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**DIRECT TO SOURCE – TAKING THE POLITICAL ROUTE TO  
INFLUENCE ENVIRONMENTAL LAW AND POLICY**

By Cindy Chiasson, *Executive Director*

Part of our work at the Environmental Law Centre is to provide Albertans with information on environmental law and policy, how it works (or sometimes doesn't work) and how they can use it to protect the environment. In the nearly 15 years I've worked here, I've lost count of the number of times I've told people: "The law will only take you so far. For the result you want, you may need to look at political action instead." At this point, many have reacted with frustration to the law's limitations and some have seemed horrified at the prospect of dipping their toes in the political pool. This need not be the case. If we realize that the political arena is the source of most of our law, in particular environmental regulatory law, it seems natural that one of the routes for influencing and changing that law is via politics.

**Start out easy – cast your vote**

In Canada, the most basic way we can seek to influence law and policy through politics is to vote in elections, federally, provincially and municipally. All these levels of government have varying degrees of legislative authority for environmental matters and by voting each of us is giving direction on where we want to see environmental law and policy go. Election requirements and process, including voter eligibility and frequency of elections, are governed by legislation. The *Canada Elections Act* deals with federal elections (Members of Parliament).<sup>1</sup> In Alberta, the *Election Act* addresses provincial elections (Members of the Legislative Assembly)<sup>2</sup> and the *Local Authorities Election Act* deals with municipal elections.<sup>3</sup> While Alberta municipal elections have had fixed dates since 1983, this has been a newer development at both the provincial (Alberta) and federal levels.<sup>4</sup> The table to the right shows requirements for voter eligibility and election frequency.

While election officials commonly compile lists of eligible voters in advance

of elections, it's always a wise idea when you go to vote to take documents with you to prove your identity and place of residence, such as photo identification and other proof of address if you've recently changed residences. Voting locations are referred to as polling stations. Often you'll receive notice by mail before election day directing you to your polling station; this and other election-related information is also commonly available online.<sup>5</sup>

**Make an informed decision**

Legalities aside, another important aspect of voting is being informed. First step: decide what issues are of importance to you, whether there are specific questions you have about those issues and what information you want to get about and from candidates. Keep in mind that each level of government has its own areas of jurisdiction in relation to the environment, which means that it may or may not be the level that can properly address your concerns. For example, if you have concerns about how oil and gas developments are regulated, municipal governments in Alberta have

minimal regulatory powers on that topic, so candidates in a municipal election won't be able to do much to help you.



There are various ways to look for the information you want to get from candidates. An initial step is to find the full list of candidates in your area. Official candidate lists are usually posted on the official elections website (such as Elections Canada or Elections Alberta) after nominations have closed; sometimes these lists will include links to candidates' personal or party websites, which can provide information about candidates' positions on the issues and platforms. Information can also be gathered from brochures or other print material that candidates may drop in your mailbox or have available at public events. Asking direct questions of candidates can be quite effective and can be done in a number of ways: when they knock on your door; at public events and election forums; or by a phone call, e-mail or direct visit to their campaign headquarters.

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	Canada	Alberta (provincial)	Alberta (municipal)
Voter eligibility	<ul style="list-style-type: none"> <li>Canadian citizen</li> <li>Age 18 or older on polling day</li> </ul>	<ul style="list-style-type: none"> <li>Canadian citizen</li> <li>Age 18 or older on polling day</li> <li>Ordinarily resident in Alberta for at least 6 months immediately preceding election</li> </ul>	<ul style="list-style-type: none"> <li>Canadian citizen</li> <li>Age 18 or older on polling day</li> <li>Resident in Alberta for at least 6 months immediately preceding election</li> <li>Place of residence within municipality on election day</li> </ul>
Election frequency	<ul style="list-style-type: none"> <li>3<sup>rd</sup> Monday in October in the 4<sup>th</sup> calendar year following polling day of the last general election (next election 19 Oct 2015)</li> </ul>	<ul style="list-style-type: none"> <li>Within the period 1 March – 31 May (starting 2012), then within the same period in the 4<sup>th</sup> calendar year following polling day of the most recent general election</li> </ul>	<ul style="list-style-type: none"> <li>3<sup>rd</sup> Monday in October, every 3<sup>rd</sup> year commencing in 1983 (next election 21 Oct 2013)</li> </ul>

You may also be able to gather information on candidates' positions and platforms from third party sources, such as media reports, websites of organizations working on issues of interest to you, and forums or information sessions hosted by such organizations. When using third party information, be sure to give some thought to the integrity and accuracy of the sources.

