

Environmental Rights in Alberta: Follow up on ELC's Webinar on the Interaction of Environmental Rights & Property Rights

Author : Brenda Heelan Powell

On June 21st, we conducted a webinar based upon our most recent publication in the ELC's Environmental Rights program, [The Interaction of Environmental Rights & Property Rights](#). This webinar considered how an *Environmental Bill of Rights* (EBR), which is focused on components of the environment, could affect landowners and those with interests in land. Below are some of the questions that were raised and addressed during the webinar.

What is an Environmental Bill of Rights? An EBR is a way to express, entrench and protect environmental rights via legislation. An environmental right may be substantive in nature, protecting the right of every Albertan to a healthy environment. Environmental rights may also ensure that Albertans have process rights such as access to environmental information, meaningful participation in environmental decision-making, and effective tools to enforce environmental laws.

How does an Environmental Bill of Rights affect property rights? The role of an EBR is not to impose regulatory regimes upon the use of land and other natural resources. Rather, an EBR is meant to protect the right of all Albertans to a healthy environment. This means that an EBR will benefit landowners and those with interests in land (as well as Albertans without interests in land) by providing additional tools to prevent and remedy adverse environmental impacts.

Some of these tools – such as investigations and environmental protection actions – can be used to directly protect a person's interests in land. Other tools, such as enhanced participation and procedural rights in environmental decision-making and planning, can also protect a person's interests in land by improving access to information and opportunities to be heard. Third party oversight assists with ensuring that environmental rights, along with environmental laws, are being respected.

Does an Environmental Bill of Rights have to be a stand-alone piece of legislation or can existing legislation just be modified? The EBR is presented by the ELC as a stand-alone piece of legislation but the protections offered by an EBR could be achieved via modifications to existing legislation. The substantive right to a healthy environment could be incorporated into Alberta's

existing *Bill of Rights*. An Environmental Commissioner could be established by amendments to the *Auditor General Act*. Other pieces of legislation – such as sector specific legislation – could be modified to offer procedural environmental rights.

The advantage of a stand-alone EBR is that the legal and procedural protections would consistently apply across all environmental legislation (which might not be the case if existing legislation is modified). A stand-alone EBR provides a clear, express declaration of environmental rights in a piece of legislation that is paramount over other Alberta statutes.

What are some of the new legal and procedural tools that would be created by an Environmental Bill of Rights? The EBR expands public involvement in decision-making, guarantees certain process rights, and provides several tools to improve accountability in the implementation of environmental laws. The EBR also incorporates the idea that the Government of Alberta holds the environment in trust for all current and future generations of Albertans.

The EBR expands existing procedural rights by improving access to information, guaranteeing the opportunity for public participation in environmental decision-making, and protection for whistleblowers and from SLAPPs (strategic lawsuits against public participation).

Several legal tools are incorporated into the EBR to improve accountability. For instance, the EBR creates a new legal tool called environmental protection actions which can be brought against the Government of Alberta for failing in its duty as trustee of the environment, for failing to enforce environmental laws, or for violating an environmental right. Environmental protection actions may also be brought against a person for breaching an environmental law or for causing a significant adverse environmental effect. Other tools – such as investigations and creation of the Office of Environmental Commissioner – improve oversight and enforcement of Alberta's environmental laws.

Who determines what a healthy environment is? Who sets the thresholds for environmental effects? The EBR, as proposed by the ELC, provides a few avenues for making these determinations. Firstly, expanded public participation in environmental decision-making including at the policy and legislative level, will inform determinations of “healthy environment” and appropriate thresholds. Secondly, improved access to courts via environmental protection actions, will build case-law and precedent considering what constitutes a “healthy environment” and appropriate thresholds. Thirdly, the work and oversight of the Environment Commissioner, assisted by the Policy and Technical Advisory Group, will inform these determinations.

How will we get an Environmental Bill of Rights in Alberta? An EBR is a piece of legislation which means it must be passed by the government (provincial or federal, or both). The political will to pass an EBR is created by a public which expresses a desire or need for such legislation.

The idea of an EBR is not entirely new to the Alberta government. In the 1970s, an EBR was proposed in the Alberta Legislature (but obviously not passed). There have been some federal bills proposing an EBR in recent years and the Province of Ontario has had an EBR since 1993.

I missed the webinar, can I download it somewhere? Absolutely. A recording of the webinar is available [here](#), along with the accompanying [PowerPoint](#) presentation.

The Environmental Bill of Rights Program:

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.

[**ELC's DRAFT ENVIRONMENTAL BILL OF RIGHTS**](#)

The ELC sets out key recommendations in its report [A Road Map for Environmental Rights in Alberta: Rights for a Sustainable Future](#).

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

*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.*

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

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.

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

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

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

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

[ENVIRONMENTAL RIGHTS IN ALBERTA: MODULE 5 – COSTS IN COURT AND REGULATORY PROCEEDINGS](#)

[ENVIRONMENTAL RIGHTS IN ALBERTA: MODULE 6: ACCESS TO JUSTICE AND THE RIGHT TO BE HEARD](#)

[ENVIRONMENTAL RIGHTS IN ALBERTA: THE INTERACTION OF ENVIRONMENTAL RIGHTS AND PROPERTY RIGHTS](#)

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) has been seeking strong and effective environmental laws since it was founded in 1982. The ELC is dedicated to providing credible, comprehensive and objective legal information regarding natural resources, energy and environmental law, policy and regulation in 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. Our vision is a society where laws secure an environment that sustains current and future generations.

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.
[Donate online today](#)

Share this: