

Court File No. T-1182-17

FEDERAL COURT

BETWEEN

WELLS GRAY GATEWAY PROTECTION SOCIETY
Applicant

AND

THE MINISTER OF ENVIRONMENT AND CLIMATE CHANGE and
ATTORNEY GENERAL OF CANADA
Respondents

APPLICANT'S MEMORANDUM OF FACT AND LAW

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Part I – Statement of Facts

A. Overview

1. This is an application for judicial review in respect of the failure of the Minister of Environment and Climate Change, the Honourable Catherine McKenna (the Minister), to form an opinion under section 80(2) of the *Species at Risk Act* (SARA) as to whether the listed species Southern Mountain Caribou, Wells Gray-Thompson Local Population Unit faces imminent threats to its survival or recovery.
2. For greater certainty, the Applicant is seeking an order that the Minister must form an opinion under section 80(2) of SARA. It is not asking the Court to tell the Minister what opinion she should form. Nor is it asking the Court to order the Governor in Council to make an emergency order under section 80(1).

B. Wells Gray-Thompson caribou herd

3. This application concerns the Wells Gray-Thompson Local Population Unit (LPU) of the Woodland Caribou, Southern Mountain Caribou population (*Rangifer tarandus caribou*), which for convenience will be referred to here as the Wells Gray-Thompson LPU or caribou herd.
4. The Wells Gray-Thompson LPU is one some 24 Local Population Units of what are now called Southern Mountain Caribou. Southern Mountain Caribou are now divided into Northern, Central and Southern groups. The Wells Gray-Thompson LPU is within the Southern group.
5. The Wells Gray-Thompson caribou herd is a listed species under SARA. It is designated “threatened” under SARA and “endangered” by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). Fortunately, the herd’s recovery is deemed is both technically and biologically feasible.
6. The critical habitat of the Wells Gray-Thompson caribou herd was mapped in a 2014 Recovery Strategy for Southern Mountain Caribou under SARA.

This critical habitat is British Columbia Crown land,¹ which is “non-federal land” under SARA.

7. The Recovery Strategy does not, and is not intended to, provide legally binding protection of critical habitat. Further, there are only two mechanisms under SARA for binding federal measures to protect critical habitat of listed species² on provincial land: the “safety net” mechanism under s.61 and the emergency order mechanism under s.80.
8. In 2017, the Minister issued an “effective protection” study³ for the Central Group of Southern Mountain Caribou, which is a step toward a federal safety net order. However the Central Group does not include the Wells Gray-Thompson caribou herd.
9. Meanwhile, clearcut logging continues within the critical habitat of the Wells Gray-Thompson caribou herd and the herd’s population continues to decline. Recent population estimates range from 140 to 164.⁴

C. Application for Emergency Order under SARA s.80

10. On April 7, 2017, the applicant Wells Gray Gateway Protection Society and other environmental and citizens groups and concerned individuals made an application to the Minister for an emergency order under section 80 of SARA to protect matrix range critical habitat of the Wells Gray-Thompson caribou herd against timber harvesting and related road-building on provincial crown land.⁵
11. The 87-page application documents a precipitous decline in the number of animals in the herd and imminent threats to the herd’s survival and recovery

¹ See the map at Applicant’s Record, Tab 2, cumulative page (cp.) 104., Appendix F of Exhibit “1” of the Zabrack affidavit.

² Other than aquatic species and migratory birds.

³ The study addresses whether Provincial law provides “effective protection” of the listed species and its habitat, per SARA s.61(4)(b). Applicant’s Record, Tab 6.

⁴ The estimate of 140 is from the 2017 Central Group Protection Study, Table 2, Zabrack affidavit, Exhibit “1”, Applicant’s Record, Tab 2, cp.39. The Hammond affidavit provides a “present estimate” of 164 in para.21, with no source or date.

⁵ Zabrack affidavit, Exhibit “1”, Applicant’s Record, Tab 2, cp.8.

particularly due to ongoing and upcoming clearcut logging within critic matrix habitat. The application provides new scientific evidence that if logging persists in the subject area then wolf density is more likely than not to increase, contrary to defined recovery objectives.⁶

12. The request to the Minister for an emergency order was made by: Wells Gray Gateway Protection Society, Upper Clearwater Referral Group, BC Nature, Western Canada Wilderness Committee, Sierra Club British Columbia, Kamloops Naturalist Club, Kamloops Unitarians for Social Justice, Shuswap Naturalist Club, Working Group on Indigenous Food Sovereignty, Vermilion Forks Field Naturalists Society, South Okanagan Naturalists' Club, Squamish Environmental Conservation Society, Chilliwack Field Naturalists, Trevor Goward, Roland Neave, Erik Milton, Dr. Cathie Hickson, Dr. Lyn Baldwin, Dr. Nancy Flood, Dawn Morrison, and Kanahus Manuel.⁷

D. Substantive response coming “relatively soon,” and “in the coming weeks”

13. On April 24, 2017, counsel for WGGPS, *et al.*, wrote to the Minister providing further information regarding imminent logging in the subject area.⁸ He reminded the Minister that her decision must be made in a timely manner, bearing in mind the emergency nature of the order requested. He respectfully requested a substantive response within 45 days, i.e., on or before May 22, 2017.
14. On May 23, 2017, an official of the Canadian Wildlife Service (CWS) wrote to counsel for WGGPS saying the department will be submitting information

⁶ Field, Kate A., Paul C. Paquet and Chris T. Darimont. “Wolf (*Canis lupus*) Density and Probable Effects of Logging in Matrix Range Critical Habitat within the Wells Gray-Thompson Local Population Unit for Woodland Caribou (*Rangifer tarandus caribou*), Southern Population.” March 28, 2017. Zabrack affidavit, Exhibit “1”, Appendix C, Applicant’s Record, Tab 2, cp.89.

