

2011 Bill 5

Fourth Session, 27th Legislature, 60 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 5

NOTICE TO THE ATTORNEY GENERAL ACT

MR. ROGERS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 5
Mr. Rogers

BILL 5

2011

NOTICE TO THE ATTORNEY GENERAL ACT

(Assented to , 2011)

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

Definitions

- 1 In this Act,

- (a) “designated decision maker” has the meaning given to it by section 10 of the *Administrative Procedures and Jurisdiction Act*;
- (b) “person”, except in the phrase “in person” and in sections 6 and 7, includes a corporation or other entity and the heirs, executors, administrators or other legal representatives of a person.

Notice of question respecting enactment

2(1) Subject to subsection (2), where in any proceeding a person intends to raise a question respecting

- (a) the constitutional validity of an enactment of the Parliament of Canada or of the Legislature of Alberta, or
- (b) whether an enactment of the Parliament of Canada or of the Legislature of Alberta is the appropriate legislation applying to or governing any matter or issue,

the person must give notice to the Attorney General of Canada and the Minister of Justice and Attorney General of Alberta.

(2) Subsection (1) does not apply

- (a) in a proceeding in which notice is required to be given under section 4, and
- (b) in a proceeding under section 5 before the Court of Queen’s Bench of Alberta.

(3) In a proceeding in which notice is required to be given under subsection (1),

- (a) the Attorney General of Canada and the Minister of Justice and Attorney General of Alberta are entitled as of right to be heard, either in person or by counsel, notwithstanding that the Crown is not a party to the proceeding,
- (b) no person other than the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta shall, on behalf of the Crown in right of Alberta or on behalf of an agent of the Crown in right of Alberta, appear and participate in

any proceeding within or outside Alberta in respect of the question referred to in subsection (1), and

- (c) if the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta appears in a proceeding within Alberta in respect of the question referred to in subsection (1), the Minister of Justice and Attorney General of Alberta is deemed to be a party to the proceeding for the purpose of an appeal from an adjudication in respect of that question and has the same rights with respect to an appeal as any other party to the proceeding.

Notice of consultation question

3(1) Where in any proceeding a person intends to raise a question respecting the Crown's duty to consult aboriginal peoples, the person must give notice to the Attorney General of Canada, the Minister of Justice and Attorney General of Alberta, the parties and the court or body conducting the proceeding.

(2) In a proceeding in which notice is required to be given under subsection (1),

- (a) the Attorney General of Canada and the Minister of Justice and Attorney General of Alberta are entitled as of right to be heard, either in person or by counsel, notwithstanding that the Crown is not a party to the proceeding,
- (b) no person other than the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta shall, on behalf of the Crown in right of Alberta or on behalf of an agent of the Crown in right of Alberta, appear and participate in any proceeding within or outside Alberta in respect of the question referred to in subsection (1), and
- (c) if the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta appears in a proceeding within Alberta in respect of the question referred to in subsection (1), the Minister of Justice and Attorney General of Alberta has the same rights as any party to the proceeding, is deemed to be a party to the proceeding for

the purpose of an appeal from an adjudication in respect of that question and has the same rights with respect to an appeal as any other party to the proceeding.

Proceedings before designated decision makers

4(1) In this section,

- (a) “question of constitutional law” has the meaning given to it by section 10 of the *Administrative Procedures and Jurisdiction Act*;
- (b) “party” has the meaning given to it by section 1 of the *Administrative Procedures and Jurisdiction Act*.

(2) Where in any proceeding before a designated decision maker a person intends to raise a question of constitutional law, the person must give notice to the Attorney General of Canada, the Minister of Justice and Attorney General of Alberta, the parties to the proceeding and the designated decision maker.

(3) In a proceeding in which notice is required to be given under subsection (2) or a proceeding before the Court of Queen’s Bench of Alberta under section 5, and in any subsequent proceeding on appeal or judicial review,

- (a) the Attorney General of Canada and the Minister of Justice and Attorney General of Alberta are entitled as of right to be heard, in person or by counsel,
- (b) no person other than the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta shall, on behalf of the Crown in right of Alberta or on behalf of an agent of the Crown in right of Alberta, appear and participate, and
- (c) if the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta appears, the Minister of Justice and Attorney General of Alberta is deemed to be a party and has the same rights as any other party.