## After and between elections

So what do you do about your environmental issues and concerns when there aren't any elections going on? When a politician is elected, it doesn't mean they get a free pass from public engagement until the next election. Even if the councillor, MLA or MP elected for your area isn't the person you voted for, they have an obligation to represent all their constituents. Given this relationship, they are one of the first doors you should knock on when you seek political remedies to your environmental concerns. Contacting your municipal representative will most likely be directly through the municipality. At both the provincial and federal levels, MLAs and MPs generally have a legislative office (in Edmonton for MLAs and Ottawa for MPs) as well as a constituency office located in the area they represent. Contact information for all Alberta MLAs is available through the Legislative Assembly website,<sup>6</sup> while similar information for federal MPs is available from the Parliament of Canada website.<sup>7</sup> Other options for contact include the cabinet minister(s) responsible for your area of concern and opposition members designated by their parties as "critics"



for those areas. For many environmental issues, the relevant minister will be the Minister of Environment, but note that there may be other relevant ministries, especially if development of natural resources is involved. Contact information for cabinet ministers can also be found on the website for their department.

The means you choose to contact elected officials may vary depending on their accessibility, the significance of your issue, the record you want to have of your contact and your comfort level and experience in dealing with these officials. Telephone is often one of the quickest means of contact, but there is no guarantee that you'll contact the elected official directly and no direct record of your call. Written communications (letter or e-mail) can provide you with a record and often a response; a good practice is to keep a copy of all letters or e-mails you send, to allow you to compare any responses to your original correspondence. Meeting personally with an elected official is another option; these meetings can require some advance time to arrange and meeting time may be limited. With all of these options, you should seek to focus on your key concern and message. Elected officials have significant demands on their time from many interests on many issues and the more focused and straightforward you can make your message, the better your chances of getting and keeping their attention. You should also be prepared to be persistent in making your points and seeking information. For example, you may find that an official's response to your correspondence deals with your issue in a very general way or only answers some of your questions or concerns. You could then pursue further contact, focused on more specific points.

## You're not alone

An important point to remember is that you're likely not the only person who has these environmental concerns nor are you the only person ever to have engaged in the political system. You may find using these processes easier by finding other individuals, groups or organizations to talk to, get information from, and work with in pursuing your own environmental law or policy goals. If your issue is a local one, look around your community to find if there are others with similar interests who may also want to engage in the political process. To find groups with similar interests and concerns, good starting points include the Alberta Environmental Network,<sup>8</sup> an umbrella organization for environmental groups in

Alberta, and the Canadian Environmental Network,<sup>9</sup> a similar nation-wide organization. •

<sup>1</sup> S.C. 2000, c. 9.

<sup>2</sup> R.S.A. 2000, c. E-1.

<sup>3</sup> R.S.A. 2000, c. L-21.

<sup>4</sup> The Alberta *Election Act* was amended in late 2011 to provide for (somewhat) fixed election dates; *Election Amendment Act*, S.A. 2011, c. 17. The *Canada Elections Act* was amended in 2007 to enable fixed election dates; *An Act to amend the Canada Elections Act*, S.C. 2007, c. 10. Note however that elections in both jurisdictions could be called for other dates, as the Queen's representative (Governor-General federally and Lieutenant-Governor provincially) is given the ability to dissolve Parliament/ the Legislature, which triggers an election, at any time he or she sees fit. Practically speaking, it is very rare for these officials to take this step without being requested to do so by the government of the day.

<sup>5</sup> For federal elections, see the Elections Canada website at [www.elections.ca](http://www.elections.ca). For Alberta elections, see the Elections Alberta website at [www.elections.ab.ca](http://www.elections.ab.ca).

<sup>6</sup> Legislative Assembly of Alberta, Elected Members of the Assembly, [http://www.assembly.ab.ca/net/index.aspx?p=mna\\_home](http://www.assembly.ab.ca/net/index.aspx?p=mna_home).

<sup>7</sup> Parliament of Canada, Find your Member of Parliament using your postal code, <http://www.parl.gc.ca/Parlinfo/Compilations/HouseOfCommons/MemberByPostalCode.aspx?Menu=HOC>.

<sup>8</sup> Alberta Environmental Network, < <http://www.aenweb.ca/>>.

<sup>9</sup> Canadian Environmental Network, < <http://www.cen-rce.org/>>.

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#### ABOUT THE ELC

At the Environmental Law Centre (ELC) we envision an Alberta where the environment is a priority. We see a society where environmental concerns guide our choices. We believe that if we make the right choices, future generations will enjoy a clean, healthy and diverse environment protected by strong, effective laws.

