

1990 BILL 238

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Second Session, 22nd Legislature, 39 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 238

ENVIRONMENTAL OMBUDSMAN ACT

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MR. MITCHELL

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 238*  
*Mr. Mitchell*

## **BILL 238**

1990

### **ENVIRONMENTAL OMBUDSMAN ACT**

*(Assented to* , *1990)*

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

Definitions

In this Act,

(a) "agency" means any agent of the Crown and for the purposes this Act includes a Crown corporation and any provincial agency as defined in the *Financial Administration Act*;

(b) "Environmental Ombudsman" means the Commissioner for the Environment appointed under this Act;

(c) "consent" means any approval required by a public authority for any development as defined in the Planning Act and any other approval by a public authority under any enactment for the doing of any thing which may affect the environment;

(d) "contaminant" means any substance, whether gaseous, liquid, or solid that

(i) is foreign to or alters the balance of the natural constituents of the environment into which it is introduced; and

(ii) is or may be injurious to, or will or may adversely affect, the environment or the health or safety of persons or property;

(e) "ecosystem" means any system of interacting terrestrial or

aquatic organisms within their natural and physical environment;

(f) "environment" includes

(i) ecosystems and their constituent parts;

(ii) all natural and physical resources; and

(iii) the social, economic, aesthetic, and cultural conditions which affect the environment or which are affected by changes to the environment;

(g) "hazardous substance" means a hazardous chemical as defined by the *Hazardous Chemicals Act*, and any other inflammable, toxic, explosive, infectious, radioactive, or other substance which may impair human, plant, or animal health;

(h) "local authority" has the meaning given to it in the *Local Authorities Board Act*;

(i) "Minister" means a member of the Executive Council;

(j) "natural hazard" means any atmospheric or earth or water related occurrence, including erosion, volcanic activity, landslip, subsidence, sedimentation, fire or flooding, the action of which adversely affects or may adversely affect human life, property, or the environment;

(k) "natural and physical resources" includes water, air, soil, minerals, hydrocarbons, and energy, all forms of flora and fauna, whether native to Alberta or introduced, and any building, structure machine, device, or other facility made by people;

(l) "pollution" means any process, whether natural or artificial, resulting in the introduction of any contaminant into the environment, and includes air pollution within the meaning of the *Clean Air Act*, and noise; and "pollutant" has a corresponding meaning;

(m) "public authority" means

(i) a Minister of the Crown;

(ii) a Government department or agency;

(iii) an instrument of the Executive Council; or

(iv) a local authority;

(n) "Select Standing Committee" means the Select Standing Committee of the Legislative Assembly on Legislative Offices.

Appointment of  
Commissioner

2(1) There shall be appointed, as an officer of the Legislature, a commissioner for investigations to be called the Environmental Ombudsman.

(2) Subject to section 7, the Lieutenant Governor in Council shall appoint the Environmental Ombudsman on the recommendation of the Legislative Assembly.

Qualifications

3(1) The Environmental Ombudsman may not be a member of the Legislative Assembly and shall not hold any office of trust or profit, other than his office as Environmental Ombudsman, or engage in any occupation for reward outside the duties of his office.

(2) The Environmental Ombudsman must be a Canadian citizen.

Term of office

4 Unless his office sooner becomes vacant, a person appointed as Environmental Ombudsman holds office for 5 years

(a) from the date of his appointment under section 2, or

(b) from the date his appointment under section 7 is confirmed under that section,

and continue to hold office after the expiry of his term of office until he is reappointed, his successor is appointed or a period of 6 months has expired, whichever occurs first.

Resignation

5 The Environmental Ombudsman may at any time resign his office by writing addressed to the Speaker of the Legislative Assembly or, if there is no Speaker or if the Speaker is absent from Alberta, to the Clerk of the Legislative Assembly.

Removal

6(1) On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Environmental Ombudsman from his office for disability, neglect of duty, misconduct or bankruptcy.

(2) At any time the Legislature is not in session the Lieutenant Governor in Council, on the recommendation of the Select Standing Committee, may suspend the Ombudsman from office for disability, neglect of duty, misconduct or bankruptcy, but the suspension shall not continue in force beyond the end of the next ensuing session of the Legislature.

