

1993 BILL 238

First Session, 23rd Legislature, 42 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 238

ENVIRONMENTAL BILL OF RIGHTS ACT

MR. COLLINGWOOD

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 238
Mr. Collingwood

BILL 238

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ENVIRONMENTAL BILL OF RIGHTS ACT

(Assented to , 1993)

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 Alberta enacts as follows:

PART 1

INTERPRETATION AND PURPOSE

Definitions

1 In this Act,

(a) "Board" means the Natural Resources Conservation Board;

(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 or 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;

(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 Environmental Protection;

(g) "person" includes a corporation, association, partnership, a municipality and the Crown;

(h) "proponent" means a person who,

- (i) carries out or proposes to carry out an undertaking, or

- (ii) is the owner or person having charge, management or control of an undertaking;

(i) "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;

(j) "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 participation of the people of Alberta in

decisions affecting the environment and their ability to protect 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 Crown to conserve and maintain the resources of the Province for present and future generations;

(d) to ensure that 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;

(e) to provide every person with an adequate remedy to protect and conserve the environment and the public trust therein from contamination and degradation; and

(f) to give the people of Alberta the right of access to information in the possession of the Crown relating to the environment and its protection.

Crown duty

3 The Crown 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

CROWN DUTY AND INVESTIGATIONS

Request for
investigation or
information

4(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 considers necessary of the alleged contamination or degradation, its source, its effect on the environment and of any advisable remedial action.

(3) A refusal by the Minister to act on a written request may be appealed to the Court.

(4) The Minister shall provide a copy of the report of the investigation or his reasons for not making it, to the person who requested the investigation within 90 days of the date the request is received by him.

(5) A person who requires information on the environment or its protection, that is in the possession of the Crown may apply to the Minister for the information and the Minister shall provide the information at a charge not to exceed 10 cents a page unless the Minister applies to the Court for an order that it is not in the public interest to provide the information or that disproportionate harm would thereby be done to a private interest and if the Court grants the order the Minister need not provide the information.

PART 3

RIGHT OF ACTION

Right of action;
setting standards

5(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 it being required 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 pursuant to 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 by or pursuant to 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 and set the time and other conditions applying to complying with the standard.

(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 fulfillment or non-fulfillment 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

6(1) Any person who has reasonable grounds to believe another person is in violation of any Act listed in the Schedule or of any approval, permit, licence, standard, regulation, rule or order established by or pursuant to an Act listed in the Schedule, may commence an action against that other person in the Court.

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

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

Standing

7 Any person may apply for judicial review under section 5(4) or may bring an action to require the Crown to carry out its responsibility to protect the environment, including an action in nuisance or an action under section 5.

Security for costs

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

Onus; defences

9(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 pursuant to an Act listed in the Schedule or by the Court 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 actually the cause 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, etc.

10 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 Board

11(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 Board 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 Board has completed its review and consideration of the question referred to it under subsection (1), the Board 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

12(1) In any action under this Act, the Court may appoint one or more experts, who shall be disinterested persons and qualified as experts in the relevant field, to investigate any matter and report to the Court or give technical and scientific testimony under oath.

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

PART 4

CLASS ACTIONS

Class actions;
damages

13(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 subsection (1)(b), material facts which relate 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, CONTROL ORDERS

Definitions

14(1) In this Part,

(a) "appropriate board" means the Board or any other 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;

(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 carry on an activity that will contaminate or degrade the environment;

(i) to an extent that exceeds a legally established standard for the activity, or

(ii) in a case where there is no legally established standard for the activity.

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

Licences; effect
and publication

15(1) Notwithstanding any other Act, no instrument is effective unless the requirements of this Part 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 Alberta.

Submissions,
review, hearing

16(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 (3), it shall give notice of its decision, together with written reasons therefor.

(5) If there is no request for a hearing under subsection (1), 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 (1) 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 Board 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 Board shall hear the application where a *prima facie* case has been made that the instrument should be amended or revoked.

Notice of hearing

17(1) Where the appropriate board holds a hearing under section 16, the appropriate board shall,

(a) appoint a time and place for the hearing at a place 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 made a submission or gave notice to the proper authority under section 16(1),

(iii) to any person who submitted notice to the Board under section 16(7), 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 Alberta.

(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 as 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 Part, 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

18(1) In this section, "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 60 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 30 days.

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

Review of
regulations

19(1) In 1994 and every third year thereafter, the Board 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 Alberta.

(2) The Board 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 Board shall make a report thereon to the Minister, including any recommended changes to the regulations, and the Minister, after receiving the report, shall lay the report before the Assembly if it is sitting or, if it is not then sitting, within 15 days of the commencement of the next sitting.

PART 7

EMPLOYEE RIGHTS

No discipline,
dismissal, etc. by
employer

20(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 any person an act that contaminates or degrades the environment.

(2) An employer who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$5000.

(3) An employee who believes he has suffered from a contravention of subsection (1) may file a complaint in writing with the Labour Relations Board as if it were a breach of the Labour Relations Code and the Board shall deal with the complaint as if it were a complaint under section 15 of that Act.

PART 8

GENERAL

Other remedies
preserved

21 Nothing in this Act affects any other remedy available at law.

Conflict

22 If there is a conflict between any provision of this Act and any other Act, the provision of this Act prevails.

SCHEDULE

Alberta Environmental Protection and Enhancement Act
Public Health Act
Hazardous Chemicals Act
Transportation of Dangerous Goods Act