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# 2012 ALBERTA PROVINCIAL ELECTION: WHAT CANDIDATES STAND ON

By Adam Driedzic, *Staff Counsel*



Platforms are the public statements of political parties that go beyond core principles to advance positions on issues. Election platforms are constructed to appeal to the public and get candidates elected. Thus, the “environment” may be a small plank in one party’s platform, while “water” is a major plank in the same party’s environmental platform. Election platforms propose actions or at least articulate changes sought. The parchment manifestos of yore have largely been replaced by website representations and downloadable documents featuring expanded content.

## Most frequent environmental platform issues

- Greenhouse gas (GHG) regulation (and climate change)
- Energy diversification (and climate change)
- Land reclamation and restoration
- Sustainable communities and municipalities
- Water licensing and markets
- Water conservation and management
- Tailings reduction
- Air quality
- Natural areas, wetlands, and watershed protection
- Land use planning and land conservation

In the tables below you will find various Alberta provincial parties’ environmental platforms.

At the time of writing, the governing Progressive Conservative party had not posted a detailed election platform. Under the heading “Stewardship of our environment” the PC Alberta party states: “Sustaining the quality of our air, water, soil, wildlife, and natural environment is important to Albertans. We must ensure that our activities, growth and development take place in an environmentally sensitive manner for the benefit of current and future generations.” (<http://www.albertapc.ab.ca/admin/contentx/default.cfm?PageId=9380>)

### Alberta Party

Priorities	Where is the environment?	Platform or principles	Plans or promises
<ul style="list-style-type: none"> <li>• Economy</li> <li>• Health</li> <li>• Environment</li> <li>• Education</li> <li>• Democratic renewal</li> </ul>	<ul style="list-style-type: none"> <li>• Integrated energy and environment policy</li> <li>• Direct link: <a href="http://www.albertaparty.ca/energy-environment-policy/">http://www.albertaparty.ca/energy-environment-policy/</a></li> </ul>	<ul style="list-style-type: none"> <li>• Water as a public good</li> <li>• Sustainable choices</li> <li>• Improve land use planning and policy</li> <li>• Air quality and GHG emissions reduction</li> </ul>	<ul style="list-style-type: none"> <li>• Integrated energy and environment policy</li> <li>• Water management</li> <li>• Land management</li> <li>• Air quality</li> <li>• Climate</li> </ul>

### Evergreen Party

Priorities	Where is the environment?	Platform or principles	Plans or promises
<ul style="list-style-type: none"> <li>• Restoration of the Environment</li> <li>• Creation of a sustainable economy</li> <li>• Restoration of community</li> <li>• Renewal of democracy</li> </ul>	<ul style="list-style-type: none"> <li>• Front page priority</li> <li>• Direct Link: <a href="http://evergreenparty.ca/index.html">http://evergreenparty.ca/index.html</a></li> </ul>	<ul style="list-style-type: none"> <li>• Ecological Wisdom</li> <li>• Social Justice</li> <li>• Participatory Democracy</li> <li>• Non-Violence</li> <li>• Sustainability</li> <li>• Respect for Diversity</li> <li>• Charter of Global Greens</li> </ul>	<ul style="list-style-type: none"> <li>• Give nature time and space to heal itself</li> <li>• Sustainable economy constrained by limits of natural world</li> <li>• Empower local communities to create equitable and supportive societies</li> <li>• Proportional representation</li> </ul>

### Liberal

Priorities	Where is the environment?	Platform or principles	Plans or promises
<ul style="list-style-type: none"> <li>• Economy</li> <li>• Oil and gas policy</li> <li>• Education</li> <li>• Healthcare</li> <li>• Communities</li> </ul>	<ul style="list-style-type: none"> <li>• Under Communities</li> <li>• Direct Link: <a href="http://www.albertaliberal.com/policy.php">http://www.albertaliberal.com/policy.php</a></li> </ul>	<ul style="list-style-type: none"> <li>• Water is our most precious resource</li> <li>• Climate change is real</li> <li>• Long term economic growth requires energy diversification</li> <li>• Ethical duty to preserve natural areas</li> </ul>	<ul style="list-style-type: none"> <li>• Water</li> <li>• Climate change</li> <li>• Economic growth / energy diversification</li> <li>• Preserve natural areas</li> <li>• Communities</li> <li>• Legacy science-based clean up</li> </ul>

