

‘Difficult to fathom’ delay in moving to protect spotted owl, Federal Court judge says

By [Ian Burns](#) · [Listen to article](#)

Law360 Canada -- A Federal Court judge has ruled Environment and Climate Change Minister Steven Guilbeault violated Canada’s species-at-risk legislation by waiting eight months to recommend an emergency order to protect British Columbia’s endangered northern spotted owls.

The spotted owl can be found exclusively in southwestern British Columbia, and before European settlement and industrial logging, it is said that there were as many as 500 pairs of the species. There has been a very sharp decline of that population — according to the environmental group Wilderness Committee, which brought the legal challenge of the delay, there is only one wild-born owl left in the wild in Canada.

In January 2023, Guilbeault determined the spotted owl faced imminent threats to its recovery primarily due to logging throughout its critical habitat, but his recommendation on emergency action was only made that September.

And Federal Court Justice Yvan Roy has now ruled that delay violated the *Species at Risk Act* (SARA), writing it was “difficult to fathom” how it could be reasonable once the opinion had been formed that there were imminent threats to the species’ survival or recovery (*Western Canada Wilderness Committee v. Canada (Environment and Climate Change)*, 2024 FC 870).

“Either the threats are imminent or not. Either the threats concern the survival or recovery of the species, or they do not,” he wrote. “Once the opinion that the threats are about to happen, the Act says that the recommendation must be made. There is emergency. The opinion triggers the action that must be taken.”

Despite Guilbeault’s eventual recommendation, the emergency order was not issued, with the federal government saying such an order is not its preferred approach. It ultimately endorsed what it called a “collaborative” approach with B.C. and Indigenous Peoples — although Justice Roy noted no more information on the decision taken is available.

The Wilderness Committee, alongside environmental law charity Ecojustice and Spô’zêm First Nation, called the ruling a “historic and critical win for the spotted owl and all at-risk species.”

“This is an important decision for at-risk species across the country facing imminent

threats to their survival and recovery. Ministers must act with urgency. No longer can they rely on extraneous considerations and processes, like negotiating with the province, to justify delay,” said Ecojustice lawyer Kegan Pepper-Smith. “As Justice Roy found, ‘it is not for the legal obligation to adjust to some process. The tail cannot be wagging the dog.’”



Chris Tollefson, Tollefson Law

Chris Tollefson, a professor at the University of Victoria Faculty of Law and principal at Tollefson Law, said Justice Roy’s decision was a “careful and important ruling that safeguards Parliament’s intent with respect to the emergency order power.”

“To date, there have only been a small handful of cases to consider this pivotal SARA provision — one that exists to protect species that find themselves on the brink,” he said. “While SARA has been around for over 30 years, this was a question of first instance.”

Tollefson said many other provisions under SARA are highly discretionary, but here the court concluded once a minister forms the opinion that a species needs the protection of the order power, they cannot delay recommending that Cabinet take action

“To do otherwise would undermine the purpose of the legislative architecture,” he said.

Environment and Climate Change Canada (ECCC) spokesperson Amelie Desmarais said in an email that the government will “take the time to analyze the decision further and evaluate the next steps.”

“The spotted owl is an important species to Canada and has a deep and important cultural and spiritual meaning to First Nations,” Desmarais said. “The minister formed his opinion on the imminent threat to the recovery of the species and made a recommendation to the Governor in Council.”

Desmarais said the government is committed to supporting the recovery of the spotted owl, as reflected in the tripartite framework agreement on nature conservation between Canada, British Columbia and the First Nations Leadership Council signed in 2023.

“Officials are working closely with B.C.’s Ministry of Water, Land, and Resource Stewardship, and First Nations, including the Spô’zêm First Nation, to use the agreement to protect the habitat required to ensure the spotted owl’s recovery,” Desmarais said. “ECCC hopes to provide a public update on these efforts before the end of the year.”

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