

*Bill 49*  
*Mr. Ducharme*

## **BILL 49**

2003

### **PUBLIC LANDS AMENDMENT ACT, 2003**

*(Assented to* , 2003)

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

#### **Amends RSA 2000 cP-40**

**1 The *Public Lands Act* is amended by this Act.**

**2 Section 1(l) is repealed and the following is substituted:**

- (l) “livestock” means horses, sheep, cattle and, to the extent permitted by the regulations, bison;

**3 Section 8(1) is amended**

**(a) by adding the following after clause (a):**

- (a.1) limiting or restricting the areas of the province in respect of which the Minister may issue dispositions or certain kinds of dispositions;

**(b) by repealing clause (b) and substituting the following:**

- (b) respecting the rights, duties and obligations of disposition holders;

**4 The following is added after section 54:**

**Prohibited uses of roads, etc.**

**54.01(1)** In this section, “closed road” means a road that was constructed pursuant to a licence of occupation issued under this Act and has been closed

- (a) by an order of the Minister, or
- (b) in accordance with a term or condition of the licence of occupation.

**(2)** No person shall

- (a) travel on or enter on a closed road,
- (b) damage, destroy, remove or alter any posted notice or sign denoting a closed road,
- (c) damage, destroy, remove or alter any barrier set up to prevent access to a closed road, or
- (d) block, disrupt, hinder, impede, interfere with or otherwise obstruct access by a disposition holder or a commercial user to a closed road to which the disposition holder or commercial user is legally entitled to have access

unless the person is authorized to do so by the Minister or under this Act or the regulations.

**(3)** No person shall block, disrupt, hinder, impede, interfere with or otherwise obstruct free access to or passage on and over, or use by any other person of, a highway, road or trail located on public land unless that person is authorized to do so by the Minister or under this Act or the regulations.

**(4)** No person shall, directly or indirectly, induce or attempt to induce another person to provide money or other consideration for the purpose of gaining access to, passage on or over or use of public land unless

- (a) that person is the holder of a disposition or an authorization under section 20 and is entitled at law to

request or receive money or other consideration for that purpose, and

- (b) the desired access, passage or use is in respect of public land that is the subject of the disposition or authorization.

(5) No person shall provide or receive money or other consideration for the purpose of gaining or allowing access to, passage on or over or use of public land unless

- (a) the person receiving the money or other consideration is the holder of a disposition or authorization under section 20 and is entitled at law to receive money or other consideration for that purpose, and
- (b) the access, passage or use is in respect of public land that is the subject of the disposition or authorization.

(6) A person who contravenes subsection (2), (3), (4) or (5) is guilty of an offence.

(7) If a police officer has reasonable grounds to believe that a person has contravened subsection (2) or (3), the police officer may remove or seize and remove any material, barrier, equipment, vehicle, structure or obstruction used in or during the commission of that offence.

#### **Disposition of seized items**

**54.02(1)** Where a police officer seizes anything under section 54.01(7) the police officer shall, within a reasonable time,

- (a) provide a justice with an affidavit stating that the police officer has reasonable grounds to believe that a person named in the affidavit has contravened section 54.01(2) or (3) and that the thing seized was used in the commission of the offence, or
- (b) return the thing seized to the person from whom it was seized.

(2) On receipt of an affidavit under subsection (1), the justice may order that the affidavit be served on the person referred to in the affidavit, may set down a date to hear the matter and may order that the thing seized

- (a) be retained by the Crown until final disposition of the charge,
- (b) be returned to the person from whom it was seized, or
- (c) be returned to any other person who is entitled to possession of it.

(3) If a thing that was seized is returned to the person from whom it was seized, the justice may order that person

- (a) to hold it as bailee for the Crown until final disposition of the charge, and
- (b) to produce it if it is required with respect to proceedings related to the charge.

(4) Where a person is convicted of an offence under section 54.01(2) or (3) and a thing that was seized under section 54.01(7) in respect of the offence is being detained under this section, the court may direct

- (a) that the thing seized be forfeited to the Crown on the expiration of the time for an appeal or on conclusion of the proceedings, as the case may be, or
- (b) that the thing be returned to the person from whom it was seized or to any other person who is entitled to possession of it, subject to any terms and conditions the court considers appropriate.

