant Governor in Council. The applicant seeks to quash that regulation, a remedy available in this application for judicial review. The applicant submits that the imposition of domestic content requirements is *ultra vires* the province and otherwise wrongful.

[18] Beginning with the obligation on a respondent to produce a record of proceedings, which is provided for under s. 10 of the *JRPA*, it is statutorily defined and limited.²

[19] For good reason, The applicant does not seriously contend that the judicial review of the making of a regulation requires the provision of a record of proceedings under s. 10 the *JRPA*. The obligation to produce a record of proceeding applies only to the exercise or purported exercise of a "statutory power of decision". As set out in s. 1(1), the power to make a regulation is a "statutory power" but it is not included in the narrower definition of a "statutory power of decision". There is no obligation to produce a record of proceedings.

¹ As illustrated in various cases, sometimes a government respondent provides a record that it calls a "record of decision" to distinguish it from the "record of proceedings" that is required by statute in a limited scope of proceedings. The applicant refers to a record of decision in the context of citing cases where there was such a record. It is not otherwise a formal, legally defined record.

² Although the moving party mainly focused on the *JRPA*, a parallel provision also appears in the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

[20] There is then the question of whether the other alleged decisions, by the Minister, are the exercise or purported exercise of a “statutory power of decision”.

[21] Beginning with the alleged decision of the Minister to implement the policy proposal, it is apparent from the legislation that the Minister did not have a decision-making role. Subsection 1(6)(c) of the *EBA* expressly provides that a proposal for a regulation “is implemented when the regulation that would implement the proposal is filed with the Registrar of Regulations in accordance with Part III (Regulations) of the *Legislation Act, 2006*...”. The Minister did not have any decision-making role in implementing the impugned regulation.

[22] The inclusion of this alleged Minister’s “decision” in the notice of application is perhaps entirely explained by the wording used in one of the public documents. The Ministry published a document entitled “Decision Summary”, with a subheading “Decision Details” and using informal language such as: “We decided to proceed with domestic bio-based content requirements...” While this document supports some caution on the part of the applicant regarding whether there was a decision by the Minister, it does not change the legal regime. There was no statutory power of decision exercised or purported to be exercised by the Minister to implement the regulation.

[23] The other “decisions” asserted by the applicant are also not the exercise or purported exercise of a “statutory power of decision”. The notice of application asserts that they are breaches of procedural fairness. There was a public notice and comment process under s. 16(1) of the *EBR*, which the applicant alleges was insufficient. The applicant further submits that there was a failure to publish a regulatory impact analysis. However, under s. 27(4) of the *MOPBA*, that publication is only required if the Minister considers that it is necessary to do so in order to permit more informed public consultation on the proposal. Here, it was not done.

[24] The applicant relies on *Greenpeace Canada v. Minister of the Environment (Ontario)*, 2019 ONSC 5629 regarding these alleged Ministerial decisions. However, *Greenpeace* was a case where the Minister decided not to consult on a proposal under the *EBR* at all, despite a mandatory statutory obligation to do so. There is no such Ministerial decision in this case. There was a public consultation as is shown in the respondents’ record.

[25] These alleged statutory breaches are not separate decisions, nor are they the exercise or purported exercise of separate statutory powers of decision. They may still be relied on in the application.

[26] The applicant is therefore not entitled to a record of proceedings.

[27] The applicant then submits that even though the *JRPA* does not impose an obligation to produce a record of proceedings, all the documents before Cabinet and the Minister should be produced to it in this case. The applicant relies on this Court’s inherent jurisdiction to control its process, citing cases such as *CCSAGE Naturally Green v. Director, Sec. 47.5 EPA*, 2018 ONSC 237.

[28] In *CCSAGE*, the respondent had also provided a record that the applicant found insufficient. There was also no obligation on the respondents to deliver a record of proceedings

under the *JRPA*. The motion judge observed, at para. 68, that the panel hearing the application must still have sufficient information to allow it to make a decision, relying on r. 68. The motion judge noted, at para. 68, that depending on the circumstances of the decision at issue, the nature of the record may vary.

[29] In *CCSAGE* the requested production was denied. Even though the motion judge found that because of the nature of the decisions that were at issue, the respondents would be expected to assist in providing the necessary documentation, the motion judge held: “...I can say without hesitation that I cannot imagine a circumstance where the documentary productions requested ... could be required. ...The request for records amounts to a fishing expedition. Judicial review does not afford a party with a right to documentary discovery.”

[30] Further, the case before me is a challenge to a regulation. *CCSAGE* was not. Unlike the issues in *CCSAGE*, the express wording of the *JRPA* excludes challenges to a regulation from the obligation to produce a record.

[31] Further, the overarching issue – division of powers – is a legal issue that turns on s. 92 of *Constitution Act, 1867* and the impugned regulation itself. The applicant focuses on its challenge to the regulation-making authority to make the impugned regulation under the *EPA*, submitting that it does support further production of documents. On this point, both sides rely on *Auer v. Auer*, 2024 SCC 36.

[32] In *Auer v. Auer*, the Supreme Court confirmed the limited nature and scope of judicial review of the *vires* of a regulation. The Court held, at para. 56, that it does not involve assessing the policy merits of the regulation. As set out at para. 59, judicial review of a regulation is “fundamentally an exercise of statutory interpretation.” The court must ask whether the subordinate legislation (here, O. Reg. 163/25) is consistent with the statutory purpose and with the scope of the delegated authority. This is a limited task.

[33] The applicant points to para. 53 of *Auer*, which refers to possible sources of information when conducting a reasonableness review in the absence of reasons for decision. The examples given in *Auer* are in the context of a municipal by-law, which is different from the regime here. In addition, those examples include documents that are analogous to the documents already included in the record provided by the respondents. As well, that record includes documents that give the rationale for the impugned regulation, which are arguably reasons for decision in the context of the making of a regulation.

[34] The applicant also relies on para. 54 of *Auer*, which observes that even where such other sources are unavailable, the record and context may reveal that a decision was made based on an improper motive. This was not an invitation to look behind the public record, quite the contrary. It is an observation that such a motive may be obvious.

[35] The applicant submits that an improper purpose could be revealed in the requested documents. A bald allegation of improper purpose, which could easily be included in every notice of application for judicial review, is not a basis for what would be a fishing expedition through Cabinet documents. Further, in that same paragraph of *Auer*, the Court goes on to emphasize that

the reasonableness review is limited to whether the regulation is within the scope of the authority delegated by the enabling legislation.

[36] Similarly, the applicant submits that the rationale set out in the public documents regarding O. Reg. 163/25 is “self-serving”. A government’s rationale could often be described in that way, advancing reasons that support the government action. That does not call for this broad production request.

[37] The exercise of statutory interpretation mandated in *Auer* does not support this production request.

[38] The applicant also points to cases where the court had materials such as briefing notes before it, suggesting that this shows there was some relevance and supports an order to produce: e.g., *New Sunlight Inc. v. Ontario (Minister of Infrastructure)*, 2025 ONSC 638. This overlooks the framework of an application for judicial review. Judicial review does not afford a party a right to documentary or other discovery based on a theory of relevance: *Lachance v. Ontario (Solicitor General)*, 2023 ONSC 7143, at para. 15. There is no presumptive entitlement to the production of documents from a respondent except for the statutory right to a record of proceedings in certain types of cases.

[39] With respect to the request for an affidavit or certification of completeness, this is also analogous to a discovery process. At the hearing, the applicant acknowledged that there is no case authority supporting the request and did not press for it.

[40] Lastly, the applicant relies on the general discussion in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 about judicial review in the absence of reasons for decision. However, as *Vavilov* expressly recognizes at paras. 136-138, there are different types of decisions. The very general statements relied upon do not focus on a challenge to a regulation.

[41] I have considered all the applicant’s submissions in support of this request that there be an extraordinary order for the broad production of internal documents in this case. In summary, the *JRPA* has delineated the obligation to produce a record of proceedings and excludes this challenge to a regulation. At its core, this application raises *vires* issues regarding the division of powers and regulation-making authority requiring statutory interpretation. I am not persuaded that the respondents’ record is inadequate to the task at hand such that the respondents should have added production obligations. Judicial review is intended to be a focused challenge to certain decisions, and ought not to be burdened down in what is essentially a discovery process.

[42] To the extent that there is inherent jurisdiction to control this Court’s process, it does not need to be exercised in this case.

[43] This motion is therefore dismissed with costs to the respondents in the agreed total amount of \$5,000 all inclusive.

Matheson J.

Date: July 21, 2026