

Federal Court



Cour fédérale

Date: 20180510

Docket: T-1882-17

Ottawa, Ontario, May 10, 2018

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**WELLS GRAY GATEWAY PROTECTION
SOCIETY**

Applicant

and

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

Respondents

JUDGMENT

UPON MOTION for an Order giving effect to a settlement agreement and allowing the application for judicial review;

AND UPON counsel being advised that they were to appear before the Court to speak to this matter;

AND UPON a Notice of Discontinuance being filed to apparently foreclose such court attendance, in part due to the additional cost to be incurred in attendance at Court;

AND UPON the Court refusing to accept the Notice of Discontinuance for filing;

AND UPON being advised that the Minister issued her opinion on the “imminent threat” before the date specified in the settlement agreement and contended that there was no longer a justiciable issue also in the face of the Court’s direction to attend;

AND UPON being advised that the parties had agreed to costs;

THE COURT CONCLUDES that it is in the public interest to make this Order even though the Minister has issued her opinion as follows:

- The Respondent appears to have gone to considerable lengths to avoid appearing in Court having settled the matter virtually on the “courthouse steps” and then taking additional steps to foreclose appearing as directed;
- The parties were directed to appear to explain the Minister’s delay in rendering the required opinion and to speak to costs;
- The Court is concerned that the Minister and her officials delayed acting on the request for the opinion for which Respondents’ counsel, consistent with the record before the Court, conceded that there was “no good answer”;
- The Court is concerned that citizens should not have to resort to mandamus relief to cause the Minister to do what the legislation clearly requires the Minister to do unless there is good reason;
- The Court notes the tactical advantage of delay that the government gains when it forces resort to mandamus;

- The Court considers the lack of action by the Minister egregious particularly given that this matter was for an “emergency order” under s 80(1) of the *Species at Risk Act*, SC 2002, c 29, and the request for the order was made over one year ago;
- The Court’s concerns are directed to the Respondent and, to be clear, not to Department of Justice counsel;
- The Applicant, a not for profit entity, was required to expend efforts and funds which it should not have had to do; and
- The Applicant should be fully compensated for its costs in bringing this mandamus application and for its attendance today. The Court is not prepared to accept the parties’ settlement of costs.

THIS COURT’S JUDGMENT is that:

- a) the Minister is, no later than June 13, 2018, to form an opinion under s 80(2) of the *Species at Risk Act* as to whether the Southern Mountain Caribou face an imminent threat to its survival or recovery and inform the Applicant on the day following the formation of the opinion;
- b) the Applicant is to have its full costs of this matter on a solicitor-client basis of full indemnity;
- c) the Applicant is to have its costs of today’s attendance in the amount of \$1,000.00; and

- d) the Court remains seized of this matter to ensure that the terms of the settlement and of this Judgment are enforced.

“Michael L. Phelan”

Judge