## NDP

Priorities	Where is the environment?	Platform or principles	Plans or promises
<ul style="list-style-type: none"> <li>• Making life affordable</li> <li>• Green energy plan</li> <li>• Full value royalties</li> <li>• Big money out of politics</li> </ul>	<ul style="list-style-type: none"> <li>• Under "where we stand" on multiple issues</li> <li>• Direct link: <a href="http://albertandp.ca/wherewestand">http://albertandp.ca/wherewestand</a></li> </ul>	<ul style="list-style-type: none"> <li>• Reduce dependence on fossil fuels</li> <li>• GHG regulation and enforcement</li> <li>• Reclamation compliance and oversight</li> <li>• Water management plan</li> <li>• No additional resource development on lakeshores and beds</li> <li>• Green energy plan</li> <li>• Curb urban sprawl/save farmland and habitat</li> </ul>	<ul style="list-style-type: none"> <li>• Green energy plan</li> <li>• Increase payment for resource extraction</li> <li>• Create green energy fund</li> <li>• Fund renewables initiatives</li> <li>• Create crown corporation</li> <li>• Choice in metering and retrofit loans</li> </ul>

## Wildrose

Priorities	Where is the environment?	Platform or principles	Plans or promises
<ul style="list-style-type: none"> <li>• Ideas and solutions</li> </ul>	<ul style="list-style-type: none"> <li>• Under "ideas and solutions"</li> <li>• Direct Link: <a href="http://www.wildrose.ca/policy/environment/">http://www.wildrose.ca/policy/environment/</a></li> </ul>	<ul style="list-style-type: none"> <li>• Environment and economy are linked</li> </ul>	<ul style="list-style-type: none"> <li>• Clean air</li> <li>• Natural gas strategy</li> <li>• Promote investment through tax incentives</li> <li>• Repeal Bill 50 (<i>The Electric Statutes Amendment Act, 2009</i>)</li> <li>• Clean water</li> <li>• Elimination and reclamation of tailings ponds</li> <li>• Revisit the use of dams and reservoirs</li> <li>• Conservation by eliminating burdensome regulations</li> <li>• Clean land</li> <li>• Fast regulatory approvals</li> <li>• Environmental ombudsman</li> <li>• Private land used for development is returned to same condition and value.</li> </ul>

## BROKEN PROMISES: CAN THEY BE AVOIDED?

By Adam Driedzic, *Staff Counsel*

If Canadians are the world class example of any environmental problem, it is the fall out between what we say and what we do. The old maxim that politicians mostly care about the next election does not bode well for the long term thinking demanded by the environment. Public concern with the environment can be fickle compared to perennial concerns like jobs or taxes. The latter set of demands can be tangibly met between election cycles so the real agenda is predetermined. But is it really all that cynical?

At least one study finds that the gap between environmental policy and performance has real institutional causes.<sup>1</sup> Foremost is jurisdiction. Any policy will be frustrated by the legal inability to act. Second is accountability for decisions. High accountability requires constraints on decision making, recourse for people impacted by decisions, and

a monitoring system that can connect decisions to their impacts. A third factor is the cost of implementation and enforcement, especially if this cost is borne disproportionately or concentrated on one sector. In sum, the extent to which measures are taken to pursue expressed goals might be highest in unitary jurisdictions with direct accountability and dispersed costs. A residual consideration is any particular bias built into political and legal institutions.

None of this bodes well for Canada and the western provinces in particular. Jurisdiction over the environment is shared, parliamentary democracy promotes broad discretion and low accountability, and governments who become dependent on natural resource industries share with those industries an aversion to enforcement. As for any latent bias, the western Canadian legal tradition has its roots in the colonial frontier. It

enables the sprawl of human settlements and facilitates resource extraction.

In this light, the top priority might not be any one environmental issue but the reform of political and legal institutions. New environmental policies could help, but new electoral, legislative, and adjudicative systems might do more to close the integrity gap. •

<sup>1</sup> Eugene Lee and Anthony Perl, Ed., *The Integrity Gap: Canada's Environmental Policy and Institutions* (Vancouver: UBC Press, 2003).



# WATCH WHAT YOU SAY OR YOU MIGHT GET SLAPPED!

By Jason Unger, *Staff Counsel*

When you communicate strong feelings on an issue you can find yourself in court. One way to find yourself in court is when, through your statements or actions, you defame a person or company. The other is when you get “SLAPPED” (a Strategic Lawsuit Against Public Participation) or sued for speaking out or advocating a specific position that does not sit well with the proponent of an activity.

In the first instance you are in court because someone is using the legal system to ensure you abide by the law and that they are compensated for the harm you have wrought. In the second, you are there because someone is using the legal system as a mechanism to shut you up.

## What you say matters: The tort of defamation

The tort of defamation covers both libel and slander and basically involves saying or printing things that may result in tarnishing reputations.

