

#5

Frequently Asked Environmental Law Questions

PARTICIPATING IN LEGAL PROCESSES

Q:

How can I participate in the legal process involving particular environmental concerns?

A:

You have a number of options open to you. We have grouped these together into four categories:

- You can participate in making laws to protect the environment,
- You can use the law to protect your private interests from environmental harm,
- You can use the law to protect the public interest in a clean environment, and
- You can help enforce laws that protect the environment.

Making Law

Our laws are made up of statutes passed by the federal parliament and by the provincial legislatures. They also include regulations made under those statutes and by municipal bylaws. In addition we have inherited a body of law consisting of previous decisions of the courts in England and Canada. This is known as the "common law."

The federal government, provincial legislatures and municipal councils all use their authority to make laws protecting the environment. The simple act of voting allows you to participate in that process.

One vote in millions may not seem like much influence, but many votes are impossible to ignore. Anything that you can do to convince others to support good environmental laws helps to see those laws get passed

You can greatly increase your influence by joining with others in political parties or other groups. These groups can be more effective in influencing the population and governments.

Whether you try to influence lawmakers or the general public, you will have more success if you

have a clear understanding of the issues and carefully prepare the proposals that you will make.

At times governments attempt to gauge public opinion about proposed legislation. A pattern is developing of governments seeking public input into contemplated legislation and regulations. The consultation process involves the identification of issues and then seeking submissions to suggest how those issues should be solved. If you participate in these you will be able to receive working papers, attend information sessions, and perhaps appear at public hearings. These opportunities are often advertised in your local media. If you participate and prepare well-reasoned submissions they can be influential in changing the direction of the law.

If you are prepared to pay the price you could even hire a professional lobbyist to promote your views to politicians.

Using the Law to Protect Private Interests

Your interest in environmental law may stem from particular harm that you are experiencing. You may find that your land is being contaminated by your neighbours, that your market garden has been harmed by a farmer's weed spray or that your well water contains chemicals from a factory.

The law offers you a mechanism to seek redress for these and other damages that you may have suffered. If your neighbours allow things to pass from their land to your land, the neighbours could be liable in nuisance or trespass. If the neighbours used the land unreasonably to your detriment they could be liable in negligence. With regard to some substances, your neighbour could be liable for damage caused by contaminants that escape even though everything reasonable was done to prevent the escape.

In all of these cases you would have the right to bring a lawsuit against your neighbour to seek damages for the loss that you suffer and to ask the court to order that your neighbour stop these activities. If a relatively small amount is in issue, the lawsuit could be brought in the Provincial Court by way of a fairly simple process. If the damages are greater or if you want to obtain an injunction you will have to bring action in the Alberta Court of Queen's Bench. In that case you would be wise to hire a lawyer to act for you in the lawsuit.

There are time limits for starting actions and there are usually no guarantees that you will be successful. Bear in mind as well that the court has the power to order that unsuccessful parties pay some or all of the costs incurred in the lawsuit by the successful parties. That could work for you or against you.

If there are others who have also suffered damage you could get together to bring action and share the risk and the expense of doing so.

Even before your interests are harmed you can become involved in consultations or hearings designed to approve future projects. If you think that these projects will harm you, you may be able to participate in hearings before the boards that make the decisions. These can include municipal councils, federal and provincial tribunals and certain regulators. These types of hearings are often advertised and you should be on the lookout for them.

Using the Law to Protect the Public Interest

You may want to become involved in a matter that does not directly affect your interest but about which you have strong opinions. It is not always clear who represents the environment. It is represented in some cases by the government, particularly the environment departments. The government's position may not be what you think that it should be. You would like to influence the decision-makers to provide more or different protection than what the government wants. There are limits on who can bring forward these matters. The law of "standing" sets out those limits. For example, under the *Alberta Environmental Protection and Enhancement Act* polluting activities can receive an approval to continue. That approval can be appealed to the Environmental Appeal Board. The legislation limits those appeals to those who filed a statement of concern about the activity and who are "directly affected" by it. This right to be heard is called standing.

