

# **ENVIRONMENTAL RIGHTS IN ALBERTA: Module 1: Substantive Environmental Rights**

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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.*

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When we talk about environmental rights we are generally talking about procedural rights you have under the law. These procedural rights may include:

- the right to appeal a decision that may impact on the environment,
- the right to access information about the activity, and
- the right to access a tribunal or the courts.

Whether a given procedural right exists varies in the circumstances and, in Alberta, depends on the nature of the activity (and its governing laws and regulations). Procedural rights may be codified, in laws and regulations, or they may arise through the common law.

Substantive environment rights on the other hand relate to right to a specific environmental condition. Typically this environmental condition is characterized as “healthy”, “healthful” or “clean”. Defining these terms may be done in our statutes and regulations or it may be left for the courts to decide.

Substantive environmental rights are not overly common and there are no rights to environmental quality in Alberta or Canada for that matter. This environmental rights module canvasses some of key questions related to substantive environmental rights and identifies some approaches taken elsewhere.

A substantive environmental right for Alberta is appealing in many regards. Where most legal rights relate to process this right would be outcome oriented. Nevertheless, many questions remain about how a province may choose to implement and protect a substantive right.

Some of the central questions for defining a substantive right, and that we take a closer look at, include:

1. Who defines it and what is the process for reaching a definition?
2. Who has the ability to uphold the right? Is it limited to individuals or is there a broader public right to environmental quality?
3. Does the right protect nature? If so who speaks for nature's rights?
4. Who decides if the right has been infringed?
5. What process should be used to determine who has infringed a right?
6. What remedies are available for an infringement?

We look at publications from subject expert/authors such as David Boyd, Lance Gunderson and Christopher Stone, and we look at case studies and legislation from other provinces, Parliament and other jurisdictions, as well as research and recommendations from the United Nations to consider, ultimately, whether Alberta needs substantive environmental rights (**SPOILER ALERT: YES**).

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### **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. Module 2 discusses issues around third party oversight and Module 3 delves into the need for and challenges of citizen enforcement. Phase 2 and future modules will consider costs of environmental rights, access to information and access to justice.*

[ENVIRONMENTAL RIGHTS IN ALBERTA:Phase I: Do We Have The Rights We Need?](#)

[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](#)

#### **HAVE YOUR SAY:**

**The ELC wants to know what you think and encourage discussion about the issues that matter. Please participate in our online poll or share your thoughts in the comment section below.**

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(function(d, s, id){ var js, fjs = d.getElementsByTagName(s)[0], p = (('https:' == d.location.protocol) ? 'https://' : 'http://'), r = Math.floor(new Date().getTime() / 1000000); if (d.getElementById(id)) {return;} js = d.createElement(s); js.id = id; js.async=1; js.src = p + "www.opinionstage.com/assets/loader.js?" + r; fjs.parentNode.insertBefore(js, fjs); }(document, 'script', 'os-widget-jssdk'));
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The ELC would like to thank the Alberta Law Foundation for its support of the ELC's *Environmental Bill of Rights* program.



*The Environmental Law Centre (ELC) believes that law is the most powerful tool 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.*

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