

1998 BILL 218

Second Session, 24th Legislature, 47 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 218

ENVIRONMENTAL BILL OF RIGHTS

MS. CARLSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 218
Ms. Carlson

BILL 218

1998

ENVIRONMENTAL BILL OF RIGHTS

(Assented to _____, 1998)

Preamble

WHEREAS the people of Alberta recognize the inherent value of the natural environment;

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

WHEREAS the people of Alberta recognize the need to maintain the integrity, biological diversity and productivity of the ecosystems in Alberta;

WHEREAS the people of Alberta have the right to protect, conserve and restore the natural environment for the benefit of present and future generations;

WHEREAS the people of Alberta believe in the principle of sustainable development; and

WHEREAS, while the Government of Alberta has the primary responsibility for protecting the environment, the people shall have the ability to participate in the protection of the environment in an effective, timely, open and fair manner:

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

Definitions

1 In this Act,

- (a) "appropriate Minister" means the Minister responsible for the ministry to which a petition, policy, instrument, regulation or code of practice applies;

- (b) "biotechnology" means the application of science and engineering in the direct or indirect use of living organisms or parts or products of living organisms in their natural or modified forms;
- (c) "Commissioner" means the Environmental Commissioner appointed under section 6;
- (d) "contaminant" means a solid, liquid, gas, odour, heat, sound, vibration, radiation, a product of biotechnology or combination of any of them, which, upon release
 - (i) impairs the quality of or the public trust in the environment,
 - (ii) causes injury or damage to property or to plant or animal life,
 - (iii) causes harm or material discomfort to a person,
 - (iv) adversely affects the health or impairs the safety of a person,
 - (v) renders property or plant or animal life unfit for use by any plant or animal life or by any person;
- (e) "Court" means the Court of Queen's Bench;
- (f) "degradation" means the destruction of or significant decrease in the quality of the environment or the public trust therein other than a change resulting from contamination;
- (g) "delegated authority" means an individual, corporation or municipality designated in the regulations;
- (h) "environment" means the components of the earth and includes
 - (i) air, land and water,
 - (ii) all layers of the atmosphere,
 - (iii) all organic and inorganic matter and living organisms, and
 - (iv) the interacting natural systems that include

components referred to in subclauses (i) to (iii);

- (i) “instrument” means any document of legal effect issued under an Act and includes a permit, licence, approval, authorization, registration, direction or order issued under an Act;
- (j) “ministry” means a ministry as defined in the *Government Accountability Act*;
- (k) “public trust” means the collective interest of the people of the Province of Alberta in the quality of the environment and the protection of the environment for the benefit of present and future generations;
- (l) “sustainable development” means ecologically sustainable development that meets the needs of the present without compromising the ability of the earth to meet the needs of future generations.

Purpose

2 The purpose of this Act is

- (a) to protect health;
- (b) to protect, conserve and, where reasonable, restore the integrity of the environment, including
 - (i) the prevention, reduction and elimination of the use, generation and release of contaminants,
 - (ii) the protection and conservation of biological, ecological and genetic diversity,
 - (iii) the protection and conservation of natural resources, including plant life, animal life, water and ecological systems,
 - (iv) the identification, protection and conservation of ecologically sensitive areas or processes, and
 - (v) the prevention of environmental degradation;
- (c) to ensure that the policies of the Government are based on the principles of sustainable development and protection of the environment;

- (d) to increase the accountability of the Government for its environmental decision-making;
- (e) to establish the Office of Environmental Commissioner within the Office of the Auditor General;
- (f) to facilitate the participation of the people of Alberta in the decisions of the Government affecting the environment;
- (g) to provide every Albertan with adequate remedies to protect and conserve the environment from contamination and degradation;
- (h) to provide protection for employees who take action to protect and conserve the environment.

Government's responsibility

3 The Government, as trustee of the public trust, shall protect and conserve the natural environment for the benefit of present and future generations in accordance with the principles of sustainable development.

Public comment on Government proposals

4(1) If a Minister determines that a proposed Act, regulation, instrument, code of practice or policy in his ministry could, if implemented, have a significant effect on the environment, then the Minister shall

- (a) provide the public with the opportunity to comment on the proposal before its implementation, and
- (b) give notice of the proposal to the public at least 60 days before the intended date for implementation.

(2) A member of the public may submit comments on a proposal made under subsection (1) within 30 days of the date notice is given.

(3) The Minister shall

- (a) review the submissions received within the time period specified in subsection (1) before deciding whether to implement the proposal, and
- (b) respond in writing within 30 days of receiving the submission.

Ministry
Business
Plans

5 The appropriate Minister shall ensure that a business plan prepared pursuant to section 13 of the *Government Accountability Act* specifies how the goals are compatible with

- (a) the principles of sustainable development, and
- (b) the protection of the environment,

and that all policies, legislation and instruments referred to in the business plan are compatible with these principles.

Environmental
Commissioner

6 The Auditor General shall, in accordance with the *Public Service Act*, appoint an Environmental Commissioner who shall report directly to the Auditor General.

Duties and
powers of the
Commissioner

7(1) The duties of the Commissioner appointed pursuant to section 6 are

- (a) to receive and respond to petitions that have been sent pursuant to section 8;
- (b) to conduct inquiries in accordance with section 9;
- (c) to investigate, evaluate and report on the system of agencies, including delegated authorities, and processes established by the Government to manage the allocation, use and preservation of natural and physical resources, with respect to sustainable development and the protection of the environment;
- (d) to investigate and report on any matter which, in the Commissioner's opinion, adversely affects sustainable development or the environment.

(2) In performing his duties under this Act, the Commissioner shall have the same powers as the Auditor General.

Petitions

8(1) Two or more persons may submit a petition to the Commissioner regarding an environmental matter under this Act.

(2) If 2 or more signatures appear on a petition, the petition must identify the names and addresses of 2 petitioners to whom a reply

should be directed.

(3) Upon receiving a petition under this section that, in the opinion of the Commissioner, is not frivolous or vexatious, the Commissioner shall

- (a) make a record of the petition,
- (b) forward the petition to the appropriate Minister within 15 days of receipt.

(4) A petition submitted pursuant to this section may refer to, but shall not be restricted to, any instrument, regulation or policy that affects the protection of the environment, including the manner in which the instrument, regulation or policy is enforced.

(5) Within 15 days after the day on which the Minister receives the petition from the Commissioner, the Minister shall send to the petitioners an acknowledgement of receipt of the petition and shall send a copy of the acknowledgement to the Commissioner.

(6) The Minister shall

- (a) consider the petition,
- (b) send a reply to the petitioners, and
- (c) send a copy of the reply to the Commissioner within
 - (i) 120 days after the day on which the Minister receives the petition from the Commissioner, or
 - (ii) any longer time, where the Minister, within those 120 days, notifies the petitioner that it is not possible to reply within this time period and sends a copy of that notification to the Commissioner.

(7) If the Commissioner is not satisfied with the Minister's response, the Commissioner shall commence an inquiry in accordance with section 9.

Inquiries

9(1) The Commissioner shall make any examinations and inquiries that the Commissioner considers necessary in order to monitor the following:

- (a) the extent to which ministries have met the objectives

outlined in their business plans with respect to sustainable development and the protection of the environment;

- (b) whether policies and instruments are consistent with sustainable development and environmental protection;
- (c) the replies by Ministers required by section 8.

(2) The Commissioner shall report annually to the Legislative Assembly concerning any matter that the Commissioner considers should be brought to the attention of the Legislative Assembly in relation to environmental protection and sustainable development including the following:

- (a) the extent to which ministries have met the objectives and implemented the plans with respect to sustainable development and environmental protection as set out in their business plans;
- (b) the number of petitions received pursuant to section 8, the subject matter of the petitions and their status;
- (c) recommendations resulting from examinations and inquiries as outlined in subsection (1).

Right of action

10(1) Every resident of Alberta has the right to protect the environment and the public trust from any activity that has contaminated or degraded, or is likely to contaminate or degrade, the environment and may commence an action in Court against any person who is responsible for that 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, code of practice, rule or order established by or pursuant to an Act.

(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, 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 in order to comply 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 an Act on a Minister responsible for regulatory, fiscal or proprietary control of the activity.

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

(6) Damages awarded in an action commenced under subsection (1) shall be paid to the Crown.

(7) The Crown may reimburse the costs of the person commencing an action under subsection (1).

Standing

11(1) Any person resident in Alberta may apply for judicial review under section 10(4) or may commence 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 10.

(2) No person is prohibited from commencing an action under section 10 by reason only that he is unable to show

- (a) any greater or different right, harm or interest than any other person, or
- (b) any pecuniary or proprietary right or interest in the subject matter of the proceeding.

Security for costs

12 In the trial of an action commenced under this Act, the Court may order the posting of security for costs to a maximum amount of \$1 000.

Court orders

13 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

- (a) grant either an interim or permanent injunction,
- (b) order the defendant to remedy any damage caused by the defendant's activity,

- (c) award damages,
- (d) impose conditions on the defendant, or
- (e) make such other order as the Court may consider necessary.

No discipline, dismissal, etc. by employer

14(1) No employer shall dismiss or threaten to dismiss an employee, discipline or suspend an employee, impose any penalty on an employee or intimidate or coerce an employee because the employee

- (a) has reported or proposes to report to the appropriate authority any release, or any likely release, of a contaminant to the environment,
- (b) has made or proposes to make either a submission under section 4 or a petition under section 8, or
- (c) has commenced or proposes to commence an action under section 10.

(2) An employer who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50 000.

(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.

Other remedies preserved

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

Non-appropriation

16 No payment shall be made out of the General Revenue Fund to defray any expense necessary for the implementation of this Act without the authority of an appropriation made by the Legislature for such purpose.

Conflict with other Acts

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

Regulations

18 The Lieutenant Governor in Council may make regulations

providing for any matter that is necessary to carry out the purpose of this Act.

Crown bound **19** This Act binds the Crown.

Consequential and Coming into Force

Amends RSA
1980 cA-49 **20** The *Auditor General Act* is amended in section 18(2) by striking out “and” at the end of clause (b) and by adding the following after clause (b):

(b.1) include a statement as to whether, in his opinion, public money has been expended without due regard to the *Environmental Bill of Rights*, and

Amends SA
1995 cG-5.5 **21** The *Government Accountability Act* is amended in section 13(3) by striking out “and” at the end of clause (b) and by adding the following after clause (b):

(b.1) an outline of efforts made to fulfill the *Environmental Bill of Rights*, and

Coming into
force **22** This Act comes into force on Proclamation.