You will have to review the appropriate legislation to determine if you have standing. If it is not clear, the decision-maker will make that decision.

Sometimes others are given the responsibility of making decisions instead of the courts. These tribunals include the Energy and Utilities Board, the Natural Resources Conservation Board and the National Energy Board. Each has its own set of rules and procedures. In many respects their decisions are final, however courts retain the power to override their decisions if they try to do more than what the law allows them to do. This type of action is called "judicial review."

Enforcing the Law

What do you do if you are satisfied with the law as it exists but you think that it is not being enforced as it should be. In extreme cases you can commence a private prosecution under federal or provincial laws. This means that instead of the government seeking to penalize an alleged offender, you, as a citizen, are doing that.

This is a complex area and will require the help of a lawyer. It can also be expensive. Starting a private prosecution can sometimes shame the authorities into taking over and providing the resources that you lack in pursuing a conviction.

We already mentioned an application for judicial review. If you have standing, you can ask the court to declare that the proceedings of a tribunal are invalid because they did not follow their legislation.

There may be times when you think that laws have been broken but you cannot find the evidence that you need to proceed. The *Freedom of Information and Protection of Privacy Act* gives you access to information that is held by the government including Alberta Environmental Protection. The rules for this are contained in the act and its regulations.

Conclusion

Before becoming involved decide the result that you want. Sometimes you may know that you want to stop a development. In other instances you may just want to be satisfied that what is planned is environmentally sound. Sometimes you may just want to help keep the regulators on their toes. There are a number of variations on these opportunities and sometimes the rules relating to

them are complex. You would be wise to seek legal advice.



Acknowledgements

The Frequently Asked Environmental Law Questions series is made possible by a grant from Alberta Ecotrust and by charitable donations to the Environmental Law Centre.



The series is part of a larger project titled *Building Internet Bridges* which received support from the Community Animation Program of Health Canada and Environment Canada, Athabasca University, and the Environmental Law Centre.

We also express appreciation to the Alberta Law Foundation who has provided ongoing financial support to the Environmental Law Centre since its incorporation in 1982.



Environmental Law Centre

The Environmental Law Centre (Alberta) Society is a non-profit charitable organization operating in Alberta since 1982. The Society believes in making the law work to protect the environment and in support of this objective, provides services in environmental law education and assistance, environmental law reform, and environmental law research. The Society operates the Environmental Law Centre which is staffed by four full-time lawyers.

Funding is provided to the Society in part by the Alberta Law Foundation and through the generous support of the public. The Centre also accepts private and government research contracts for work relevant to and consistent with the Society's objectives.

For further information, pursue the following:

Environmental Law Centre Library Resources:

- WINNING BACK THE WORDS : CONFRONTING EXPERTS IN AN ENVIRONMENTAL PUBLIC HEARING / Richardson, Mary; Sherman, Joan; Gismondi, Michael. --Toronto: Garamond Press, c1993.
- CONSUMER ADVOCACY MANUAL / Lawson, Philippa. --Ottawa: Public Interest Advocacy Centre, 1991.
- ENVIRONMENTAL CONSULTATION : AN ALBERTA PERSPECTIVE / Alberta Environmental Network. - -Edmonton: Alberta Environmental Network, c1994.
- HEARINGS BEFORE ADMINISTRATIVE TRIBUNALS / Macaulay, Robert W.; Sprague, James L.H. --Scarborough: Carswell, c1995.
- EFFECTIVE ADVOCACY BEFORE ADMINISTRATIVE TRIBUNALS / Roman, Andrew J. --Toronto: Carswell, 1989.
- PUBLIC PARTICIPATION AND JUDICIAL REVIEW / Tollefson, Chris. --In Environmental Law and Policy / Elaine L. Hughes, Alastair R. Lucas, William A. Tilleman, eds. --Toronto : Emond-Montgomery Limited, Chapter Seven, pp. 235-276, c1998.
- NOT DIRECTLY AFFECTED : USING THE LAW TO CLOSE THE DOOR ON ENVIRONMENTALISTS / Sherman, Joan; Gismondi, Michael; Richardson, Mary. --In Journal of Canadian Studies, V. 31, No.1 (Spring 1996), pp. 102-118.