⁷ Zabrack affidavit Exhibit “1”, cp.9, and Appendix A. Names and Descriptions of Applicants, Applicant’s Record, Tab 2, cp.80, *et seq.*

⁸ Zabrack affidavit Exhibit “2”, Applicant’s Record, Tab 2, cp.105.

to the Minister that will support her in forming an opinion under section 80 of SARA.⁹ No date was specified.

15. On June 14, 2017, a CWS official told counsel for the Society that he expected the department to provide a briefing package to the Minister “relatively soon.”¹⁰
16. On September 14, 2017, counsel for WGGPS wrote to CWS officials providing a map showing logging operations within critical habitat in May, June and August 2017. The letter stresses the urgency of the matter and says the Minister’s failure to make a decision under section 80(2) is unreasonable. The letter refers to the possibility of an application to Federal Court should that become necessary.¹¹
17. On October 17, 2017, counsel for WGGPS wrote to the Minister again asking her to form an opinion under s.80(2) and respectfully informing her that in the absence of a satisfactory response by October 31, 2017 the applicants would not provide further notice before initiating litigation.¹²
18. On October 26, 2017, the Minister wrote to counsel for WGGPS saying that the request for an emergency order is under active consideration and that pertinent information would be provided to her (the Minister) “in the coming weeks” to enable her to form her opinion under section 80(2) of SARA.¹³
19. On November 27, 2017, counsel for WGGPS wrote to CWS providing maps and images regarding logging operations within critical habitat as of November 17, 2017. Again, counsel stressed the urgency of the situation and asked for a substantive response.¹⁴ No response was forthcoming.

⁹ Zabrack affidavit Exhibit “3”, Applicant’s Record, Tab 2, cp.107.

¹⁰ Zabrack affidavit Exhibit “4”, Applicant’s Record, Tab 2, cp.108.

¹¹ Zabrack affidavit Exhibit “5”, Applicant’s Record, Tab 2, cp.109.

¹² Zabrack affidavit, Exhibit “6”, Applicant’s Record, Tab 2, cp.112.

¹³ Zabrack affidavit, Exhibit “7”, Applicant’s Record, Tab 2, cp.114.

¹⁴ Zabrack affidavit, Exhibit “8”, Applicant’s Record, Tab 2, cp.115.

E. Application to Federal Court

20. On December 6, 2017, the Applicant Wells Gray Gateway Protection Society filed this Notice of Application.
21. WGGPS is the leading organization making the April 7, 2017 application for an emergency order under SARA s. 80. All the other organizations and individuals who made the request for an emergency order consent or are not opposed to the Society making this Application to the Court. The Society works to protect the Clearwater River watershed and Mountain Caribou habitat in the Clearwater Valley, which is the southern corridor entrance to Wells Gray Provincial Park. Most of the society's members live and work in the Clearwater area.¹⁵

F. Still no substantive response

22. The Respondents filed a January 30, 2018 affidavit of Blair Hammond, Acting Regional Director, Pacific Region, Environment and Climate Change Canada, and a January 29, 2018 affidavit of Robert McLean, Director General of the Assessment and Regulatory Affairs Directorate of ECCC.
23. Mr. Hammond's role is to supervise the information gathering process and the subsequent drafting of an analysis of whether the Wells Gray-Thompson LPU is facing an imminent threat to its recovery or survival.¹⁶
24. Mr. Hammond deposes that "At the present time [January 30, 2018], ECCC is in the process of finalizing advice" to the Minister regarding the request for an emergency order to protect the Wells Gray-Thompson caribou herd.¹⁷
25. Neither Mr. Hammond nor Mr. McLean offers a prediction as to when CWS will provide its information and advice package to the Minister or when the Minister will form an opinion under s.80(2).

¹⁵ Neave affidavit, paras.2, 4, Applicant's Record, Tab 2, cp.127.

¹⁶ Hammond affidavit, para.39-40.

¹⁷ Hammond affidavit, para.49.

26. At the time of writing, to the knowledge of the Society, the Minister has not formed an opinion under SARA s.80(2) regarding whether the Wells Gray-Thompson LPU faces imminent threats to its recovery or survival.

Part II – Points in Issue

27. The issue is whether the Society's application meets the conditions precedent for *mandamus* relief and whether on the balance of convenience the Court should order that the Minister must form an opinion under section 80(2) of SARA as to whether the listed species Southern Mountain Caribou, Wells Gray-Thompson Local Population Unit faces imminent threats to its survival or recovery.

