

1992 BILL 261

Fourth Session, 22nd Legislature, 41 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 261

ENVIRONMENTAL BILL OF RIGHTS ACT

MR. McINNIS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 261
Mr. McInnis

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ENVIRONMENTAL BILL OF RIGHTS ACT

(Assented to , 1992)

Preamble

WHEREAS a healthy and sustainable environment is the basis of the health and well-being of the people of Alberta;

AND WHEREAS the environment of Alberta is under stress from contamination and degradation;

AND WHEREAS the people of Alberta face substantial obstacles to their ability to participate in environmental decision-making and to protect their common interest in a healthy and sustainable environment;

AND WHEREAS it is desirable to remove these obstacles and ensure the important role of the people of Alberta and their government in securing a healthy environment for present and future generations;

AND WHEREAS it is desirable to conserve and maintain the resources of the Province for the benefit of present and future generations;

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

PART 1
INTERPRETATION AND PURPOSE

Definitions

1 In this Act,

(a) "Council" means the Environment Council of Alberta established under the *Environmental Council Act*.

(b) "contaminant" means any solid, liquid, gas, odour, heat, sound, vibration, radiation, or combination of any of them resulting directly or indirectly from the activities of people which may,

(i) impair the quality of the environment of the public trust therein for any use that can be made of it,

(ii) cause injury or damage to property or to plant or animal life,

(iii) cause harm or material discomfort to any person,

(iv) adversely affect the health or impair the safety of any person,

(v) render any property or plant or animal life unfit for use by people,

(vi) cause loss of enjoyment of normal use of property, or

(vii) interfere with the normal conduct of business,

and "contaminate" and "contamination" have corresponding meanings;

(c) "Court" means the Court of Queen's Bench of Alberta;

(d) "degradation" means any destruction or significant decrease in the quality of the environment or the public trust therein other than a change resulting from contamination and "degrade" has a corresponding meaning;

(e) "environment" means,

- (i) air, land or water,
- (ii) plant and animal life, including people,
- (iii) the social, economic and cultural conditions that influence the life of people or a community,
- (iv) any building, structure, machine or other device or thing made by people,
- (v) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of people, or
- (vi) any part or combination of the foregoing and the inter-relationships between any two or more of them,

in or of Alberta;

- (f) "Minister" means the Minister of the Environment;
- (g) "public trust" means the collective interest of residents of the Province of Alberta in the quality of the environment and the protection thereof and the heritage therein for future generations;
- (h) "regulation" means a regulation made under an Act listed in the Schedule to this Act.

Purpose

2 The purpose of this Act is to ensure the health and sustainability of the environment of Alberta and, in particular,

- (a) to facilitate the right of the people of Alberta to participate and be heard in decisions affecting the environment and their common interest in a healthy and sustainable environment;
- (b) to recognize the right of the people of Alberta to an environment that is adequate for their health and well-being and sustainable into the future;
- (c) to recognize the obligations of the Province of Alberta to conserve and maintain the resources of the Province for present and future generations; and

(d) to give a right of standing to any person to seek legal remedies in protecting and conserving the environment.

Rights of Citizens 3(1) The people of Alberta have a right to a healthy and sustainable environment, including clean air and water, to the conservation of the natural, scenic, historic and aesthetic values of the environment, and to the protection of ecosystems and biological diversity.

(2) It is hereby declared that it is in the public interest to provide every person with an adequate remedy to protect and conserve the environment and the public trust therein from contamination and degradation.

Crown duty 4 The Province of Alberta, as trustee of Alberta's public lands, waters and natural resources, shall conserve and maintain them for the benefit of present and future generations.

PART 2 INVESTIGATIONS

Request for Investigation 5(1) A person who considers that the environment is being contaminated or degraded may in writing, specifying the nature of the contamination or degradation, request that the Minister investigate the alleged contamination or degradation.

(2) Where the Minister receives a written request under subsection (1) and is satisfied that the request is made in good faith and is not frivolous, the Minister shall make, or cause to be made, any investigation that he or she considers necessary of the alleged contamination or degradation, its source, its effect on the environment and of any advisable remedial action.

(3) The Minister shall provide a copy of the report of the investigation to the person who requested the investigation within ninety days of the date of the request.

PART 3 RIGHT OF ACTION

Standards for Initiating an Action 6(1) If an activity has contaminated or degraded, or is likely to contaminate or degrade, the environment, any person may commence an action in the Court against any person who is responsible for the activity.

(2) Subsection (1) applies without any requirement that the person commencing the action allege or establish that there has been, is or will be an infringement of an approval, permit, licence, standard, regulation, rule or order established by or under an Act listed in the Schedule.

(3) In an action commenced under this section, if the activity complained of is not governed by a standard established under an Act listed in the Schedule, the Court may hear evidence as to the standard, if any, that should apply to the defendant, having regard to the purposes of this Act, and the Court may order the defendant to comply with such standard as it may determine.

(4) If an activity has contaminated or degraded, or is likely to contaminate or degrade, the environment, any person may apply for judicial review of the exercise or non-exercise of any power or the fulfilment or non-fulfilment of any duty conferred or imposed by any Act on the Minister of the Environment or any other Minister responsible for regulatory, fiscal or proprietary control of the activity.

Citizen Suit 7(1) Any person may commence an action in the Court against any person who appears to be in violation of any Act listed in the Schedule or of any approval, permit, licence, standard, regulation, rule or order established under an Act listed in the Schedule.

(2) No action under subsection (1) shall be commenced if the Crown is diligently pursuing enforcement action against the potential defendant.

(3) Damages awarded in an action commenced under this Part shall be paid to the Crown.

Standing 8 Any person may apply for judicial review under section 5(4) or may bring an action to enforce the public's responsibility to protect the environment, including an action in nuisance or an action under section 5.

Security for Costs 9 In the trial of an action commenced under this Act, the Court shall not order the posting of security for costs in an amount in excess of \$1000.

Onus; defences 10(1) If the Activity of the defendant that is the subject-matter of an action is not governed by a standard established under an Act listed in the Schedule or under section 5(3) and if the plaintiff

has established that the activity of the defendant has contaminated or degraded, or is likely to contaminate or degrade, the quality of the environment, the onus shall be on the defendant to establish that there is no feasible and prudent alternative to the activity and that such activity is in the best interests of the public having regard to the purposes of this Act.

(2) It shall be a defence to an action commenced under this Act that the activity of the defendant is authorized by a standard established by or under an Act listed in the Schedule unless the plaintiff can establish, on a balance of probabilities, that the activity has caused, or is likely to cause, severe or irreparable contamination or degradation to the environment.

(3) It shall not be a defence to an action commenced under this Act that,

(a) the defendant is not the sole cause of the alleged or potential contamination or degradation; or

(b) it cannot be established that the contaminant which the defendant discharged or deposited or permitted to be discharged or deposited was the cause, in fact, of the contamination or degradation of the environment or the public trust therein, if the effect on the environment is of a nature consistent with the contaminant or source of degradation being a cause.

Injunction; Orders

11 In an action commenced under this Act, if it has been established that the activity of the defendant has contaminated or degraded, or is likely to contaminate or degrade, the environment, the Court may grant either an interim or permanent injunction, order the defendant to remedy any damage caused by the defendant's activity, award damages, impose conditions on the defendant or make such other order as the Court may consider is necessary.

Reference to Council

12(1) The Court may, on the motion of any party or on its own motion, refer any question, except the final determination of the issue, to the Council and the Court may also grant an interim injunction or such other temporary relief as the Court considers necessary for the protection of the environment or the public trust therein pending final determination of the issue.

(2) When the Council has completed its review and consideration

of the question referred to it under subsection (1), the Council shall make recommendations concerning the matter in question to the Court, and the Court shall review the recommendations and make such order as it considers appropriate under section 10.

Experts

13(1) In any action under this Act, the Court may appoint an expert, who shall be a disinterested person and qualified as an expert in the relevant field, to give technical and scientific testimony under oath.

(2) The Court may order that the costs of the expert be paid in such manner and by such persons as the Court considers appropriate.