Defamation has been defined as:<sup>1</sup>

A publication is considered defamatory if it has the tendency to lower that reputation in the estimation of reasonable persons in the community.

In order to recover in an action for defamation, the plaintiff must show:

- (1) That the words about which the plaintiff complains are defamatory;
- (2) That they referred to the plaintiff; and
- (3) That they were published to a third person.

In Alberta, the common law tort is augmented by the *Defamation Act*.<sup>2</sup> The media or method of communication you use to defame someone may have implications for legal process but, more importantly, you should know that defamation may arise through all forms of expression. You can directly and expressly defame someone but the defamatory nature of material may also be implied or based in innuendo.<sup>3</sup> Also know that defamation law is messy, as it attempts to balance the right of individuals and non-natural persons (corporations/societies) with the right to freedom of expression (and the press).

Once the plaintiff has proven that a defamatory statement has been published or made there are several defences available. These defences include the fact that the transmittal of information was privileged in some manner, i.e., the parties publishing the information are granted immunity from liability based on the nature of the information or the specific circumstances in which the communication is made, that the statement was justified, or that the statement constitutes “fair comment” based in fact.<sup>4</sup> Some arenas of comment have absolute privilege against defamation suits, including judicial proceedings and parliamentary proceedings. This type of privilege is based on the idea that, in certain instances, “dissemination of information, regardless of accuracy and regardless of motive” that may harm someone’s reputation is in the broader interest of society.<sup>5</sup> There are also areas of “qualified privilege,” which has been described as a publication that is “fairly made by a person in the discharge of a public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned.”<sup>6</sup> Examples of qualified interests include defending one’s reputation against someone who is attacking it, the discharge of a public duty or comments made in the public interest. A detailed review of this area of privilege is beyond the scope of this article.<sup>7</sup> Defences that are typically central to an environmental scenario are a claim that your comments are justified or are fair comment.

## The defences of justification and fair comment

So when will you be justified in tarnishing someone’s reputation? For the defences of both justification and fair comment the defendant has the burden of proving that what they are saying is based on facts and they have proof of those facts. The defence of fair comment allows someone to avoid liability if the matter is of public concern

### What’s the difference between libel and slander?

Libel: Publishing or broadcasting a false and damaging statement

Slander: Making a false or damaging statement in ordinary conversation.

or interest and the comments and opinions made are substantiated in facts.<sup>8</sup>



The legal concept of fair comment was recently discussed by the Supreme Court of Canada in the case of *Grant v. Torstar Corp* as:<sup>9</sup>

A defendant claiming fair comment must satisfy the following test:

- (a) the comment must be on a matter of public interest;
- (b) the comment must be based on fact;
- (c) the comment, though it can include inferences of fact, must be recognisable as comment;
- (d) the comment must satisfy the following objective test: could any person honestly express that opinion on the proved facts?; and
- (e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice.

In dealing with the idea of what constitutes a public interest question, the Supreme Court noted:<sup>10</sup>

Public interest is not confined to publications on government and political matters, as it is in Australia and New Zealand. Nor is it necessary that the plaintiff be a “public figure”, as in the American jurisprudence since *Sullivan*. Both qualifications cast the public interest too narrowly. The public has a genuine stake in knowing about many matters, ranging from science and the arts to the environment, religion, and morality. The democratic interest in such wide-ranging public debate must be reflected in the jurisprudence.

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If one is acting out of malice, that is to say making comments out of spite, the fair comment defence may not apply.<sup>11</sup>

For an interesting example of how the “fair comment” defence is to be applied see *Creative Salmon Company Ltd. v. Staniford*.<sup>12</sup> This case involved an aquaculture company that was the subject of two press releases of the Defendant regarding issues of contamination of salmon and antibiotic use. At trial the Plaintiff was successful in suing the Defendant for defamation. This was overturned on appeal on the basis of a misapplication of the fair comment defence. (Further, the Supreme Court of Canada denied leave to appeal this case.<sup>13</sup>)

### Being SLAPPED into silence

Sometimes defamation suits arise as a method of shutting people up. “Strategic Litigation Against Public Participation,” or “SLAPP” suits are intended to get a vocal advocate to stop being an advocate and to shackle them with the weight of litigation. These types of law suits often claim defamation as a cause of action, as well as claims that a party has unlawfully interfered with economic interests or interfered with contractual relations (among others).<sup>14</sup> SLAPP suits are typically used in instances where someone is attempting to oppose the granting of government authorization (such as a

zoning change, development permit or water licence) or to minimize protests and campaigns focused on changing consumer behavior (market campaigns).<sup>15</sup>