Part III – Submissions

A. Jurisdiction of the Court

28. The Court has jurisdiction to make the requested order under section 18(1) of the *Federal Courts Act*. Section 18(1) provides that the Court has exclusive original jurisdiction to issue a writ of mandamus, among other remedies, against any federal board, commission or other tribunal not listed in section 28 of the *Act*. In exercising her duty to form an opinion under section 80(2) of SARA, the Minister is a federal tribunal within the meaning of s.18 of the FCA and is not listed in s.28 of the FCA.
29. Section 18(3) provides that a remedy under s.18(1) may be obtained only on an application for judicial review under s.18.1. This is an application for judicial review under s.18.1.
30. Section 18.1(1) provides that an application for judicial review may be made by anyone directly affected by the matter in respect of which relief is sought. The Wells Gray Gateway Protection Society is directly affected by the Minister's failure to form an opinion in this matter. This is addressed further, below, under the subheading "The Society should be granted public interest standing."

31. Section 18.1(3) provides that: “On an application for judicial review, the Federal Court may (a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing...” The Applicant says that the Minister has unlawfully failed to form, or unreasonably delayed in forming, an opinion under SARA s.80(2) regarding the Wells Gray-Thompson Caribou herd.
32. Section 18.1(4) lists the grounds on which the Court may grant relief under subsection 18.1(3), including that the tribunal “(a) ... refused to exercise its jurisdiction” or “(f) acted in any other way that was contrary to law.” The Applicant says that the Minister has refused to exercise her jurisdiction to form an opinion under SARA s.80(2) and that this failure or refusal to act is contrary to law.

B. Conditions for an order of mandamus

33. The principles applicable to a claim for *mandamus* relief were summarized by the Federal Court of Appeal in *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742 at 766-769 (citations omitted)¹⁸:

1. There must be a public legal duty to act.
2. The duty must be owed to the applicant.
3. There is a clear right to performance of that duty, in particular:
 - (a) the applicant has satisfied all conditions precedent giving rise to the duty;
 - (b) there was (i) a prior demand for performance of the duty; (ii) a reasonable time to comply with the demand unless refused outright; and (iii) a subsequent refusal which be either expressed or implied, e.g. unreasonable delay;
4. Where the duty sought to be enforced is discretionary, the following rules apply:
 - (a) in exercising a discretion, the decision-maker must not act in a manner which can be characterized as "unfair", "oppressive" or demonstrate "flagrant impropriety" or "bad faith";

¹⁸ Applicant's Record, Tab 8.

(b) *mandamus* is unavailable if the decision-maker's discretion is characterized as being "unqualified", "absolute", "permissive" or "unfettered";

(c) in the exercise of a "fettered" discretion, the decision-maker must act upon "relevant", as opposed to "irrelevant", considerations;

(d) *mandamus* is unavailable to compel the exercise of a "fettered discretion" in a particular way; and

(e) *mandamus* is only available when the decision-maker's discretion is "spent"; i.e., the applicant has a vested right to the performance of the duty.

5. No other adequate remedy is available to the applicant.

6. The order sought will be of some practical value or effect.

7. The Court in the exercise of its discretion finds no equitable bar to the relief sought.

8. On a "balance of convenience" an order in the nature of *mandamus* should (or should not) issue.

34. These principles are applied to the facts in the present case in the paragraphs that follow.

(1) The Minister's public legal duty to act

35. Upon receipt of the request, the Minister has a public legal duty to form an opinion under section 80(2) of SARA as to whether the listed species faces imminent threats to its survival or recovery. This is an objective determination that must be made in a timely manner, bearing in mind the emergency nature of the order requested.

36. In *Adam v Canada*, Chief Justice Crampton endorsed the proposition that "timely decision-making is required" under SARA s.80(2).¹⁹ He also stated:

"Keeping in mind the "emergency" nature of the power contemplated in section 80, it may nevertheless be legitimate for the Minister to take a short period of time, following a request such as was made by the Applicants to: (a) obtain information

¹⁹ *Adam v. Canada (Environment)*, 2011 FC 962, paras.38(ix), 39. Applicant's Record, Tab 7.

necessary to make an informed opinion under subsection 80(2); or (b) obtain receipt of scientific or other information that is in the process of being prepared.” [para.39(iv), underline added]

37. These general principles were quoted with approval by Justice Martineau in *Centre Québécois du droit de l’environnement v. Canada (Environment)*.²⁰ He also stated that “It is clear from the case law that section 80 of the federal Act must be given a liberal interpretation.”²¹

(2) The Minister’s duty is owed to the applicant Society

38. The Minister’s duty to form an opinion under section 80(2) is owed to the Applicant, who, with others, made the request for an emergency order.

(3) There is a clear right to performance of the duty

39. The Applicant has a clear right to performance of the duty and has satisfied all the conditions precedent giving rise to the duty.
40. Prior demands for performance of the duty were made by letters of April 24, September 14, October 17 and November 17, 2017.
41. Despite repeated entreaties from the Applicant that successive new clearcut logging operations are causing further harm to the Wells Gray-Thompson caribou herd’s designated critical habitat, the Minister has, to date, failed to form an opinion under section 80(2).
42. The Minister and her representatives say only that the department will be submitting information to the Minister (May 23, 2017), that a briefing package will be provided to the Minister “relatively soon,” (June 14, 2017), that information will be provided to the Minister “in the coming weeks” (October 26, 2017), and that CWS is “in the process of finalizing” the advice to the Minister (January 30, 2018). The Applicant submits that this an implied refusal and an unreasonable delay.