Designated decision maker may refer question to Court

5(1) In this section, “Court” means the Court of Queen’s Bench of Alberta.

(2) With respect to a question over which a designated decision maker has jurisdiction and in respect of which a notice has been given under this Act, if the designated decision maker is of the opinion that the Court is a more appropriate forum to decide the question, the designated decision maker may, instead of deciding the question,

- (a) direct the person who provided the notice to apply to the Court to have the question determined by the Court, or
- (b) state the question in the form of a special case to the Court for the opinion of the Court.

(3) Before acting under subsection (2)(a) or (b), the designated decision maker may conduct any inquiries the designated decision maker considers necessary.

(4) Where the designated decision maker acts under subsection (2)(a) or (b), the designated decision maker must, unless otherwise directed by the Court, suspend the proceeding, or any part of the proceeding, as it relates to the question to be heard by the Court under subsection (2) until the decision of the Court has been given.

(5) A question in respect of which an application has been directed to be made to the Court under subsection (2)(a) must be brought on for hearing as soon as practicable.

(6) The Court must hear and determine the question submitted to it under this section and give its decision as soon as practicable.

(7) The designated decision maker may, and at the request of the Court shall, provide the Court with any record and documentation that may assist the Court in determining the question submitted to it under this section.

No decision before notice

6(1) Where notice of a question is required to be given under section 2, 3 or 4 or under the regulations, the court, person or body conducting the proceeding must not begin the determination of the question and must not decide the question unless the required notice is given.

(2) Nothing in this section affects the power of a court, person or body to make any interim order, decision, directive or declaration it considers necessary pending the final determination of any matter before it.

Restriction

7 Where notice of a question is required to be given under section 2, 3 or 4 or under the regulations, the court, person or body hearing the proceeding must not decide the question except on the basis of the grounds set out in the notice.

Notice under the Alberta Bill of Rights

8 Where notice is required to be given under section 4 of the *Alberta Bill of Rights*, the notice must be given in accordance with the regulations.

Notice requirements

9 Where notice is required to be given under this Act, the notice must be given in accordance with the regulations.

Regulations

10 The Lieutenant Governor in Council may make regulations

- (a) setting out additional circumstances in which, and additional questions in respect of which, notice must be given to the Attorney General of Canada, the Minister of Justice and Attorney General of Alberta, or both of them;
- (b) respecting notices and the giving of notice under this Act, including, without limitation, regulations respecting
 - (i) the form and contents of a notice,
 - (ii) the time at which the obligation to give a notice arises, and
 - (iii) the time by which a notice must be provided and the period of notice that must be given;
- (c) defining “body” or “proceeding” or both for the purposes of any provision of this Act or any regulation made under this Act;

- (d) respecting the referral of questions to the Court of Queen's Bench of Alberta under section 5;
- (e) that the Lieutenant Governor in Council considers necessary or advisable for carrying out the intent of this Act.

**Transitional Provisions,
Consequential Amendments
and Coming into Force**

Transitional

11 Where a proceeding in which a notice is required to be given under a provision of this Act has commenced but has not been concluded before the coming into force of the provision, the proceeding is to continue as if the provision had not come into force.

Amends RSA 2000 cA-3

12(1) *The Administrative Procedures and Jurisdiction Act* is amended by this section.

- (2)** Section 10(a) is repealed.
- (3)** Sections 12, 13 and 14 are repealed.
- (4)** Section 16(c) and (d) are repealed.

Explanatory Notes

11 Transitional.

12 Amends chapter A-3 of the Revised Statutes of Alberta 2000. Sections 10(a), 12, 13, 14 and 16 presently read in part:

10 In this Part,

(a) “court” means the Court of Queen’s Bench of Alberta;

12(1) Except in circumstances where only the exclusion of evidence is sought under the Canadian Charter of Rights and Freedoms, a person who intends to raise a question of constitutional law at a proceeding before a designated decision maker that has jurisdiction to determine such a question

(a) must provide written notice of the person’s intention to do so at least 14 days before the date of the proceeding

(i) to the Attorney General of Canada,

*(ii) to the Minister of Justice and Attorney General of Alberta,
and*

(iii) to the parties to the proceeding,

and

(b) must provide written notice of the person's intention to do so to the designated decision maker.