Legal responses to a SLAPP suit are limited and typically rely on some aspect of procedure and costs system to discourage law suits that are brought for such ulterior motives. In Alberta for instance the *Rules of Court* provide an opportunity for a defendant to seek the striking out of all or any part of a claim as “frivolous, irrelevant or improper,” or constituting “an abuse of process” (although the latter is difficult to substantiate).<sup>16</sup> A defendant can also seek summary dismissal of the statement of claim where there is “no merit to a claim”<sup>17</sup> and can seek an increased costs award in certain instances.<sup>18</sup> It has been observed the tools available under the *Rules of Court* are likely insufficient to effectively deal with SLAPP suits, and that the stifling of public discourse on valid public interest matters should be prohibited more extensively in our laws.<sup>19</sup>

What are the lessons to learn from defamation law and SLAPP suits? Be aware, be factual and be bold. As Justice Bruce of the Supreme Court of British Columbia recently stated in a cost decision with a SLAPP lawsuit, “Public participation and dissent is an important part of our democratic system.”<sup>20</sup> •

<sup>1</sup> Raymond Brown, *The Law of Defamation in Canada*, looseleaf (Scarborough: Thomson Canada Limited, 1999) at 24-8 to 24-9 as cited in *Chohan v. Cadsky*, 2009 ABCA 334.

<sup>2</sup> R.S.A. 2000, c. D-7.

<sup>3</sup> See Allen M. Linden, *Canadian Tort Law*, (Markham Ontario: Butterworths, 2001) at 706-727.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.* at 708.

<sup>6</sup> *Ibid.* at 712.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.* at 723.

<sup>9</sup> 2009 SCC 61, [2009]3 SCR 640, online: CanLII <<http://canlii.ca/t/27430>>.

<sup>10</sup> *Ibid.* at para 106.

<sup>11</sup> *Supra* note 3 at 721.

<sup>12</sup> 2009 BCCA 61, online: CanLII <<http://canlii.ca/t/22gxb>>.

<sup>13</sup> *Creative Salmon Company Ltd. v. Don Staniford*, 2009 CanLII 34733 (SCC) online: CanLII <<http://canlii.ca/t/24brd>>.

<sup>14</sup> See West Coast Environmental Law, *SLAPP Handbook*, (Vancouver: West Coast Environmental Law, 2002), online: West Coast Environmental Law <<http://www.wcel.org/sites/default/files/publications/The%20West%20Coast%20Environmental%20Law%20SLAPP%20Handbook.pdf>>.

<sup>15</sup> *Ibid.* Also see Michaelin Scott and Chris Tollefson, “Strategic Lawsuits Against Public Participation: The British Columbia Experience” *RECEIL* 19 (1) 2010, online: Environmental Law Centre, University of Victoria <<http://www.elc.uvic.ca/publications/documents/Reciel-2010-SLAPP-BC-Tollefson-Scott.pdf>>.

<sup>16</sup> *Alberta Rules of Court*, AR 124/2010, including changes from AR215/2011 at Rule 3.68 (1) and (2).

<sup>17</sup> *Ibid.* at Rule 7.3(1)(b), online: Queen’s Printer, <[http://www.qp.alberta.ca/documents/rules2010/Rules\\_vol\\_1.pdf](http://www.qp.alberta.ca/documents/rules2010/Rules_vol_1.pdf)>.

<sup>18</sup> *Ibid.* at Rule 10.33.

<sup>19</sup> See Scott and Tollefson, *supra* note 15.

<sup>20</sup> *Scory v. Krannitz*, 2011 BCSC 1344.

## GETTING YOUR VOICE HEARD THROUGH PETITIONS

Members of the public can use petitions to bring environmental issues to a governmental authority’s attention and request that actions be taken in response to those issues. Petitions may be made to provincial or federal legislative bodies. Many provincial and federal statutes also provide petition processes to address environmental issues. Ultimately, the goal of a petition is to raise awareness of an issue and get the government to take (or not take) a particular action.

### Petitions to a legislative body

Petitions can be made provincially to the Alberta Legislative Assembly and federally to the House of Commons. Petitions to a legislative body must address a subject within the authority of that body. For example, a petition to the House of Commons should not concern a purely provincial or municipal matter. Prior to collecting signatures for a petition, it is a good idea to present a draft to a member of the legislative body for review. It should

be noted that a member of the legislative body is not required to present a petition that has been brought to his or her attention.