(4) The Applicant is not challenging a decision by the Minister

²⁰ *Centre Québécois du droit de l’environnement v. Canada (Environment)*, 2015 FC 773, para.19. Applicant’s Record, Tab 10.

²¹ *Ibid.*, para.20.

43. The Applicant says that the fourth rule is not applicable in the present case because the Applicant is not challenging a discretionary decision. Rather, the Applicant submits that the Minister must form an opinion under SARA s.80(2), and that the Minister has failed to do so or has unreasonably delayed in doing so.

(5) No other adequate remedy is available to the applicant

44. The s.80 emergency order mechanism is the only provision in SARA (or any other legislation) under which the federal government can take emergency action to protect critical habitat on non-federal land in the case of a listed species such as the Wells Gray-Thompson caribou herd. The s.80 mechanism fills the gap where the s.61 “safety net” mechanism (for federal action where provincial or territorial laws do not effectively protect critical habitat on non-federal land) is too slow.

(6) The order sought will be of some practical value or effect.

45. The requested order compelling the Minister to form an opinion under SARA section 80(2) would have practical effect. If the Minister’s opinion under section 80(2) is that the Wells Gray-Thompson caribou herd faces imminent threats to its survival or recovery then the Minister must, by section 80(2), make a recommendation which is a precondition for the Governor in Council to exercise its authority under section 80(1) to make an emergency order to provide for the protection of the listed species.

(7) No equitable bar to the relief sought

46. There is no equitable bar to the order of mandamus sought in this application.

(8) Balance of convenience favours an order of mandamus.

47. The Society submits that the balance of convenience favours granting an order of mandamus.

48. While Mr. Hammond provides some detail in his January 30, 2018 affidavit about the information gathering CWS has been undertaking,²² he provides

²² Hammond affidavit, paras.39 to 44.

no explanation of why this detail was not provided to the Society before the Society applied to the Court for a remedy. He provides no explanation of why CWS repeatedly led the Society to believe that a decision was imminent when it was not. He does not explain why the Minister said on October 26, 2017 that she would receive the information package “in the coming weeks” and yet three months later, on January 30, 2018, he says that CWS is “finalizing” the package. Neither he nor Mr. McLean provide any estimate of when the package will be provided to the Minister or when the Minister will form an opinion under s.80(2).

49. With respect, the Hammond and McLean affidavits conspicuously fail to provide any assurance as to when, if ever, the Minister will form an opinion under s.80(2) in response to the request for an emergency order. The affidavits are devoid of any acknowledgment of the ongoing decline of the Wells Gray-Thompson caribou herd and the continuing destruction of critical habitat. The affidavits provide no objective basis for a reasonable expectation that the Minister will provide a substantive response in a timely manner, bearing in mind the emergency nature of the order requested.
50. By the time of the scheduled oral hearing of this application on May 9, 2018, it will be more than one year since the Society and others made the April 7, 2017 request to the Minister for an emergency order to protect the critical habitat of the Well Gray-Thompson caribou herd against clearcut logging and road building. This significantly exceeds the “short period of time” that Chief Justice Crampton said in *Adam* was legitimate for the Minister to take to obtain information to make an informed decision under s.80(2).²³

C. WGGPS should be granted public interest standing

51. The Wells Gray Gateway Protection Society should be granted public interest standing to bring this application.

²³ *Adam v. Canada (Environment)*, 2011 FC 962, para. 39(iv), quoted in paragraph 36, above. Applicant’s Record, Tab 7.

52. In exercising its discretion with respect to standing, the court considers three factors: whether the application raises a serious justiciable issue, whether the applicant has a real stake in the issue, and whether the application is a reasonable and effective means to bring the case to the Court.²⁴

(1) Serious and justiciable issue

53. The Minister's alleged unreasonable delay in forming an opinion under SARA s.80(2) is a serious issue because it negates the role of the s.80 emergency order mechanism within the framework of the Act.

(a) The triggering criterion is expressly time-sensitive: "the [listed] species faces imminent threats to its survival or recovery."²⁵

(b) Unreasonable delay of action under s.80(2) directly frustrates the purpose of the Act "to prevent wildlife species from being extirpated or becoming extinct..."²⁶

(c) As discussed in paragraph 44, above, the s.80 emergency order mechanism is the only provision in the Act under which the federal government can take emergency action to protect critical habitat on non-federal land in the case of a listed species such as the Wells Gray-Thompson caribou herd.

(d) The s.80 emergency order mechanism omits the requirement in the safety net mechanism for the Minister to consult with provincial ministers before making a recommendation,²⁷ presumably because an emergency order requires quick action to be effective.

²⁴ *Canada v. Downtown Eastside Sex Workers*, 2012 SCC 45, para.3. Applicant's Record, Tab 9.

²⁵ SARA, section 80(2), Applicant's Record, Tab 6.

²⁶ SARA, section 6, Applicant's Record, Tab 6.

²⁷ SARA, section 61(4)(a). Section 80(3) of SARA requires the Minister to consult "every other competent minister" before making a recommendation to the Governor in Council that it make an emergency order. However, the Minister is the only "competent minister" with respect to the Wells Gray-Thompson caribou herd. Applicant's Record, Tab 6.

(e) The timeliness of the action contemplated in the s.80 emergency order mechanism is informed by the precautionary principle endorsed in the preamble: “the Government of Canada is committed...to the principle that, if there are threats of serious or irreversible damage to a wildlife species, cost-effective measures to prevent the reduction or loss of the species should not be postponed for a lack of full scientific certainty.”