Websites:

- <http://www.gov.ab.ca/eab/index.html> *Alberta Environmental Appeal Board homepage*. Information on appealing decisions made under the Environmental Protection and Enhancement Act about development approvals, environmental certificates, or other orders.
- <http://www.gov.ab.ca/nrcb/guidedoc.html> *NRCB Process Guides* by the Natural Resources Conservation Board. A list of links to guides describing all aspects of the NRCB process.
- http://www.gov.ab.ca/nrcb/h_index.html *The NRCB Hearing: Get Involved – Here’s How* by the Natural Resources Conservation Board.
- <http://www.neb.gc.ca/about/particip.htm> *Information Bulletin IV: How to Participate in a Public Hearing* by the National Energy Board. Describes how to get involved in the hearing process and the different types of documents and procedures used.
- <http://www.neb.gc.ca/about/process.htm> *Information Bulletin II: The Public Hearing Process* by the National Energy Board. Explains the procedures currently used at public hearings by the National Energy Board (NEB).
- <http://www.sierralegal.org/reports/handbook.htm> *SIERRA LEGAL DEFENCE FUND HANDBOOK: How to Gather and Present Evidence for the Purposes of the Laying of Charges in a Private Prosecution* by John Werring, Sierra Legal Defence Fund, July, 1997. Intended for all jurisdictions.

- <http://www.web.net/~aen/action/action.htm> *Action Alert* by Alberta Environmental Network. Provides a current listing of environmental events happening in and around Alberta that need public participation or volunteers immediately.

Contacts:

- Alberta Environmental Network
10511 Saskatchewan Drive
Edmonton, AB T6E 4S1
Phone: 780-433-9302
Fax: 780-433-9305
E-mail: samaen96@freenet.edmonton.ab.ca
- *The Alberta Environmental Directory: An Annotated Guide to Alberta's Environmental Organizations and Agencies.* This directory will help you discover local and/or provincial environmental organizations that you may wish to contact to identify others with similar interests. It is compiled periodically by The Pembina Institute for Appropriate Development for the Alberta Environmental Network and should be available in most public libraries.
- Alberta Environmental Appeal Board
400, 9925 – 109 Street
Edmonton, AB T5K 2J8
Phone: 780-427-6207
Fax: 780-427-4693
E-mail: joanne.taylor-weir@gov.ab.ca
URL: www.eab.gov.ab.ca/eab/
- Alberta Energy and Utilities Board
Energy Resources Building
640 – 5th Avenue SW
Calgary, AB T2P 3G4
Phone: 403-297-37
Fax: 403-297-3520
URL: www.eub.gov.ab.ca
- Natural Resources Conservation Board
4th Fl., Sterling Place
9940 – 106 Street
Edmonton, AB T5K 2N2
Phone: 780-422-1977
Fax: 780-427-0607
URL: www.gov.ab.ca/nrcb
- National Energy Board
444 Seventh Avenue SW
Calgary, AB T2P 0X8
Phone: 403-292-4800
Fax: 403-292-5503
URL: www.neb.gc.ca
- Office of the Information and Privacy
Commissioner
410, 9925 – 109 Street
Edmonton, AB T5K 2J8
Phone: 780-422-6860
Fax: 780-422-5682
E-mail: ipcab@planet.eon.net
URL: www.gov.ab.ca/foip/



March 1999

The information provided is current to December 31, 1998. While every effort has been made to ensure the accuracy and timeliness of the information, the answer, of necessity, is of a general nature. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this publication.

©Environmental Law Centre (Alberta) Society, 1999

This information sheet can be reproduced for educational purposes without permission provided appropriate credit is given.