### Alberta Legislative Assembly

The requirements of a valid petition to the Alberta Legislative Assembly are set out in *Guidelines for Submitting Petitions to the Legislative Assembly*.<sup>1</sup> As a matter of form, a petition:

- Should be addressed to the Legislative Assembly, preferably as “The Legislative Assembly of Alberta, in Legislature Assembled”;
- Must clearly state the request of the petition on every page of the petition;
- Must contain a notice on each page of the petition that states that the name and address of every person who signs the petition may be made available to

By Brenda Heelan Powell, *Staff Counsel*

- the public; and
- Cannot contain argument or debate and should use moderate and temperate language.



The petition must contain original signatures and, as such, electronic petitions are not valid.

A petition must be presented to the Alberta Legislative Assembly by an MLA. The MLA presenting the petition confines his or her remarks to a brief description of the remedy sought, the number of signatures attached and the geographic region represented by those signatures. Once the petition is presented, neither the Legislative Assembly nor the Government is compelled to take any action on the petition.

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## House of Commons

The requirements for a valid petition to the House of Commons are set out in *Petitions: Practical Guide*.<sup>2</sup> As a matter of form, a petition:

- Should be addressed to the House of Commons, the House of Commons in Parliament Assembled, the Government of Canada, a Minister of the Crown or a Member of the House of Commons;
- Must contain a request to take or refrain from action to remedy a grievance. The petition may also contain a detailed description of the grievance and/or a statement of opinion. The subject matter of the petition must be clearly stated on every page;
- Should use moderate and temperate language; and
- Must bear a minimum of 25 signatures.

The petition must contain original signatures and, as such, electronic petitions are not valid.

Prior to being presented to the House of Commons, a petition must receive certification as being correct to form and content. Once certified, the petition must be presented to the House of Commons by an MP (or it may be filed with the Clerk of the House while Parliament is sitting). The MP presenting the petition will make a brief factual statement, referring to the petition as duly certified, to its source, subject matter and its request, as well as to the number of signatures. Once a petition has been presented to the House of Commons, the government is required to make a response within 45 days. If no response is made within that time, then a standing committee is convened to consider the failure to respond.

## Statutory Petitions

Aside from general petitions to legislative bodies, petitions may be made pursuant to certain pieces of legislation. Petitioners must strictly follow the statutory requirements for a petition otherwise the petition could be rendered invalid. Two statutory petitions that are particularly helpful for raising awareness of environmental issues are reviewed below.

### **Municipal Government Act<sup>3</sup>**

Sections 219 to 240 of Alberta's *Municipal Government Act* establish a petition process to compel a municipal government to call a public meeting; to pass, amend or repeal a by-law; or to hold a vote of electors on a proposed by-law. In order to be valid, the *Municipal Government Act* requires that a petition be signed by at least 10% of the municipality's population. In addition, as a matter of form, a petition:

- Should include a statement of purpose, which must appear on each page of the petition;
- Must include each petitioner's name, signature, street address or legal description of property, and the date. An adult person must witness each signature.
- Must have a signed statement by a person indicating that he or she is the contact for questions or concerns with the petition.

Given the requirement for signatures that are witnessed by an adult, an electronic petition would not be valid under the *Municipal Government Act* (although such a petition can inform the municipality of public concerns).

The subject matter of by-laws that may be affected by the petitions process is limited by the *Municipal Government Act*. For example, petitions dealing with planning

and development issues under Part 17 of the Act are of no effect (although such a petition can inform the municipality of public concerns).

### **Auditor General Act<sup>4</sup>**

An environmental petition process has been established under the federal *Auditor General Act*. The environmental petitions process allows Canadians to bring environmental concerns to the attention of the federal government. The government is required to respond to an environmental petition within 120 days of its receipt. Under this process, a petition must be:

- Submitted and signed by a resident of Canada;
- About an environmental matter in the context of sustainable development; and
- Within the mandate of one or more of the federal departments or agencies that are subject to the environmental petitions process.

The petition must contain one original signature and, as such, electronic petitions are not valid.

Further guidance for filing an environmental petition can be found in *Getting Answers: A Guide to the Environmental Petitions Process*.<sup>5</sup> •

<sup>1</sup> *Submitting Petitions to the Legislative Assembly* (November 2011), Office of the Parliamentary Counsel, Legislative Assembly of Alberta which is available on-line at [www.assembly.ab.ca/pro/Petition\\_guide.pdf](http://www.assembly.ab.ca/pro/Petition_guide.pdf)

<sup>2</sup> *Petitions: Practical Guide* (October 2008), Procedural Services of the House of Commons which is available on the Parliament of Canada website at [www.parl.gc.ca](http://www.parl.gc.ca).

<sup>3</sup> *Municipal Government Act*, R.S.A. 2000, c. M-26.

<sup>4</sup> *Auditor General Act*, R.S.C. 1985, c. A-17.

<sup>5</sup> *Getting Answers: A Guide to the Environmental Petitions Process* (2008), Office of the Auditor General of Canada which can be found on-line at [www.oag-bvg.gc.ca/internet/English/pet\\_lp\\_e\\_930.html](http://www.oag-bvg.gc.ca/internet/English/pet_lp_e_930.html).



### **From the Editor**

As Cindy mentioned, we often hear about the limitations of the law from ELC users. If you're anything like me, you might forget where laws come from: government and the politicians who are elected to run it. That's why we've put together this issue of *News Brief*. We hope to remind readers that sometimes the best course of action doesn't lie in existing legislation, but rather in putting pressure on public officials to enforce existing laws and policies or develop new ones.

As always, if you have feedback or ideas for content you can let me know by email at [lorry@elc.ab.ca](mailto:lorry@elc.ab.ca) or phone at 1-800-661-4238.

Our next issue, out in April 2012, will focus on public participation, standing, costs and other issues in the context of the Northern Gateway Pipeline.

Warmest regards,  
Leah



# LESSONS LEARNED FROM "POTATOGATE"

By Nigel Douglas  
Conservation Specialist  
[Alberta Wilderness Association](#)

Towards the end of 2010, the name "Potatogate" became synonymous with all that was bad about politics and public engagement in Alberta. News leaked out in late September that the Minister of Sustainable Resource Development (SRD) was proposing to sell off 16,000 acres of public land near Bow Island. In a behind-closed-doors process, the Alberta government had deemed the 25 sections of native prairie to be "surplus to requirements." Despite the fact that the land was known to be habitat for a number of species listed under the federal *Species at Risk Act* (including burrowing owl, ferruginous hawk and Sprague's pipit), the land would be ploughed up and used to grow potatoes.

Fast forward a year to October 2011, when one of the first actions of newly-appointed Premier Alison Redford was to scrap the deeply unpopular deal. The word "Potatogate" by then had become much more closely associated with public outrage and the growing realization that, if enough people care enough about something to speak out loudly and clearly, there is a chance that their politicians will eventually pay attention, even in Alberta.

The legal foundation for opposing the Potatogate land sale was not a strong one. Like so much legislation in Alberta, the

Minister of SRD is afforded a considerable degree of discretion in selling off our public resources. According to the 2010 *Public Lands Act*, "The Lieutenant Governor in Council may make regulations (a) authorizing the Minister to sell public land by public auction, private sale or tender on the terms and conditions prescribed by the Minister..." (emphasis added).

The minister is expected to listen to the advice of his staff, but is not required to act upon it. The Alberta Wilderness Association (AWA) applied under *Freedom of Information and Protection of Privacy (FOIPP)* legislation to see background correspondence behind the proposed sale and the results were very striking. The Fish and Wildlife division recommended "against the sale of this land due to its high value for species at risk and wildlife, and high ecological value as a large contiguous block of native grassland, a relatively limited resource." Similarly, a report from SRD's Rangeland division emphasized: "The land is environmentally sensitive and best left in its native state. Taking such a large acreage out of the public land base would have a profound effect on the people who rely on this resource and all the values it provides. (The) recommendation is **not** to sell it." Yet their advice was overruled.

When the news did eventually leak out that the proposed land sale was going ahead with no opportunity for public input, groups such as Alberta Wilderness Association, Alberta Native Plant Council and Alberta Fish and Game Association mobilized supporters to write to their politicians and to the media. The result was an unprecedented outpouring of opposition to a deeply unpopular deal, from a whole range of different interests: environmentalists, hunters, grazers and taxpayers all spoke out loud and clear. All provincial opposition parties also opposed the sale, and when the Lethbridge Herald revealed that the putative buyer of the land was a donor to the provincial PC party, the calls became even louder.

That the Potatogate land sale was finally cancelled was a credit to a newly-elected premier, who had stood on a platform of openness and transparency. But although this particular land sale was halted, the process that allows public land to be sold in Alberta with no opportunity for public comment remains in place. There is nothing to stop more "Potatogates" taking place in future. Until a legal framework is developed that defines a required process to allow public input before public land is disposed of, Albertans will need to remain vigilant. •

## SUPPORT THE ELC

### Can you imagine an Alberta where...

- Environmental concerns guide our choices?
- Future generations enjoy a clean, healthy and diverse environment?
- Strong, effective laws protect that healthy environment?
- Albertans actively engage in environmental decision-making?

At the ELC, we can imagine such a place – but we need your help to get there.

Please consider making a charitable donation to help us continue to push for an Alberta that will provide a clean, healthy and diverse environment for generations to come.

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