54. The Minister’s alleged unreasonable delay to act under s.80(2) is a justiciable issue. As noted in paragraph 31, above, section 18.1(3) of the *Federal Courts Act* specifically provides that on an application for judicial review the Federal Court may order the tribunal “to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing...”

(2) The Applicant has a real stake in the issue

55. The Wells Gray Gateway Protection Society has a real stake in this application and is engaged with the issues that it raises. As affirmed in the Neave affidavit, all the other applicants for the emergency order are content with the Society undertaking the court application.²⁸ It is submitted that this is a desirable approach and that it would be inefficient to require all the groups and individuals who endorsed the request to the Minister to sign on as applicants in the Court application.

(3) Reasonable and effective means to bring the case to the Court

56. This application for judicial review under section 18.1 of the FCA is the appropriate way to bring the case to the Court.

57. In conclusion regarding standing, it is respectfully submitted that upon consideration of the relevant factors the Wells Gray Gateway Protection Society should be granted public interest standing to bring this application.

Part IV – Order Sought

58. The applicant makes application for the following remedies:

²⁸ Neave affidavit, para.2., Applicant’s Record, Tab 3, cp.127.

- (a) an order of *mandamus* compelling the Minister of Environment and Climate Change to form an opinion under section 80(2) of the *Species at Risk Act* as to whether the listed species Southern Mountain Caribou, Wells Gray-Thompson Local Population Unit faces imminent threats to its survival or recovery,
- (b) costs, and
- (c) such further relief as this Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

27 February 2018

William J. Andrews
Solicitor for the Applicant

Part V – List of Enactments and Authorities

Appendix A – Enactments	Tab
<i>Federal Courts Act</i> , RSC 1985, c. F-7, sections 18, 18.1, 28	5
<i>Species at Risk Act</i> , SC 2002, c. 29, preamble, sections 6, 61, 80, 81, 82	9

Appendix B – Authorities	
<i>Adam v. Canada (Environment)</i> , 2011 FC 962 paras. 38(ix) and 39,.	7
<i>Apotex Inc. v. Canada (Attorney General)</i> , [1994] 1 FC 742, 1993 CanLII 3004 (FCA)	8
<i>Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society</i> , [2012] 2 SCR 524, 2012 SCC 45.	9
<i>Centre Québécois du droit de l’environnement v. Canada (Environment)</i> , 2015 FC 773, para. 19, 20	10

Appendix A Statutes and Regulations

Federal Courts Act, RSC 1985, c F-7	Loi sur les cours fédérales, LRC 1985, c F-7
<p>Extraordinary remedies, federal tribunals 18 (1) Subject to section 28, the Federal Court has exclusive original jurisdiction</p> <p>(a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and</p> <p>(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.</p>	<p>Recours extraordinaires : offices fédéraux 18 (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :</p> <p>a) décerner une injonction, un bref de certiorari, de mandamus, de prohibition ou de quo warranto, ou pour rendre un jugement déclaratoire contre tout office fédéral;</p> <p>b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.</p>
<p>Extraordinary remedies, members of Canadian Forces (2) The Federal Court has exclusive original jurisdiction to hear and determine every application for a writ of habeas corpus ad subjiciendum, writ of certiorari, writ of prohibition or writ of mandamus in relation to any member of the Canadian Forces serving outside Canada.</p>	<p>Recours extraordinaires : Forces canadiennes (2) Elle a compétence exclusive, en première instance, dans le cas des demandes suivantes visant un membre des Forces canadiennes en poste à l'étranger : bref d'habeas corpus ad subjiciendum, de certiorari, de prohibition ou de mandamus.</p>
<p>Remedies to be obtained on application (3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.</p>	<p>Exercice des recours (3) Les recours prévus aux paragraphes (1) ou (2) sont exercés par présentation d'une demande de contrôle judiciaire.</p>
<p>Application for judicial review 18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.</p>	<p>Demande de contrôle judiciaire 18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.</p>
<p>Time limitation (2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made</p>	<p>Délai de présentation (2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de</p>

<p>within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.</p>	<p>sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.</p>
<p>Powers of Federal Court (3) On an application for judicial review, the Federal Court may</p> <p>(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or</p> <p>(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.</p>	<p>Pouvoirs de la Cour fédérale (3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :</p> <p>a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;</p> <p>b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.</p>
<p>Grounds of review (4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal</p> <p>(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;</p> <p>(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;</p> <p>(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;</p> <p>(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;</p> <p>(e) acted, or failed to act, by reason of fraud or perjured evidence; or</p>	<p>Motifs (4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :</p> <p>a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;</p> <p>b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;</p> <p>c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;</p> <p>d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;</p> <p>e) a agi ou omis d'agir en raison d'une fraude ou</p>

<p>(f) acted in any other way that was contrary to law.</p>	<p>de faux témoignages; f) a agi de toute autre façon contraire à la loi.</p>
<p>Defect in form or technical irregularity (5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may</p> <p>(a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and</p> <p>(b) in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.</p>	<p>Vice de forme (5) La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun dommage important ni déni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.</p>

