



Legal backgrounder

Migratory Birds Convention Act (S.C. 1994, c. 22)

Overview

The *Migratory Birds Convention Act* (MBCA) is one of the oldest conservation laws in Canada. It was born of a 1916 treaty between the United Kingdom (for Canada) and the United States. The treaty became law in Canada in 1917.

Since that time, the MBCA has been updated and amended on several occasions. It remains an important and strong conservation law. Provisions of the law relating to bird nest protection were challenged in a recent court case against Irving Forest Products Limited in New Brunswick but found to be constitutionally valid. In the U.S., the Migratory Birds Treaty Act (MBTA) is the law that was passed to implement the treaty. The MBTA remains in force.

The Act is an important and strong federal law intended to protect migratory birds, which not only have significant ecological benefits but also add major financial benefits to the economy from bird-watching or birding activities.

Migratory birds play a vital ecological role in pest control by eating insects (and therefore protecting agricultural and timber products), dispersing seeds and pollinating plants. For example, Rose-breasted Grosbeaks and Scarlet Tanagers feed on caterpillars that eat the leaves of trees, and Western Bluebirds are effective at controlling moths that act as vineyard pests. A large array of migratory birds, such as orioles, vireos, flycatchers, blackbirds, bluebirds, warblers, wrens, sparrows and swallows, feast on insects.

Migratory birds are also key indicators of the health of our environment.

How does the law work?

A key provision of the law is the nest protection provision. Destroying a migratory bird nest is illegal. It is also illegal to deposit a substance that is harmful to birds in an area frequented by migratory birds. In 2010, Syncrude was convicted under this provision when hundreds of ducks were killed in one of its oil sands tailings ponds. Environment Canada is primarily responsible for enforcing the MBCA, although game officers in most provinces also have powers to lay charges under the Act.

Examples of this law in action:

- In the Syncrude case, the company was subjected to a \$3 million fine for the deaths of 1,600 ducks on its tailings ponds.
- In the Irving Forest Products case, a \$60,000 penalty was imposed on the company for destroying heron nests.
- In a case commenced in 2011, counsel at Ecojustice argued that light reflected from a Toronto office tower was a "harmful substance" that caused the death of

Published by Ecojustice, May 2012

For more information, please visit: ecojustice.ca

thousands of migratory birds from collisions with the building. A decision in that case is expected later this year.

What changes are being proposed to the law?

There are no proposed amendments to the MBCA in Bill C-38, the Budget Implementation Bill. However, Ecojustice has heard from credible sources within the federal government that a standalone bill may be tabled as early as June 2012 to amend both the MBCA and the *Species at Risk Act*.

Ecojustice and MBCA

In 2006, NAFTA's Commission for Environmental Cooperation (CEC) found that Canada was failing to enforce the nest protect provisions of the MBCA. This finding was the result of a 2001 petition filed to the CEC by Ecojustice on behalf of a number of groups.

As a result, Canada began working on an impressive regulatory initiative to protect migratory birds from a host of threats by way of a permitting system that would protect birds at a population level. The initiative was abruptly abandoned in the fall of 2010 for reasons that are not clear.