PART 4 CLASS ACTIONS

Class Actions;
Damages

14(1) In an action under this Act, the Court may by order permit one or more persons to act as representatives of a class of persons if, in the opinion of the Court,

(a) a question arises in the proceeding that is common to each member of the class;

(b) the material facts giving rise to the claim for relief of the representatives are similar or related to the material facts giving rise to a claim for relief of the members of the class; and

(c) the representatives are acting in good faith and in the interests of the class.

(2) For the purposes of clause (1)(b), material facts relating to different transactions or events or contracts shall not be taken to be dissimilar or unrelated for that reason alone.

(3) The Court may provide in the judgment of a class action for subsequent determination of the amount and distribution of damages assessed against the defendant.

(4) If damages payable to members of the class remain uncollected for more than 120 days after payment by the defendant into the Court, the amount of the uncollected damages shall be applied in such manner as the Court may order.

**PART 5
INSTRUMENTS, HEARINGS**

Definitions

15(1) In this Part,

(a) "appropriate board" means any board, tribunal or commission established by an Act listed in the Schedule empowered to hold hearings with respect to a matter relating to such Act, and where no such board exists, the Council;

(b) "instrument" means any licence, permit, approval, certificate of approval, program approval, control order or other order made under an Act listed in the Schedule that would permit a person to contaminate or degrade the environment;

(c) "proper authority" means any authority under an Act listed in the Schedule empowered to issue an instrument.

**Instruments; Effect
and Publication**

16(1) Despite any other Act, no instrument is effective unless the requirements of this section have been met.

(2) If a new instrument or a revision to an existing instrument is proposed, the proper authority shall give notice of the proposal by publishing it in *The Alberta Gazette* and in two newspapers having general circulation throughout the Province of Alberta.

**Submissions,
Reviews**

17(1) Any person may, within 30 days of the giving of notice or within such longer time as may be stated in the notice,

(a) make written submissions to the proper authority with respect to the proposed provisions of the instrument; and

(b) by written notice to the proper authority, request a hearing by the appropriate board with respect to the proposed provisions of the instrument.

(2) The proper authority shall review any written submissions and shall respond in writing to the issues raised therein within a reasonable period of time.

(3) If a request for a hearing has been made, the proper authority shall refer the matter to the appropriate board unless, in its opinion, the request is not made in good faith or is frivolous or is made only for the purpose of delay.

(4) If the proper authority has declined to refer the matter to the appropriate board under subsection (6), it shall give notice of its decision, together with written reasons therefor.

(5) If there is no request for a hearing under subsection (4), the proper authority may issue the proposed instrument not less than 10 days after the time for filing such notice has elapsed.

(6) If there is a request for a hearing under subsection (4) but the proper authority declines to refer the matter to the relevant board, the proper authority may issue the proposed instrument not less than 20 days after the time for filing such notice has elapsed.

(7) Any person may apply to the Council for a review of an existing instrument in respect of the adequacy of the instrument to protect the environment and the public trust therein from contamination or degradation, having particular regard to technological advances that can be applied in Alberta, and the Council shall hear the application where a *prima facie* case has been made that the instrument should be amended or revoked.

Notice of Hearing,
Decisions

18(1) Where the appropriate board holds a hearing under subsection (6) or (10), the appropriate board shall,

(a) appoint a time and place for the hearing at a city or town convenient to persons likely to be affected by the contamination or degradation;

(b) cause notice to be given of the hearing,

(i) to the proper authority,

(ii) to any person who submitted notice to the proper authority under subsection (4),

(iii) to any person who submitted notice to the Council under subsection (10), and

(iv) to any person that the appropriate board may direct;
and

(c) publish notice of the hearing in *The Alberta Gazette* and in two newspapers having general circulation throughout the Province.

(2) Subject to this Act, any hearing initiated under this section shall be conducted according to the rules and procedures that apply to the appropriate board.

(3) The appropriate board may make such order as to costs it considers just.

(4) Upon the completion of the hearing, the appropriate board may make such recommendation, order or decision in respect of the matter referred to it under this section as the appropriate board is empowered to make under its enabling Act.

(5) The proper authority may, in an emergency situation, issue an instrument under an Act listed in the Schedule without complying with the other provisions of this section, but such an instrument shall cease to be effective 60 days from the date on which it is issued.