<p>Species at Risk Act, S.C. 2002, c.29</p>	<p>Loi sur les espèces en péril, LC 2002, c 29</p>
<p>Preamble Recognizing that</p> <p>Canada's natural heritage is an integral part of our national identity and history,</p> <p>wildlife, in all its forms, has value in and of itself and is valued by Canadians for aesthetic, cultural, spiritual, recreational, educational, historical, economic, medical, ecological and scientific reasons,</p> <p>Canadian wildlife species and ecosystems are also part of the world's heritage and the Government of Canada has ratified the United Nations Convention on the Conservation of Biological Diversity,</p> <p>providing legal protection for species at risk will complement existing legislation and will, in part, meet Canada's commitments under that Convention,</p> <p>the Government of Canada is committed to conserving biological diversity and to the principle that, if there are threats of serious or irreversible damage to a wildlife species, cost-effective measures to prevent the reduction or loss of the species should not be postponed for a lack of full scientific certainty,</p> <p>responsibility for the conservation of wildlife in Canada is shared among the governments in this country and that it is important for them to work cooperatively to pursue the establishment of complementary legislation and programs for the protection and recovery of species at risk in Canada,</p> <p>it is important that there be cooperation between the governments in this country to maintain and strengthen national standards of environmental conservation and that the Government of Canada is committed to the principles set out in</p>	<p>Préambule Attendu :</p> <p>que le patrimoine naturel du Canada fait partie intégrante de notre identité nationale et de notre histoire;</p> <p>que les espèces sauvages, sous toutes leurs formes, ont leur valeur intrinsèque et sont appréciées des Canadiens pour des raisons esthétiques, culturelles, spirituelles, récréatives, éducatives, historiques, économiques, médicales, écologiques et scientifiques;</p> <p>que les espèces sauvages et les écosystèmes du Canada font aussi partie du patrimoine mondial et que le gouvernement du Canada a ratifié la Convention des Nations Unies sur la diversité biologique;</p> <p>que l'attribution d'une protection juridique aux espèces en péril complétera les textes législatifs existants et permettra au Canada de respecter une partie des engagements qu'il a pris aux termes de cette convention;</p> <p>que le gouvernement du Canada s'est engagé à conserver la diversité biologique et à respecter le principe voulant que, s'il existe une menace d'atteinte grave ou irréversible à une espèce sauvage, le manque de certitude scientifique ne soit pas prétexte à retarder la prise de mesures efficaces pour prévenir sa disparition ou sa décroissance;</p> <p>que la conservation des espèces sauvages au Canada est une responsabilité partagée par les gouvernements du pays et que la collaboration entre eux est importante en vue d'établir des lois et des programmes complémentaires pouvant assurer la protection et le rétablissement des espèces en péril au Canada;</p> <p>que la coopération entre les gouvernements du pays pour le maintien et le renforcement des normes nationales de conservation de l'environnement est importante et que le gouvernement du Canada est attaché aux</p>