(2) Until subsection (1) is complied with, the decision maker must not begin the determination of the question of constitutional law.

(3) Nothing in this section affects the power of a decision maker to make any interim order, decision, directive or declaration it considers necessary pending the final determination of any matter before it.

(4) The notice under subsection (1) must be in the form and contain the information provided for in the regulations.

13(1) With respect to a question of constitutional law over which a designated decision maker has jurisdiction and in respect of which a notice has been given under section 12, if the designated decision maker is of the opinion that the court is a more appropriate forum to decide the question, the designated decision maker may, instead of deciding the question,

(a) direct the person who provided the notice under section 12 to apply to the court to have the question determined by that court, or

(b) state the question of constitutional law in the form of a special case to the court for the opinion of the court.

(2) Before acting under subsection (1)(a) or (b), the designated decision maker may conduct any inquiries the designated decision maker considers necessary.

(3) Where the designated decision maker acts under subsection (1)(a) or (b), the designated decision maker must, unless otherwise directed by the court, suspend the proceeding, or any part of the proceeding, as it relates to the question to be heard by the court under subsection (1) until the decision of the court has been given.

(4) A question of constitutional law in respect of which an application has been directed to be made to the court under subsection (1)(a) must be brought on for hearing as soon as practicable.

(5) The court must hear and determine the question of constitutional law submitted to it under this section and give its decision as soon as practicable.

Amends RSA 2000 cJ-2

13 The *Judicature Act* is amended by repealing section 24.

(6) The designated decision maker may and, at the request of the court, shall provide the court with any record and documentation that may assist the court in determining the question of constitutional law submitted to it under this section.

14 In any proceeding relating to the determination of a question of constitutional law before a decision maker or before the court under this Part, or in any subsequent proceeding on appeal or judicial review,

- (a) the Attorney General of Canada and the Minister of Justice and Attorney General of Alberta are entitled as of right to be heard, in person or by counsel,*
- (b) no person other than the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta shall, on behalf of Her Majesty in right of Alberta, or on behalf of an agent of Her Majesty in right of Alberta, appear and participate, and*
- (c) if the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta appears, the Minister of Justice and Attorney General of Alberta is deemed to be a party and has the same rights as any other party.*

16 The Lieutenant Governor in Council may make regulations

- (c) respecting the referral of questions of constitutional law to the court;*
- (d) respecting the form and contents of the notice under section 12(1).*

13 Amends chapter J-2 of the Revised Statutes of Alberta 2000. Section 24 presently reads:

24(1) If in a proceeding the constitutional validity of an enactment of the Parliament of Canada or of the Legislature of Alberta is brought into question, the enactment shall not be held to be invalid unless 14 days' written notice has been given to the Attorney General of Canada and the Minister of Justice and Attorney General of Alberta.

Coming into force

14 This Act comes into force on Proclamation.



(2) When in a proceeding a question arises as to whether an enactment of the Parliament of Canada or of the Legislature of Alberta is the appropriate legislation applying to or governing any matter or issue, no decision may be made on it unless 14 days' written notice has been given to the Attorney General of Canada and the Minister of Justice and Attorney General of Alberta.

(3) The notice shall include what enactment or part of an enactment is in question and give reasonable particulars of the proposed argument.

(4) The Attorney General of Canada and the Minister of Justice and Attorney General of Alberta are entitled as of right to be heard, either in person or by counsel, notwithstanding that the Crown is not a party to the proceeding.

(5) No person other than the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta shall, on behalf of Her Majesty in right of Alberta or on behalf of an agent of Her Majesty in right of Alberta, appear and participate in any proceeding within or outside Alberta in respect of a question referred to in subsection (1) or (2).

(6) If the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta appears in a proceeding within Alberta in respect of a question referred to in subsection (1) or (2), the Minister of Justice and Attorney General of Alberta is deemed to be a party to the proceeding for the purpose of an appeal from an adjudication in respect of that question and has the same rights with respect to an appeal as any other party to the proceeding.

14 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
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