PART 6 REGULATIONS

Proposed
Regulations;
publication

19(1) In this Part, "regulation-making authority" means any authority empowered to make any regulation under an Act listed in the Schedule.

(2) Where a regulation-making authority proposes to make a regulation that may affect the environment, it shall cause the proposed regulation to be published in *The Alberta Gazette* at least sixty days before it proposes to file the regulation with the Registrar of Regulations and shall request briefs or submissions in relation to the proposed regulation.

(3) The regulation-making authority shall review and consider the submissions received within the 60-day period and shall respond in writing to the issues raised therein within a reasonable period of time.

(4) A regulation filed in contravention of subsection (2) does not come into effect.

Review of
Regulations

20(1) In 1993 and every 5th year thereafter, the Council shall review all regulations that relate to the quality of the environment having regard to their adequacy to protect the environment and the public trust therein from contamination and degradation, having particular regard to technological advances that can be

applied in the Province.

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

(3) Upon completion of the review, the Council shall make a report thereon to the Minister, including any recommended changes to the regulations, and the Minister, after receiving the report, shall then lay the report before the Assembly if it is in session or, if not, within 5 days of the commencement of the next session.

PART 7 ACCESS TO INFORMATION

Right to
Information
Exceptions

21 In this section, "designated Minister" means any minister designated to administer an Act listed in the Schedule.

(2) Every person has the right to obtain from any designated Minister any available information concerning the quantity, quality or concentration of contaminants emitted, issued, discharged or deposited by any source of contamination or degradation.

(3) The designated Minister shall permit any person who applies therefor to examine any licence, permit, approval, certificate of approval, provisional certificate of approval, control order or other order, notice of intention to issue a control order, program approval, provisional certificate of approval, notice of violation of an Act listed in the Schedule, and any information in support of any such document, and, on payment of a fee not to exceed 10 cents per page, the person shall be provided with a copy thereof.

(4) The designated Minister shall permit any person who applies therefor to examine any report on any test, observation, inspection or analysis carried out by or under the Minister's authority relating to any operation subject to an Act listed in the Schedule under the Minister's jurisdiction, and, on payment of a fee not to exceed 10 cents per page, the person shall be provided with a copy thereof.

(5) Notwithstanding subsections (3) and (4), the designated Minister may refuse an application made under subsections (3) and (4) where, in his or her opinion, the information sought to be disclosed contains,

- (a) information the disclosure of which would be injurious to law enforcement or the conduct of lawful investigations, including investigative techniques or plans for specific lawful investigations;
 - (b) information containing personal information respecting an identifiable individual including, without restricting the generality of the foregoing,
 - (i) vital statistics,
 - (ii) background personal information,
 - (iii) medical, criminal, educational or employment records or history,
 - (iv) the personal opinions or view of the individual, unless those opinions or views are given in the course of employment in the public service of the Government of Alberta;
 - (c) information of a financial, commercial, scientific or technical sort,
 - (i) the disclosure of which could reasonably be expected to prejudice significantly the competitive position, or interfere significantly with contractual or other negotiations, of a person, group of persons, organization or government institution, or
 - (ii) the disclosure of which could reasonably be expected to result in undue financial loss or gain by a person, group of persons, organization or government institution, and which, without restricting the generality of the foregoing, includes confidential technology, trade secrets, marketing information, customer lists, advertising budgets and funding sources; or
 - (d) records of proposals and recommendations to and deliberations and proceedings of the Executive Council or any committee thereof.
- (6) Where the designated Minister, under subsection (5), refuses an application for disclosure of information, he or she shall, within

twenty days, so inform the applicant, together with written reasons thereof, and the Minister shall inform the applicant of the applicant's right of appeal to the Council.

Right of Appeal

22(1) Any applicant may, within 15 days of receipt of a notice under subsection (6), by written notice served upon the designated Minister and the Council, require a hearing before the Council.

(2) In a hearing under subsection (7), the Council shall take every precaution, including, when appropriate, receiving representations without notice and conducting hearings in private, to avoid disclosure by the Council or any other person of any information the disclosure of which may be refused under this section.