<p>intergovernmental agreements respecting environmental conservation,</p> <p>the Canadian Endangered Species Conservation Council is to provide national leadership for the protection of species at risk, including the provision of general direction to the Committee on the Status of Endangered Wildlife in Canada in respect of that Committee's activities and general directions in respect of the development, coordination and implementation of recovery efforts,</p> <p>the roles of the aboriginal peoples of Canada and of wildlife management boards established under land claims agreements in the conservation of wildlife in this country are essential,</p> <p>all Canadians have a role to play in the conservation of wildlife in this country, including the prevention of wildlife species from becoming extirpated or extinct,</p> <p>there will be circumstances under which the cost of conserving species at risk should be shared,</p> <p>the conservation efforts of individual Canadians and communities should be encouraged and supported,</p> <p>stewardship activities contributing to the conservation of wildlife species and their habitat should be supported to prevent species from becoming at risk,</p> <p>community knowledge and interests, including socio-economic interests, should be considered in developing and implementing recovery measures,</p> <p>the traditional knowledge of the aboriginal peoples of Canada should be considered in the assessment of which species may be at risk and in developing and implementing recovery measures,</p>	<p>principes énoncés dans les accords intergouvernementaux en matière de conservation de l'environnement;</p> <p>que le Conseil canadien pour la conservation des espèces en péril a la responsabilité d'établir les orientations pour l'ensemble du pays en matière de protection des espèces en péril, notamment en ce qui concerne les activités du Comité sur la situation des espèces en péril au Canada et l'élaboration et la coordination des mesures de protection et de rétablissement de ces espèces;</p> <p>qu'est essentiel le rôle que peuvent jouer les peuples autochtones du Canada et les conseils de gestion des ressources fauniques établis en application d'accords sur des revendications territoriales dans la conservation des espèces sauvages dans ce pays;</p> <p>que tous les Canadiens ont un rôle à jouer dans la conservation des espèces sauvages, notamment en ce qui a trait à la prévention de leur disparition du pays ou de la planète;</p> <p>que, dans certains cas, les frais de la conservation des espèces en péril devraient être partagés;</p> <p>que les efforts de conservation des Canadiens et des collectivités devraient être encouragés et appuyés;</p> <p>que les activités d'intendance visant la conservation des espèces sauvages et de leur habitat devraient bénéficier de l'appui voulu pour éviter que celles-ci deviennent des espèces en péril;</p> <p>que la connaissance et les intérêts — notamment socioéconomiques — des collectivités devraient être pris en compte lors de l'élaboration et de la mise en oeuvre des mesures de rétablissement;</p> <p>que les connaissances traditionnelles des peuples autochtones du Canada devraient être prises en compte pour découvrir quelles espèces sauvages peuvent être en péril et pour l'élaboration et la mise en oeuvre des mesures</p>
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<p>knowledge of wildlife species and ecosystems is critical to their conservation,</p> <p>the habitat of species at risk is key to their conservation, and</p> <p>Canada's protected areas, especially national parks, are vital to the protection and recovery of species at risk,</p> <p>NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:</p>	<p>de rétablissement;</p> <p>que la connaissance des espèces sauvages et des écosystèmes est essentielle à leur conservation;</p> <p>que l'habitat des espèces en péril est important pour leur conservation;</p> <p>que les aires protégées au Canada, plus particulièrement les parcs nationaux, sont importants pour la protection et le rétablissement des espèces en péril,</p> <p>Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :</p>
<p>Purposes 6 The purposes of this Act are to prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to manage species of special concern to prevent them from becoming endangered or threatened.</p>	<p>Objet 6 La présente loi vise à prévenir la disparition — de la planète ou du Canada seulement — des espèces sauvages, à permettre le rétablissement de celles qui, par suite de l'activité humaine, sont devenues des espèces disparues du pays, en voie de disparition ou menacées et à favoriser la gestion des espèces préoccupantes pour éviter qu'elles ne deviennent des espèces en voie de disparition ou menacées.</p>
<p>Destruction of critical habitat 61 (1) No person shall destroy any part of the critical habitat of a listed endangered species or a listed threatened species that is in a province or territory and that is not part of federal lands.</p>	<p>Destruction de l'habitat essentiel 61 (1) Il est interdit de détruire un élément de l'habitat essentiel d'une espèce en voie de disparition inscrite ou d'une espèce menacée inscrite se trouvant dans une province ou un territoire, ailleurs que sur le territoire domanial.</p>
<p>Exception (1.1) Subsection (1) does not apply in respect of (a) an aquatic species; or (b) the critical habitat of a species of bird that is a migratory bird protected by the Migratory Birds Convention Act, 1994 that is habitat referred to in subsection 58(5.1).</p>	<p>Non-application (1.1) Le paragraphe (1) ne s'applique pas : a) aux espèces aquatiques; b) aux parties de l'habitat essentiel d'une espèce d'oiseaux migrateurs protégée par la Loi de 1994 sur la convention concernant les oiseaux migrateurs, étant l'habitat visé au paragraphe 58(5.1).</p>
<p>Application (2) Subsection (1) applies only to the portions of the critical habitat that the Governor in Council</p>	<p>Application (2) Le paragraphe (1) ne s'applique qu'aux parties de l'habitat essentiel que le gouverneur</p>

<p>may, on the recommendation of the Minister, by order, specify.</p>	<p>en conseil désigne par décret pris sur recommandation du ministre.</p>
<p>Power to make recommendation (3) The Minister may make a recommendation if (a) a provincial minister or territorial minister has requested that the recommendation be made; or (b) the Canadian Endangered Species Conservation Council has recommended that the recommendation be made.</p>	<p>Pouvoir de recommandation (3) Le ministre peut faire la recommandation dans les cas suivants : a) un ministre provincial ou territorial a demandé qu'elle soit faite; b) le Conseil canadien pour la conservation des espèces en péril a recommandé qu'elle soit faite.</p>
<p>Obligation to make recommendation (4) The Minister must make a recommendation if he or she is of the opinion, after consultation with the appropriate provincial or territorial minister, that (a) there are no provisions in, or other measures under, this or any other Act of Parliament that protect the particular portion of the critical habitat, including agreements under section 11; and (b) the laws of the province or territory do not effectively protect the critical habitat.</p>	<p>Obligation de recommandation (4) Le ministre est tenu de faire la recommandation s'il estime, après avoir consulté le ministre provincial ou territorial compétent : a) d'une part, qu'aucune disposition de la présente loi ou de toute autre loi fédérale, ni aucune mesure prise sous leur régime — notamment les accords conclus au titre de l'article 11 —, ne protègent la partie de l'habitat essentiel; b) d'autre part, que le droit de la province ou du territoire ne protège pas efficacement cette partie.</p>
<p>Expiry and renewal of order (5) An order made under subsection (2) expires five years after the day on which it is made or renewed, unless the Governor in Council, by order, renews it.</p>	<p>Expiration et prorogation (5) La durée d'application du décret visé au paragraphe (2) est de cinq ans, sauf prorogation par décret.</p>
<p>Recommendation to repeal order (6) If the Minister is of the opinion that an order made under subsection (2) is no longer necessary to protect the portion of the critical habitat to which the order relates or that the province or territory has brought into force laws that protect the portion, the Minister must recommend that the order be repealed.</p>	<p>Recommandation d'abrogation (6) Le ministre est tenu de recommander l'abrogation du décret visé au paragraphe (2) s'il estime soit que son application n'est plus nécessaire pour la protection de la partie de l'habitat essentiel visée par le décret, soit que la province ou le territoire a pris les mesures législatives voulues pour protéger la partie visée.</p>

