

The cost of protecting the environment

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The Environmental Law Centre is publishing a series of educational materials concerning legal rights related to environmental quality. This work is in support of enacting laws that will foster environmental quality for future generations of Albertans.

The environment is worth protecting. But, have you ever attempted to participate in a legal process to protect it? If you have, you will know the cost associated with doing so. You might go to court to challenge a harmful government decision or to stop a harmful activity by a neighbour. Or you might go to a regulatory tribunal to provide evidence so a better environmental decision is made. Either of these processes cost time and money. Often a lot of it.

Concerns around costs in environmental decision making can be distinguished between those related to bringing a legal action or an appeal to court (i.e. a judicial proceeding) and the costs associated with participating in a regulatory proceeding and/or appeal to a regulatory tribunal (i.e. a regulatory proceeding).

Participants in court processes need money for filings, document preparation, expert evidence and lawyers. In regulatory proceedings there may be a need to hire experts and lawyers to participate in an effective manner. Costs may arise not only from the direct costs of participation, but also from the ability of other parties to seek an award of costs – those costs being paid by the “unsuccessful” party – from the decision maker (whether a court or a tribunal) These cost concerns directly impact one’s right to access the justice system and may undermine the ability to effectively participate in regulatory proceedings.

The general rule in Alberta’s system of awarding costs in judicial proceedings is that the successful party may have a portion of costs covered, at the discretion of the court. In relation to public interest litigation, including environmental litigation, there has also been some recognition that issuing adverse cost awards against a public interest litigant should occur in only limited circumstances (i.e. the court should make a “no-costs order”). However, Alberta courts still issue costs against litigants in public interest cases.^[1] Accordingly, the ELC recommends that the *Alberta Rules of Court* be amended to state a “no-cost” assumption in favour of the public interest litigant.

Like in judicial proceedings, those participating in a regulatory proceeding may have some of their costs covered at the discretion of the relevant tribunal. There is no legislative mechanism to allow awarding costs incurred prior to the initiation of a statutory appeal. Once an appeal has been filed some of the costs may be covered while many will not be. Appellants are faced with significant

uncertainty as to whether costs will be covered and to what degree they will be out of pocket. To counter this uncertainty, the ELC recommends passing legislation that provides a clear identification of the quantum of costs that will be granted in relation to the tribunal hearing process as early as possible in a proceeding.

The issue of costs is central to how we protect the environment. How much is the environment worth? How does the ledger balance? Does being “out of pocket” result in good environmental credit?

In our latest report, [ENVIRONMENTAL RIGHTS IN ALBERTA: MODULE 5 – COSTS IN COURT AND REGULATORY PROCEEDINGS](#), we examine the way costs and cost awards have been handled in Alberta and across Canada.

[Download Now!](#)

The Environmental Bill of Rights Program:

*Phase 1 of the Environmental Law Centre’s **Environmental Bill of Rights Program** examines the current state of environmental rights in Alberta and several other jurisdictions, and makes a number of recommendations.*

MORE INFORMATION: [ENVIRONMENTAL RIGHTS IN ALBERTA: PHASE I: DO WE HAVE THE RIGHTS WE NEED?](#)

*The ELC is advocating for a provincial bill of rights to provide that substantive and symbolic legal framework to ensure clean water, clean air, clean soil and biodiversity are not only a legal framing today but so that they can be in the future. The ELC sets out key recommendations in its report *A Road Map for Environmental Rights in Alberta: Rights for a Sustainable Future*.*

MORE INFORMATION: [A ROAD MAP FOR ENVIRONMENTAL RIGHTS IN ALBERTA: RIGHTS FOR A SUSTAINABLE FUTURE](#)

Each of the modules within the ELC’s Environmental Bill of Rights Program take a more in-depth look at key issues we’ve identified along with our recommendations for them to be addressed in Alberta.

MORE INFORMATION: [ENVIRONMENTAL RIGHTS IN ALBERTA: MODULE 1: SUBSTANTIVE ENVIRONMENTAL RIGHTS](#)

MORE INFORMATION: [ENVIRONMENTAL RIGHTS IN ALBERTA: MODULE 2: THIRD PARTY OVERSIGHT AND ENVIRONMENTAL RIGHTS](#)

MORE INFORMATION: [ENVIRONMENTAL RIGHTS IN ALBERTA: MODULE 3: CITIZEN ENFORCEMENT FOR ENVIRONMENTAL QUALITY](#)

MORE INFORMATION: [ENVIRONMENTAL RIGHTS IN ALBERTA: MODULE 4: ACCESS TO INFORMATION](#)

The ELC would like to thank the Alberta Law Foundation for its support of the ELC's *Environmental Bill of Rights* program.



ABOUT THE ENVIRONMENTAL LAW CENTRE:

The Environmental Law Centre (ELC), a public interest environmental law charity, believes that law is one of the most powerful tools to protect the environment. Since it was founded in 1982, the ELC has been and continues to be Alberta's only registered charity dedicated to providing credible, comprehensive and objective legal information regarding natural resources, energy and environmental law, policy and regulation in the Province of Alberta. The ELC's mission is to educate and champion for strong laws and rights so all Albertans can enjoy clean water, clean air and a healthy environment.

As a charity, the Environmental Law Centre depends on your financial support.

[Help us](#) to continue to educate and champion for strong environmental laws, through tools such as [our blog](#) and all of [our other resources](#), so that all Albertans can enjoy a healthy environment.

Your support makes a difference.

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[1] See *Alberta Wilderness Association v Alberta* (Environmental Appeal Board), 2013 ABQB 44 (CanLII), [. *Vriend v Alberta*, 1996 ABCA 274 \(CanLII\) http://canlii.ca/t/2dd17](http://canlii.ca/t/2dd17), retrieved on 2017-10-10 Also see *Pauli v. ACE INA Insurance Co.*, 2004 ABCA 253 (CanLII), <http://canlii.ca/t/1hm4w>.

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