Vacancy

7(1) If the Environmental Ombudsman dies, retires, resigns or is removed from office, the vacancy created shall be filled in accordance with this section.

(2) If a vacancy occurs while the Legislature is in session, but no recommendation is made by the Legislative Assembly before the close of that session, subsection (3) applies as if the vacancy had occurred while the Legislature was not in session.

(3) If a vacancy occurs while the Legislature is not in session, the Lieutenant Governor in Council, on the recommendation of the Select Standing Committee, may appoint an Environmental Ombudsman to fill the vacancy and unless his office sooner becomes vacant, the person so appointed holds office until his appointment is confirmed by the Legislative Assembly.

(4) If an appointment under subsection (3) is not confirmed within 30 days after the commencement of the next ensuing regular session, the appointment lapses and there shall be deemed to be another vacancy in the office of Environmental Ombudsman.

Salary

8(1) The Environmental Ombudsman shall be paid a salary at a rate set by the Select Standing Committee and the Select Standing Committee shall review that salary rate at least once a year.

(2) The Environmental Ombudsman shall receive similar benefits to those provided to Deputy Ministers.

Oath

9(1) Before entering on his duties, the Environmental Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office and that he will not, except in accordance with section 16(3) and (4) or section 21, divulge any information received by him under this Act.

(2) The oath shall be administered by the Speaker of the Legislative Assembly or by the Clerk of the Legislative Assembly.

10(1) There shall be an office of the public service of Alberta called the Office of the Environmental Ombudsman consisting of the Environmental Ombudsman and the employees appointed pursuant to the Public Service Act to assist the Environmental Ombudsman in the efficient carrying out of his functions under this Act.

(2) On the recommendation of the Environmental Ombudsman, the Select Standing Committee may order that

(a) any regulation, order or directive made under the *Financial Administration Act*, or

(b) any regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*,

be inapplicable to, or be varied in respect of, the Office of the Environmental Ombudsman or any particular employee or class of employees in the Office of the Environmental Ombudsman.

(3) An order made under subsection (2)(a) in relation to a regulation, order or directive made under the *Financial Administration Act* operates notwithstanding that Act.

(4) The Regulations Act does not apply to orders made under subsection (2).

(5) The chairman of the Select Standing Committee shall lay a copy of each order made under subsection (2) before the Assembly if it is then sitting, or if it is not then sitting, within 15 days after the commencement of the next sitting.

(6) Every person holding an office or appointment under the Environmental Ombudsman shall, before he begins to perform his duties under this Act, take an oath, to be administered by the Environmental Ombudsman, that he will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

Budget

11(1) The Environmental Ombudsman shall submit annually to the Select Standing Committee in respect of each fiscal year an estimate of the sum that will be required to be provided by the Legislature to defray the several charges and expenses of the Office of the Environmental Ombudsman in that fiscal year.

(2) The Select Standing Committee shall review each estimate submitted pursuant to subsection (1) and, on completion of the review, the chairman of the Committee shall transmit the estimate to the Provincial Treasurer for presentation to the Assembly.

(3) If at any time the Legislative Assembly is not in session the Select Standing Committee, or if there is no Select Standing Committee, the Provincial Treasurer.

(a) reports that the Environmental Ombudsman has certified that in the public interest an expenditure of public money is urgently required in respect of any matter pertaining to his office, and

(b) reports that either

(i) there is no supply vote under which an expenditure with respect to that matter may be made, or

(ii) there is a supply vote under which an expenditure with respect to that matter may be made but the authority available under the supply vote is insufficient,

the Lieutenant Governor in Council may order a special warrant to be prepared to be signed by himself authorizing the expenditure of the amount estimated to be required.

(4) When the Legislative Assembly is adjourned for a period of more than 14 days, for the purposes of subsection (3), the Assembly shall be deemed not to be in session during the period of the adjournment.

(5) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(i), the authority to spend the amount of money specified in the special warrant for the purpose specified in the special warrant is deemed to be a supply vote for the purposes of the *Financial Administration Act* for the fiscal year in which the special warrant is signed.

(6) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(ii), the authority to spend the amount of money specified in the special warrant is, for the purposes of the *Financial Administration Act*, added to and deemed to be part of the supply vote to which the report relates.