(5) Where a thing is forfeited to the Crown under this section, the Minister may destroy the thing or dispose of it in any manner the Minister considers appropriate.

(6) The Minister may, in an action in debt, recover from the person who was convicted of the offence the costs of forfeiture and destruction or disposal of a thing under this section.

#### **Court orders**

**54.03(1)** Where a person has, contrary to section 54.01(2)(d) or (3), been prevented from gaining access to a closed road or from having free access to, passage on or over or use of a highway, road or trail, that person or the Crown may apply to a judge of the Court of Queen's Bench for a short-term order or a long-term order.

- (2) An application for a short-term order
  - (a) may be made ex parte, and
  - (b) must be supported by affidavit evidence, which may be based on information and belief.
- (3) An application for a long-term order
  - (a) must be made by originating notice on at least 2 days' notice, and
  - (b) must be supported by affidavit evidence.
- (4) Where an application for a long-term order is made, the judge may extend the duration of any short-term order that is then in effect until the application for the long-term order is decided.
- (5) The judge may
  - (a) make a short-term order or a long-term order if the judge is satisfied on a balance of probabilities that a contravention of section 54.01(2)(d) or (3) has occurred and is continuing, or
  - (b) in the case of an application for a long-term order in circumstances described in subsection (4), make a long-term order if the judge is satisfied on the balance of probabilities that a contravention of section 54.01(2)(d) or (3) has occurred and is likely to recur.
- (6) A short-term order must be for a period of 7 days and a long-term order must be for a period exceeding 7 days but not exceeding one year.
- (7) In an order under this section, the judge may
  - (a) prohibit any person from engaging in or continuing any activity that constitutes the contravention,
  - (b) authorize a police officer to remove or seize and remove any material, barrier, equipment, vehicle, structure or obstruction used in the contravention, and
  - (c) make any other order the judge considers appropriate.

(8) Notice of an order under this section is sufficiently given to a person

- (a) by posting a copy of the order in a public place at or near any location where persons affected by the order might reasonably be expected to gather,
- (b) by giving a copy of the order to or serving a copy of the order on the person in any manner in which service of process may be lawfully effected, or
- (c) if it is given in any other manner permitted by the order.

(9) A police officer may without warrant arrest any person found contravening an order under this section for the purpose of bringing that person before a judge of the Court of Queen's Bench to show cause why the person should not be held to be in contempt.

(10) Any person who is directly affected by an order under this section may apply to a judge of the Court of Queen's Bench by originating notice on at least 2 days' notice for an order to set aside the order.

**Actions by police officer**

**54.04** Where section 54.01(7) or an order under section 54.03 authorizes a police officer to remove or seize and remove property, the police officer may cause the property to be removed or seized and removed by another person under the police officer's direction and control.

**No compensation for damages**

**54.05** No person has a right to compensation or damages in respect of anything done or omitted to be done in good faith under section 54.01(7) or 54.03(9) or an order under section 54.03 including, without limitation, anything done or omitted to be done by a person acting under a police officer's direction and control under section 54.04.

**5 Sections 2 and 3 come into force on Proclamation.**

## Explanatory Notes

**1** Amends chapter P-40 of the Revised Statutes of Alberta 2000.

**2** Section 1(l) presently reads:

*1 In this Act,*

*(l) "livestock" means cattle, horses or sheep;*

**3** Section 8(1) presently reads in part:

*8(1) The Lieutenant Governor in Council may make regulations authorizing and governing dispositions of public land including, without limitation, regulations*

*(a) restricting the use to be made of land that is the subject of a disposition;*

*(b) respecting the rights, duties and obligations of disposition holders in respect of their use and occupation of the land that is the subject of a disposition;*

**4** Prohibited uses of roads, etc. Disposition of seized items. Court orders. Actions by police officer. No compensation for damages.

**5** Coming into force.