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BLAKES' CANADIAN LAW OF ENDANGERED SPECIES

Walton

Release No. 2, October 2026

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 commentary and legislation in Chapters 4 (Alberta), 5 (British Columbia) and 8 (Newfoundland and Labrador). Additionally, updates were made to Appendix WP–Word and Phrases and Appendix SLL–Selected Legal Literature.

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Highlights:

Chapters 4—ALBERTA—In an appeal of a *Water Act* approval granted to a racecourse to infill some wetland areas, the Alberta Environmental Appeals Board (the "AEAB") addressed concerns by a group of residents regarding the applicability of a federal recovery strategy and designation of critical habitat for bank swallows to the decision to issue the approval. On judicial review the Alberta Court of King's Bench did not disagree with the AEAB that the enforcement of SARA was a "different matter" than the question before the Director and the AEAB under the *Water Act*. However, the Court nonetheless remitted the matter to the AEAB for redetermination, finding it had failed to meaningfully engage with the evidence presented before it that the approval would disrupt critical habitat for the bank swallow. In doing so, the Court confirmed that the federal recovery strategy and the designated critical habitat were relevant considerations under the *Water Act*. The Court also held that consideration of the designated critical habitat is consistent with the province's wetland policy.

CHAPTER 5—BRITISH COLUMBIA—In 2026, the British Columbia Supreme Court remitted a decision of a permitting officer under the provincial *Mines Act* back for redetermination. The permit was for the operation of a sand and gravel pit. The Court's reasons for the remittal included, inter alia, concerns that there would be substantial negative effects on the local ecosystem, including critical habitat for species at risk. The government's biologist had concluded that the likely consequences would be "long-term, permanent, and irreversible", notwithstanding mitigation efforts, and recommended against approval of the permit. The permitting officer issued the authorization despite the opinion of the biologist. The Court held that while the permitting officer had the authority to issue the permit, his lack of engagement with the biologist regarding endangered species and wildlife.