

1980 BILL 210

Second Session, 19th Legislature, 29 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 210

THE ENVIRONMENTAL BILL OF RIGHTS

MR. R. CLARK

First Reading -----

Second Reading -----

Committee of the Whole -----

Third Reading -----

Royal Assent -----

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Bill 210
Mr. R. Clark

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THE ENVIRONMENTAL BILL OF RIGHTS

(Assented to _____, 1980)

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that the residents of the Province have the right to enjoy a clean environment, the loss or impairment of which is a loss or impairment of an interest that should have legal recognition; and

WHEREAS it is fitting that this principle be affirmed by the Legislature of Alberta in an enactment whereby those rights may be established and means for their protection be given to all persons;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. In this Act

- (a) "Board" means The Environment Adjudication Board established pursuant to section 7;
- (b) "environment" means the air, water, soil and any life therein or any other natural resource or any combination thereof;
- (c) "Minister" means the Minister of the Environment;
- (d) "municipality" has the meaning ascribed to it in *The Municipal Government Act*;
- (e) "person" means the Crown in the right of the Province or any individual, firm, corporation, society, association, county or municipality or any agency of any of them, resident in the Province;
- (f) "pollutant" means any substance whether solid, liquid or gaseous or any radiation or vibration which, in the situation in question, is capable of destroying or significantly decreasing the quality of the environment;
- (g) "public trust" means the collective interest of residents of the Province in the quality of the environment and the protection thereof and the heritage therein for future generations;

Explanatory Notes

1. Definitions.

- (h) "regulation" means a regulation issued pursuant to this Act or to any Act listed in Schedule "A" hereto.

2. (1) Notwithstanding any other Act, and subject to subsection (3), where any Act listed in Schedule A hereto gives the Crown or the Attorney General the power to prosecute offences, every person shall have standing to prosecute an offence against any other person by laying an information for the prosecution of the offence under that Act and in the manner provided in the Act as if the grant of standing were contained in the Act.

(2) Before a person may commence an action under subsection (1) he shall appear before a judge and satisfy him that

- (a) he has given notice by registered mail of the alleged offence to the Attorney General and the Attorney General has failed to give a written undertaking to commence prosecution of the alleged offence within 60 days of mailing of the notice, or such lesser time as the judge may deem appropriate considering the seriousness of the alleged offence and the consequences of its continuance;
- (b) the information discloses an offence under the Act in question;
- (c) he has evidence which tends to show that an offence has been committed by the proposed defendant;

and the judge, if satisfied under clauses (a), (b) and (c), shall endorse the information with his fiat.

(3) No information may be laid to commence an action pursuant to subsection (1) unless endorsed with a judge's fiat pursuant to subsection (2).

3. (1) This section applies whether or not it is alleged that there has been an infringement of a standard established by or pursuant to any Act listed in Schedule A.

(2) Where a pollutant is released into or is released and subsequently escapes into the environment of any property owned or occupied by the Crown, a county or a municipality, whether the release or escape is deliberate, negligent or accidental, any person may commence an action by statement of claim in the Court of Queen's Bench against any person who

- (a) released the pollutant or allowed it to escape, or
- (b) had a duty to prevent the release or escape of the pollutant and failed therein

if that environment or the public trust therein is thereby destroyed or its quality significantly decreased, or if the release or escape, if continued or repeated, is likely to destroy or significantly decrease the quality of the environment or the public trust therein.

(3) Where a pollutant is released into, or is released and subsequently escapes, into the environment of any property owned or occupied by a person other than the Crown, a county or a municipality, whether the release or escape is deliberate, negligent

2. Grant of standing to prosecute statutory offences.

3. Grant of standing to commence action.

or accidental, then that person may commence an action by statement of claim in the Court of Queen's Bench against any person who

- (a) released the pollutant or allowed it to escape, or
- (b) had a duty to prevent the release or escape of the pollutant and failed therein

if that environment or the public trust therein is thereby destroyed or its quality significantly decreased, or if the release or escape, if continued or repeated, is likely to destroy or significantly decrease the quality of the environment or the public trust therein.

(4) Any person who would have had the right to commence an action which has been commenced under subsection (2) or (3) may apply to the Court to be joined as a co-plaintiff in any action so commenced.