<p>Emergency order 80 (1) The Governor in Council may, on the recommendation of the competent minister, make an emergency order to provide for the protection of a listed wildlife species.</p>	<p>Décrets d'urgence 80 (1) Sur recommandation du ministre compétent, le gouverneur en conseil peut prendre un décret d'urgence visant la protection d'une espèce sauvage inscrite.</p>
<p>Obligation to make recommendation (2) The competent minister must make the recommendation if he or she is of the opinion that the species faces imminent threats to its survival or recovery.</p>	<p>Recommandation obligatoire (2) Le ministre compétent est tenu de faire la recommandation s'il estime que l'espèce est exposée à des menaces imminentes pour sa survie ou son rétablissement.</p>
<p>Contents (4) The emergency order may (a) in the case of an aquatic species, (i) identify habitat that is necessary for the survival or recovery of the species in the area to which the emergency order relates, and (ii) include provisions requiring the doing of things that protect the species and that habitat and provisions prohibiting activities that may adversely affect the species and that habitat; (b) in the case of a species that is a species of migratory birds protected by the Migratory Birds Convention Act, 1994, (i) on federal land or in the exclusive economic zone of Canada, (A) identify habitat that is necessary for the survival or recovery of the species in the area to which the emergency order relates, and (B) include provisions requiring the doing of things that protect the species and that habitat and provisions prohibiting activities that may adversely affect the species and that habitat, and (ii) on land other than land referred to in subparagraph (i), (A) identify habitat that is necessary for the survival or recovery of the species in the area to which the emergency order relates, and (B) include provisions requiring the doing of things that protect the species and provisions prohibiting activities that may adversely affect the species and that habitat; and (c) with respect to any other species, (i) on federal land, in the exclusive economic zone of Canada or on the continental shelf of Canada,</p>	<p>Contenu du décret (4) Le décret peut : a) dans le cas d'une espèce aquatique : (i) désigner l'habitat qui est nécessaire à la survie ou au rétablissement de l'espèce dans l'aire visée par le décret, (ii) imposer des mesures de protection de l'espèce et de cet habitat, et comporter des dispositions interdisant les activités susceptibles de leur nuire; b) dans le cas d'une espèce d'oiseau migrateur protégée par la Loi de 1994 sur la convention concernant les oiseaux migrateurs se trouvant : (i) sur le territoire domanial ou dans la zone économique exclusive du Canada : (A) désigner l'habitat qui est nécessaire à la survie ou au rétablissement de l'espèce dans l'aire visée par le décret, (B) imposer des mesures de protection de l'espèce et de cet habitat, et comporter des dispositions interdisant les activités susceptibles de leur nuire, (ii) ailleurs que sur le territoire visé au sous-alinéa (i) : (A) désigner l'habitat qui est nécessaire à la survie ou au rétablissement de l'espèce dans l'aire visée par le décret, (B) imposer des mesures de protection de l'espèce, et comporter des dispositions interdisant les activités susceptibles de nuire à l'espèce et à cet habitat; c) dans le cas de toute autre espèce se trouvant : (i) sur le territoire domanial, dans la zone économique exclusive ou sur le plateau continental du Canada :</p>

<p>(A) identify habitat that is necessary for the survival or recovery of the species in the area to which the emergency order relates, and (B) include provisions requiring the doing of things that protect the species and that habitat and provisions prohibiting activities that may adversely affect the species and that habitat, and (ii) on land other than land referred to in subparagraph (i), (A) identify habitat that is necessary for the survival or recovery of the species in the area to which the emergency order relates, and (B) include provisions prohibiting activities that may adversely affect the species and that habitat.</p>	<p>(A) désigner l'habitat qui est nécessaire à la survie ou au rétablissement de l'espèce dans l'aire visée par le décret, (B) imposer des mesures de protection de l'espèce et de cet habitat, et comporter des dispositions interdisant les activités susceptibles de leur nuire, (ii) ailleurs que sur le territoire visé au sous-alinéa (i) : (A) désigner l'habitat qui est nécessaire à la survie ou au rétablissement de l'espèce dans l'aire visée par le décret, (B) comporter des dispositions interdisant les activités susceptibles de nuire à l'espèce et à cet habitat.</p>
<p>Exemption (5) An emergency order is exempt from the application of section 3 of the Statutory Instruments Act.</p>	<p>Exclusion (5) Les décrets d'urgence sont soustraits à l'application de l'article 3 de la Loi sur les textes réglementaires.</p>
<p>Equivalent measures 81 Despite subsection 80(2), the competent minister is not required to make a recommendation for an emergency order if he or she is of the opinion that equivalent measures have been taken under another Act of Parliament to protect the wildlife species.</p>	<p>Mesures équivalentes 81 Malgré le paragraphe 80(2), le ministre compétent n'est pas tenu de recommander la prise d'un décret d'urgence s'il estime que des mesures équivalentes ont été prises en vertu d'une autre loi fédérale pour protéger l'espèce sauvage.</p>
<p>Recommendation to repeal 82 If the competent minister is of the opinion that the species to which the emergency order relates would no longer face imminent threats to its survival or recovery even if the order were repealed, he or she must make a recommendation to the Governor in Council that the emergency order be repealed.</p>	<p>Recommandation d'abrogation 82 Si le ministre compétent estime que l'espèce sauvage visée par un décret d'urgence ne serait plus exposée à des menaces imminentes pour sa survie ou son rétablissement si le décret était abrogé, il est tenu de recommander au gouverneur en conseil de l'abroger.</p>