(7) When a special warrant has been prepared and signed pursuant to this section, the amounts authorized by it are deemed to be included in, and not to be in addition to, the amounts authorized by the Act, not being an Act for interim supply, enacted next after it for granting to Her Majesty sums of money to defray certain expenditures of the Public Service of Alberta.

Functions

12(1) The functions of the Environmental Ombudsman shall be

(a) with the objective of maintaining and improving the quality of the environment, to review from time to time the system of agencies and processes established by the Government to manage the allocation, use and preservation of natural and physical resources, and to report the results of any such review to the Legislative Assembly and to such other

bodies or persons as the Environmental Ombudsman considers appropriate;

(b) where the Environmental Ombudsman considers it necessary, to investigate the effectiveness of environmental planning and environmental management carried out by public authorities, and advise them on any remedial action the Environmental Ombudsman considers desirable;

(c) to

(i) investigate any matter in respect of which, in the Environmental Ombudsman's opinion, the environment may be or has been adversely affected, whether through natural causes or as a result of the acts or omissions of any person or body, to an extent which the Environmental Ombudsman considers warrants investigation; and

(ii) advise, where necessary, the appropriate public authority and any other person or body the Environmental Ombudsman thinks appropriate of the preventive measures or remedial action which the Environmental Ombudsman considers should be taken; and

(iii) report the results of the investigation to the Legislative Assembly;

(d) at the request of the Legislative Assembly or any select committee of the Legislative Assembly, to report to the Legislative Assembly or committee on any petition, Bill, or other matter before the Legislative Assembly or committee the subject matter of which may have a significant effect on the environment;

(e) on the direction of the Legislative Assembly to inquire into any matter that has had or may have a substantial and damaging effect on the environment, and to report the results of the inquiry to the Legislative Assembly;

(f) to undertake and encourage the collection and dissemination of information relating to the environment;

(g) to encourage preventative measures and remedial actions for the protection of the environment.

(2) For the purposes of any inquiry held under subsection (e) of this section, the Environmental Ombudsman shall have the same powers as are conferred on a commissioner under the *Public Inquiries Act* and the provisions of that Act shall apply to all



persons involved in any capacity in any such inquiry as if it were an inquiry conducted by a commissioner under that Act.

(3) The Environmental Ombudsman shall have, in relation to any such inquiry, and any report on the results of the inquiry, the same immunities and privileges as are possessed by a Judge of the Court of Queen's Bench in the exercise of the Judge's civil jurisdiction.

Consideration

13 In the performance of the Environmental Ombudsman's functions the Environmental Ombudsman, where the Environmental Ombudsman considers it appropriate, shall have regard, in particular but not exclusively, to

(a) the maintenance and restoration of ecosystems of importance, especially those supporting habitats or rare, threatened, or endangered species of flora or fauna;

(b) areas, landscapes, and structures of aesthetic, archaeological, cultural, historical, recreational, scenic, and scientific value;

(c) the effects on communities of people of

(i) actual or proposed changes to natural and physical resources;

(ii) the establishment or proposed establishment of new communities;

(d) whether any proposals, policies, or other matters, the consideration of which is within the Environmental Ombudsman's functions, are likely to

(i) result in or increase pollution; or

(ii) result in the occurrence, or increase the changes of occurrence, of natural hazards or hazardous substances; or

(iii) have features, the environmental effects of which are not certain, and the potential impact of which is such as to warrant further investigation in order to determine the environmental impact of the proposal, policy, or other matter; or

(iv) result in the allocation or depletion of any natural and physical resources in a way or at a rate that will prevent the renewal by natural processes of the resources or will not enable an orderly transition to other materials;

(e) all reasonably foreseeable effects of any such proposal, policy, or other matter on the environment, whether adverse or beneficial, short term or long term, direct or indirect, or cumulative;

(f) alternative means or methods of implementing or providing for any such proposal, policy, or matter in all or any of its aspects, including the consideration, where appropriate, of alternative sites.

Powers

14(1) The Environmental Ombudsman shall have such powers as may be necessary to enable the Environmental Ombudsman to carry out the Environmental Ombudsman's functions under this Act.

