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BLAKES' CANADIAN LAW OF ENDANGERED SPECIES

Walton

Release No. 4, December 2024

This unique supplemented looseleaf service, canvasses in detail federal, provincial and territorial statutes and regulations governing the protection of species at risk of extinction in Canada. The Work begins with a discussion of the structure of endangered species law, with specific comments on the federal division of powers, and the common law principles applicable to regulatory law. The remaining chapters review the key federal laws, with particular emphasis on the *Species at Risk Act*, as well as the legislation of each province and territory regulating endangered species, including a detailed analysis of the provisions of each section and applicable case law. In addition, the Work cites U.S. cases which may be of assistance in interpreting the Canadian legislation and includes a detailed glossary, table of contents and analytical index.

This release features updates to the case law and commentary Chapter 1: New Developments. Additionally, there have been updates to Appendix WP: Words and Phrases and Appendix SLL: Selected Legal Literature.

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Highlights:

§ 1:2. REGULATORY DEVELOPMENTS—In 2022, the Minister of Environment and Climate Change Canada issued a statement regarding the protection of critical habitat of migratory birds on non-federal lands, pursuant to s. 58(5.2) of SARA. The statement applied to those portions of the critical habitat for which the critical habitat description includes a nest. This was the interpretation by the Minister that the limitation in s. 58(5.2)(b) to “critical habitat to which the MBCA applies” means the protection statement need only address nests. The statement then referred to s. 33 of SARA, plus the prohibition against disturbance of nests in s. 6 of the *Migratory Birds Regulations and section 3(2) of the Migratory Birds Sanctuary Regulation* to demonstrate that nests are legally protected. The Statement was subsequently updated to incorporate the new *Migratory Birds Regulations, 2022*. A group of ENGOs filed for judicial review of the statement. In 2024 the Federal Court held that the statement fell outside the range of reasonable interpretations of s. 58(5.2) in that the interpretation that the habitat to which the MBCA applies is confined to nests was unreasonable. The statement was set aside and remitted to the Minister for reconsideration.

§ 1:4. Species Developments—In 2024, Environment and Climate Change Canada conducted an imminent threat assessment for the Boreal Caribou in the province of Québec. The assessment concentrated on two principal threats: logging and road construction, in particular to three population of the species. The assessment concluded that while the threats examined would not make the survival of the species in Canada highly improbable or impossible, the probability of achieving the species recovery objectives in Quebec would make the recovery of the species very unlikely. On May 10, 2024 the Minister of Environment and Climate Change Canada formed an opinion that the Boreal Caribou is facing imminent threats to its recovery due to habitat destruction caused by the increase in logging for commercial activities and related road network expansion. On June 29, 2024 a *Notice of intent to develop an emergency order to provide for the protection of Caribou, Boreal population (boreal caribou) in Quebec under section 80 of the Species at Risk Act*, was published in the Canada Gazette (Notice of Intent). The Notice of Intent stated that it was to inform and seek feedback from interested parties regarding the intent to develop an emergency order. The Notice provided a link to a *Discussion Paper: Proposed scope of an Order under section 80 of the Species at Risk Act to provide for the Protection of Caribou, Boreal population (Rangifer tarandus)* on the SARA Registry, as well as the imminent threat assessment. As of the date of this writing of this update the consultation period was ongoing.