(5) In an action commenced under this section, if the act complained of is not the subject of any legally established standard the Court may hear evidence as to what standard, if any, should apply to the conduct of that defendant and may order the defendant to comply with such standard as the Court may determine.

(6) Any order of compliance with a standard set by the Court pursuant to subsection (5) shall be binding on the defendant until there is a standard established by or pursuant to legislation relating to the defendant's conduct in connection with the pollutant in question.

4. (1) At any time prior to a trial of the issue in any prosecution or action commenced under this Act any defendant or third party may apply to the Court for an order requiring the person bringing the action to post security for costs.

(2) A hearing pursuant to subsection (1) shall be on notice to all parties and the Court may hear argument from any party as to

- (a) the seriousness of the offence or harm alleged;
- (b) the consequences to the defendant of the order sought; or
- (c) any other matter that the Court deems relevant to the posting of security for costs.

(3) Upon the conclusion of the hearing the Court shall make such order as it deems appropriate regarding the posting of security for costs.

(4) If the Court is satisfied that the person bringing the action

- (a) has a prima facie case to bring before the Court, and
- (b) is bringing the action for the protection of the environment or the public trust therein

the court shall not order the posting of security for costs in excess of

- (c) \$500 in the case of a prosecution commenced under section 2, or

4. Security for costs.

(d) \$5000 in the case of an action commenced under section 3.

(5) Upon the conclusion of the hearing the Court, if it sees fit, may order the action to be stayed.

5. In an action where the defendant's alleged conduct is not covered by a standard, established by or pursuant to any Act listed in Schedule A, when the plaintiff has shown that the conduct of the defendant has, or if continued, is likely to destroy or significantly decrease the quality of the environment or the public trust therein, the onus shall then be on the defendant to show in defence either:

- (a) that his action has been sanctioned by legal authority currently in force, or
- (b) that there is no feasible and prudent alternative to the defendant's conduct and that such conduct is in the best interests of the Province having regard to the protection of the environment and the public trust therein, and the maintenance of public health, safety and welfare.

6. (1) In an action commenced under section 3, where it has been shown that the defendant's conduct has destroyed or significantly decreased the quality of, or if continued or repeated is likely to destroy or significantly decrease the quality of the environment or the public trust therein, the Court may grant either an interim or permanent injunction, order the defendant to remedy damage caused by his conduct, award damages, impose conditions on the defendant or make such other order as in the Court's view is necessary to protect the interests of the plaintiff in the environment or the public trust therein.

(2) No interim injunction shall be granted unless the plaintiff posts security for the damages of the defendant in such amount as the Court may determine.

(3) An order made pursuant to this section need not be in the form of, and is not subject to the conditions applying to an order in the nature of mandamus, prohibition or certiorari.

7. (1) There is hereby established The Environment Adjudication Board consisting of 11 members appointed by the Lieutenant Governor in Council who shall also appoint one of the members to be Chairman.

(2) The Board may make by-laws governing its internal procedures.

(3) The Board may operate in one or more divisions.

(4) 3 members of the Board or a division constitute a quorum.

(5) The members of the Board may be paid such salary and receive reimbursement of expenses as is fixed by the Lieutenant Governor in Council out of money appropriated by the Legislature or provided by special warrant for that purpose.

(6) The Board may receive evidence on oath.

5. Burden of proof; defences.

6. Remedies.

7. Environment Adjudication Board.

8. (1) The Court may remit any proceedings or questions to the Board as the Court may deem appropriate and the proceedings therein shall be conducted in accordance with and subject to the provisions of *The Administrative Procedures Act* and in so remitting the Court may also grant interim injunctions or such other temporary relief that the Court deems necessary for the protection of the environment or the public trust therein from destruction, or significant decrease in quality and in so remitting, the Court shall retain jurisdiction of the action.

(2) Upon completion of any matter remitted to the Board, the Court shall review the recommendations of the Board and make such order as it sees fit pursuant to section 6.

(3) Whenever administrative proceedings before any body and any appeal thereof are available by provision of any Act listed in Schedule A hereto, the body or the Court may permit any person to join as co-plaintiff, or be joined as third party to such proceeding or appeal.

9. (1) In any action hereunder, the Court may appoint an inspector, who shall be a disinterested person and qualified as an expert in the relevant field, to take technical and scientific testimony under oath and make a record thereof and a report of his findings and his opinion thereon to the Court without prejudice to the right of any party to examine the inspector or any person who has given testimony to him.

(2) The costs of such inspector shall be borne in such manner as the Court may direct.

10. (1) The Minister may by regulation permit a person to exceed a legally established standard relating to the release of a pollutant into the environment for an initial period not to exceed one year.

(2) A regulation issued under subsection (1) shall be called a control order.

(3) A control order may be renewed once only, for a further period not to exceed one year.

11. (1) Notwithstanding any other Act no regulation may be issued pursuant to this Act nor any Act listed in Schedule A hereto unless no less than 60 days before the issuance of the regulation, notice of the proposed provisions of such regulation is given by publication in the Alberta Gazette and two newspapers circulating throughout the Province and of the time and place at which a hearing will be held.

(2) The hearing shall be held in public at a city or town convenient to persons likely to be affected by the regulation and shall be no less than 20 and no more than 45 days from the date of publication of the notice pursuant to subsection (1).

8. Remission of proceedings.

9. Inspector for technical evidence.

10. Control orders.

11. Regulations issued on notice and after public hearing.

(3) Any person may make a representation at the hearing if he gives notice of intent to do so by written notice received by the Minister within 15 days of the publication of the notice.

(4) If, within 15 days of the publication of the notice, no person has given the Minister notice of intent to present a representation, the Minister may cancel the hearing and issue the regulation forthwith.

(5) Any person who gives notice of intent to make a representation and who, without reasonable excuse, fails to appear at the designated place and date, or in doing so makes no argument or presents no evidence is guilty of an offence and liable on summary conviction to a fine of not more than \$250.

(6) The Minister may in emergent situations issue a regulation pursuant to any Act listed in Schedule A before, but conditional upon the subsequent fulfillment of the provisions of this section, within 60 days of the issue.

(7) Any number of regulations may be dealt with at one hearing.

12. (1) The Minister shall permit any person who applies therefor to see any control order, application made for a control order issued pursuant to section 10 or any undertaking given in support of any application therefor, and on payment of a fee not to exceed 10 cents per page, provide any person applying with a copy thereof.

(2) The Minister shall permit any person who applies therefor to see any report on any test, observation or analysis carried out by or under his authority relating to any pollutant, and shall on payment of a fee not to exceed 10 cents per page, provide any person applying with a copy thereof.

13. In an action brought against a person who has been granted a control order, where it is shown that the emission exceeded the limits in the legally established standards but did not exceed the limits established pursuant to the control order, the control order shall be a defence to the action with regard only to the remedy of injunction and general or punitive damages and shall not constitute a defence with regard to special damages.

14. (1) In 1981 and every second year thereafter, the Board shall review all regulations which relate to the quality of the environment in regard to

- (a) their adequacy to protect the environment and the public trust therein from destruction or significant decrease in quality;
- (b) their adequacy in the light of technological advances which can be applied in the Province;
- (c) their impact on the economy of the Province;

and shall make a report thereon and any recommended changes thereto to the Minister.

12. Copies of control orders and related documents available to public.

13. Control order as defence.

14. Board's biennial review of regulations.

(2) The Board shall give public notice of the review and during the review may receive public representations and evidence to the extent that, and in the manner that it deems appropriate.

15. Nothing herein contained shall be construed so as to repeal, remove or reduce any existing remedy available at law to any person.

16. This Act binds the Crown.

17. Sections 4.7 and 4.8 of The Clean Air Act are repealed.

18. Sections 4.8 and 4.9 of The Clean Water Act are repealed.

19. This Act comes into force on a date to be fixed by Proclamation.

15. Existing remedies saved.

16. Crown is bound.

17. Repeals sections 4.7 and 4.8 of chapter 16, 1971 Statutes.

18. Repeals sections 4.8 and 4.9 of chapter 17, 1971 Statutes.

SCHEDULE A

Agricultural Chemicals Act
Beverage Container Act
Clean Air Act
Clean Water Act
Department of the Environment Act
Drainage Districts Act
Environment Council Act
Alberta Environmental Research Trust Act
Ground Water Control Act
Land Surface Conservation and Reclamation Act
Litter Act
Surface Reclamation Act
Water Resources Act