(3) In a hearing under subsection (7), the onus of establishing that access to the information may be refused shall be on the designated Minister concerned.

(4) At the conclusion of the hearing, the Council may make such order as it considers appropriate, having regard to the provisions of this section, and without restricting the generality of the foregoing, may,

(a) order the disclosure of all or part of the information sought to be disclosed; or

(b) where the Council has determined that the information should not be disclosed, order that a non-confidential summary of all or any part of the information be prepared.

(5) An appeal lies to the court of Queen's Bench from a decision of the Council on a point of law or jurisdiction.

PART 8 PUBLIC INTEREST FUNDING

Public Interest
Funding of
Proceedings

23(1) In this section, "Fund" means the Environmental Hearing Assistance Fund.

(2) The Lieutenant Governor in Council may establish a fund to be known as the Environmental Hearing Assistance Fund.

(3) Where a Fund has been established under subsection (2), the moneys required for the purposes of the Fund shall be paid out of the Consolidated Revenue Fund in the fiscal year during which it

is established and thereafter shall be paid out of the moneys appropriated therefor by the Legislature.

(4) Subject to subsection (5), whenever a proceeding before any board, tribunal, commission or court, or any appeal or review thereof, is authorized under the provisions of this Act or an Act listed in the Schedule, any party or intervenor who engages in proceedings for the purpose of protecting and conserving the environment may, at any time, make an application for financial assistance to the Council.

(5) A person may apply under subsection (4) only where that person,

(a) represents an interest representative of significant bodies of opinions that would otherwise not be represented at the proceedings; and

(b) does not have sufficient financial resources to enable him to adequately represent that interest.

(6) Where a Fund is available and the Council is satisfied financial assistance is appropriate, the Council may order that a sum be paid to the applicant therefor from the Fund in such manner, at such times and in such amount as the Council considers appropriate.

(7) No person is precluded from applying under subsection (4) by reason only that he has previously received financial assistance under subsection (6).

(8) Where it appears to the Council that several parties or intervenors having identical or substantially similar interests have applied for financial assistance from the Council, the Council may consolidate the applications and make such order concerning payment as it considers appropriate.

(9) In considering the sum to be awarded to any applicant, the Council shall have regard to all the attendant costs associated with participating in the proceedings, including,

(a) legal fees;

(b) disbursements;

- (c) conduct money;
- (d) witness fees;
- (e) fees for relevant reports and studies; and
- (f) any other cost that is relevant and appropriate to participation in the proceedings.

(10) This section does not apply to hearings or other proceedings under the Energy Resources Conservation Act or the Natural Resources Conservation Board Act.

PART 9 EMPLOYEE RIGHTS

No discipline, dismissal, etc. by employer

- 24(1) No employer shall,
- (a) dismiss or threaten to dismiss an employee;
 - (b) discipline or suspend an employee;
 - (c) impose any penalty upon an employee; or
 - (d) intimidate or coerce an employee,

because the employee has reported or proposes to report to the appropriate authority an act that contaminates or degrades the environment.

(2) Where an employer is convicted of an offence under subsection (1), the provincial judge making the conviction shall, in addition to the penalty, order what action the employer shall take or what the employer shall refrain from doing and such order may include the reinstatement in employment of the employee with compensation for loss of wages and other benefits to be assessed against the employer.

(3) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

**PART 10
MISCELLANEOUS**

- Other remedies preserved** **25** Nothing herein contained shall be construed so as to repeal, remove or reduce any existing remedy available at law to any person.
- Conflict** **26** Where a conflict appears between any other Act, including the *Environmental Impact Assessment Act*, the provision of this Act shall prevail.
- Crown** **27** This Act binds the Crown.
- Proclamation** **28** This Act comes into force on the date to be fixed by Proclamation.

SCHEDULE

Agricultural Chemicals Act
Beverage Container Act
Clean Air Act
Clean Water Act
Department of the Environment Act
Environment Council Act
Energy Resources Conservation Act
Ground Water Development Act
Hazardous Chemicals Act
Land Surface Conservation and Reclamation Act
Litter Act
Natural Resources Conservation Board Act
Planning Act
Transportation of Dangerous Goods Control Act