(2) The Environmental Ombudsman may from time to time require any person who in the Environmental Ombudsman's opinion is able to give any information relating to any matter which is being investigated or inquired into by the Environmental Ombudsman to furnish to the Environmental Ombudsman any such information and to produce any documents or papers of things which in the Environmental Ombudsman's opinion relate to any such matter and which may be in the possession or under the control of that person.

(3) The Environmental Ombudsman may summon before the Environmental Ombudsman and examine on oath any person who in the Environmental Ombudsman's opinion is able to give any such information, and for that purpose may administer an oath.

(4) Any person who is bound by the provisions of any enactment to maintain secrecy in relation to any matter or not to disclose any matter shall not be required to

(a) supply any information to the Environmental Ombudsman;  
or

(b) answer any question put by the Environmental Ombudsman; or

(c) produce any document, paper, or thing to the Environmental Ombudsman

if compliance with the requirement would be in breach of the obligation of secrecy or non-disclosure.

(5) Every person shall have the same privileges in relation to the giving of information, the answering of questions, and the

production of documents and papers and things in accordance with this section as witnesses have in any Court.

(6) Except on the trial of any person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any proceedings before the Environmental Ombudsman shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Environmental Ombudsman shall be given against any person.

(7) No person shall be liable to prosecution for an offence against any enactment, other than this Act, by reason of compliance with any requirement of the Environmental Ombudsman under this section.

15(1) In any proceedings in any way relating to or arising from the obtaining of, or any attempt to obtain, any consent, the Environmental Ombudsman

(a) shall have the right to be present and be heard solely for the purpose of calling evidence on any matter, including evidence in rebuttal, that should be taken in account in determining the proceedings;

(b) may examine, cross-examine, and re-examine witnesses;

(c) may be represented by counsel or by any duly authorized representative

but shall have no greater rights than parties to the proceedings in respect of the calling of evidence or evidence in rebuttal, or in respect of the examination, cross-examination, and re-examination of witnesses.

(2) Where the Environmental Ombudsman appears in any proceedings pursuant to any of the provisions of subsection (9) of this section, the court, tribunal, or other body before which those proceedings are conducted, where it has power to award costs to or against parties to the proceedings, may make such order as it thinks just

(a) as to the payment by any party to the proceedings of the costs incurred by the Environmental Ombudsman in doing so; or

(b) as to the payment by the Environmental Ombudsman of any costs incurred by any party to the proceedings by reason of the Environmental Ombudsman's so doing;

(c) where any costs are so awarded to the Environmental Ombudsman, the Environmental Ombudsman may recover them in the same manner as parties to the proceedings may recover costs awarded to them.

16(1) No report or recommendation of the Environmental Ombudsman and no investigation or other proceeding under this Act leading to a report or recommendation of the Environmental Ombudsman shall be made the subject of

- (a) an inquiry under the *Public Inquiries Act*, or
  - (b) an inquiry, investigation, review or hearing by any person or body pursuant to any other Act.
- (2) Subsection (1) does not apply to an inquiry, investigation, review or hearing conducted by
- (a) the Legislative Assembly;
  - (b) a committee of members of the Legislative Assembly appointed by a resolution of the Legislative Assembly;
  - (c) a commissioner under the *Public Inquiries Act*, if a resolution of the Legislative Assembly authorized the Lieutenant Governor in Council to make an order for the inquiry under that Act; or
  - (d) any other person or body appointed by a resolution of the Legislative Assembly

and any resolution made under clause (b), (c) or (d) shall prescribe the terms of reference of the inquiry, investigation, review or hearing.

(3) Notwithstanding section 21 or any oath taken under section 9 or 10 but subject to subsection (4),

- (a) the Environmental Ombudsman or a former Environmental Ombudsman; or
- (b) any person who holds or formerly held an office or appointment under the Environmental Ombudsman or a former Environmental Ombudsman,

is a compellable witness in any inquiry, investigation, review or hearing mentioned in subsection (2) in respect of matters that came to his knowledge in the course of the administration of this

Act.

(4) The Environmental Ombudsman or any other person mentioned in subsection (3) who is a witness in any inquiry, investigation, review or hearing mentioned in subsection (2)

(a) shall not answer any question or be compelled to answer any question; and

(b) shall not produce or be compelled to produce any document, paper or thing

when the Environmental Ombudsman or counsel on his behalf objects on the ground that the answer, document, paper or thing relates to matters of a secret and confidential nature.

(5) When a former Environmental Ombudsman or any person who holds or formerly held an office or appointment under the Environmental Ombudsman or a former Environmental Ombudsman is summoned as a witness in an inquiry, investigation, review or hearing mentioned in subsection (2), the person who summoned that witness shall forthwith give notice of that fact to the Environmental Ombudsman that is sufficient in the circumstances to enable him to appear and to make objections in respect of the witness's testimony pursuant to subsection (4).

17 No proceedings of the Environmental Ombudsman shall be held bad for want of form and, except on the ground of lack of jurisdiction, and no proceedings or decision of the Environmental Ombudsman shall be challenged, reviewed, quashed, or called in question in any court.

18(1) No proceedings lie against the Environmental Ombudsman or against any person holding an office or appointment under the Environmental Ombudsman for any thing he may do or report or say in the course of the exercise of their functions.

(2) Subject to the provisions of section 15(1), neither the Environmental Ombudsman nor any person holding an office or appointment under the Environmental Ombudsman shall be called to give evidence in any court or in any proceedings of a judicial nature in respect of any thing coming to his knowledge in the exercise of his functions under this Act.

(3) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Environmental Ombudsman under this Act is privileged in the same manner as if the inquiry or

proceedings were proceedings in a court.

(4) For the purposes of the *Defamation Act*, reports and statements of the Environmental Ombudsman under this Act shall be deemed to be privileged and a fair and accurate report thereof in a newspaper or a broadcast shall be deemed to be privileged.

19 For the purposes of this Act, the Environmental Ombudsman may at any time enter on any premises occupied by any department or agency and inspect the premises and carry out in those premises any investigation that is within his jurisdiction.

20(1) With the prior approval of the Select Standing Committee, the Ombudsman may be writing under his hand, delegate to any person holding any office under him any of his powers under this Act, except his power of delegation and the power to make any report under this Act.

(2) A delegation may be made to a specified person or to the holder for the time being a specified office or to the holders of offices of a specified class.

(3) Every delegation is revocable at will and no delegation prevents the exercise of any power by the Ombudsman.

(4) A delegation may be made subject to any restrictions and conditions the Ombudsman thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(5) Until a delegation is revoked, it continues in force according to its tenor and, in the event of the Ombudsman by whom it was made ceasing to hold office, continues to have effect as if made by his successor.

(6) Any person purporting to exercise any power of the Environmental Ombudsman by virtue of such a delegation shall, when required to do so, produce evidence of his authority to exercise the power.

21 Except for purposes connected with the administration of this Act or with the carrying out of the provisions of this Act the Environmental Ombudsman and every person holding any office or appointment under the Environmental Ombudsman shall maintain secrecy in respect of all matters that come to their knowledge in the exercise and performance of their powers and functions under this Act.

22(1) Without limiting the right of the Environmental Ombudsman to make any other report or report to the Legislature

at any other time, the Environmental Ombudsman shall in each year make a report to the Legislature on the exercise of his functions under this Act.

(2) The Environmental Ombudsman may, from time to time, in the public interest or the interests of any person or department or agency publish reports relating

(a) generally to the exercise of his functions under this Act;  
or

(b) to any particular case investigated by him,

whether or not the matters to be dealt with in any such report have been the subject of a report to the Legislature.

23 Any person who,

(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Environmental Ombudsman or any other person in the exercise of his powers under this Act;

(b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Environmental Ombudsman or any other person under this Act; or

(c) wilfully makes a false statement to or misleads or attempts to mislead the Environmental Ombudsman or any other person in the exercise of his powers under this Act

is guilty of an offence and is liable to a fine of not more than \$1000 and in default of payment to imprisonment for a term not exceeding 3 months.

24(1) Wherever the provisions of this Act and the provisions of any other Act are in conflict, this Act shall take precedence.

(2) Notwithstanding the provisions of subsection (1) the provisions of this Act shall not be construed so as to deprive any person of;

(a) any remedy or right of appeal or objection provided for any person; or

(b) any procedure provided for the inquiry into or investigation of any matter,

provided under the provisions of any other Act or any rule of law and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure.