



Environmental Rights in Alberta

The Interaction of Environmental Rights & Property Rights



Environmental
Law Centre



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 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.
- Our vision is a society where laws secure an environment that sustains current and future generations.



The Interaction of Environmental Rights & Property Rights

- A recent publication of the ELC's *Environmental Rights* program.
- A series of educational modules 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 Environmental Rights program is funded by the

Alberta **LAW**
FOUNDATION



Overview

- The ELC's *Model Environmental Bill of Rights for Alberta* (Model EBR) published in 2017
 - Right to healthy environment
 - Public involvement in decision-making & process rights
 - Environmental justice
 - Accountability in implementation of environmental laws
 - Whistle-blower protection
- Role of EBR is not to impose regulatory regimes upon the use of land and natural resources RATHER meant to protect right of all Albertans to a healthy environment
- This report looks at the connection, convergence and potential divergence of environmental rights and property rights



What are Property Rights?

- Ownership and interests in land
 - Fee simple (ownership)
 - Leases
 - Easements
 - Restrictive covenants
 - Conservation easements
- Property rights are subject to limitations
 - Type of interest held
 - Zoning and planning legislation
 - Regulatory regimes
 - Common law obligations to neighbours



What are Environmental Rights?

- Substantive environmental rights = healthy environment
- Process Rights = tools and mechanisms to ensure healthy environment
- The ELC's Model EBR published in 2017
 - Right to healthy environment
 - Public involvement in decision-making & process rights
 - Environmental justice
 - Accountability in implementation of environmental laws
 - Whistle-blower protection
 - Public Trust



Will Environmental Rights infringe on Property Rights?

- Can an EBR be used to prevent a landowner from exercising his property rights?
- Remember that property rights are subject to limitations
 - Type of interest held
 - Zoning and planning legislation
 - Regulatory regimes
 - Common law obligations to neighbours
- Most relevant tools in EBR
 - Investigations
 - Environmental protection actions



How can Environmental Rights protect Property Rights?

- Property Rights Task Force raised 3 major concerns
 - Lack of consultation
 - Compensation
 - Access to courts and representations



General Protections offered by EBR

- Protect right to a healthy environment
- Government holds components of environment in trust
- Right to be involved in environmental decision-making:
 - Access to environmental information
 - Direct public participation in decision-making processes
 - Procedural rights
- Environmental justice
- Accountability
 - Remedies
 - Access to courts
 - Independent third party oversight
- Whistleblower protection



Environmental Rights improve Consultation (cont'd)

- EBR provides opportunities to participate in environmental decisions
 - development of Acts, regulations and policies
 - issuance of approvals, licenses and authorizations
 - process to request the development, amendment or repeal of an Act, regulation, instrument, policy or program necessary for environmental protection
- Documentation of decisions, activities, administrative measures, agreements, policies, legislation, plans, programs
- Environmental registry



Environmental Rights improve Consultation

- EBR provides process rights before provincial decision-makers
 - Reasonable opportunity for meaningful, effective, informed and timely participation
 - Public participation funding
 - Adequate notice
 - Opportunity to present comments or other information
 - Reasonable timeframes for information sharing and preparation
 - Issuance of written public decisions



Improve Access to Courts and Expand Enforcement Options

- Novel legal actions to enforce environmental rights
 - Environmental protection actions against government
 - Environmental protection actions against persons for statutory breaches
 - Environmental protection actions against persons for causing significant adverse effects
 - Protection against SLAPP suits
- Remove or alleviate barriers associated with Common Law actions
- Remove barriers created by court costs
- Public interest standing for judicial review



Improve Access to Courts and Expand Enforcement Options

Continued

- Appointment of *amicus environment et curiae*
- Third party interventions
- Public triggered investigations
- Office of Commissioner of the Environment, supported by a Technical and Policy Advisory Group



Interaction of Environmental Rights & Property Rights



Environmental Matter	Common Law	Statutory Law	Environmental Rights
<p>Water Pollution</p>	<p>Riparian Rights</p> <ul style="list-style-type: none"> • use of water for domestic purposes • undiminished quantity and quality of water • incidental protection of water <p>Nuisance</p> <ul style="list-style-type: none"> • unreasonable interference with use and enjoyment of property <p>Trespass</p> <ul style="list-style-type: none"> • a person or substance has entered onto the land of another <p><i>Rylands v Fletcher</i></p> <ul style="list-style-type: none"> • strict liability for damages if a non-natural use of the land, there was a substance likely to cause mischief, the substance escaped, and there was damage to person seeking a remedy 	<p><i>Water Act</i></p> <ul style="list-style-type: none"> • protected right to domestic use as defined in the Act • priority licensing system for use of water <p><i>EPEA</i></p> <ul style="list-style-type: none"> • protection of water quality (substance release) • issuance of approvals <p><i>Fisheries Act (federal)</i></p> <ul style="list-style-type: none"> • prohibition against deposition of deleterious substances 	<p>Right to a Healthy Environment</p> <ul style="list-style-type: none"> • substantive right held by all Albertans • components of the environment held as a public trust by the government <p>Environmental Protection Actions</p> <ul style="list-style-type: none"> • against government • against persons for breach of legislation • against persons for significant environmental harm



Interaction of Environmental Rights & Property Rights



Environmental Matter	Common Law	Statutory Law	Environmental Rights continued
Air Pollution	Nuisance Trespass <i>Rylands v Fletcher</i>	<i>EPEA</i> <ul style="list-style-type: none"> • protection of air quality (substance release) • issuance of approvals <i>Canadian Environmental Protection Act</i> (federal) <ul style="list-style-type: none"> • pollution prevention 	Third Party Oversight & Investigations <ul style="list-style-type: none"> • Commissioner of the Environment • Technical and Policy Advisory Group • Investigation for alleged breach of environmental law
Habitat Protection		<i>ALSA</i> <ul style="list-style-type: none"> • regional planning • conservation directives, conservation easements Various Pieces of Provincial Parks Legislation <ul style="list-style-type: none"> • provide a range of habitat protection for designated areas <i>Species at Risk Act</i> (federal) <ul style="list-style-type: none"> • protection of critical habitat and species residences <i>National Parks Act</i> (federal) <ul style="list-style-type: none"> • protection of ecological integrity is a legislative priority <i>Fisheries Act</i> (federal) <ul style="list-style-type: none"> • fish habitat 	Participation and Process Rights <ul style="list-style-type: none"> • opportunity to participate • information rights • reasonable timeframes <ul style="list-style-type: none"> • written, public decisions • anti-SLAPP provisions Whistleblower Protection <ul style="list-style-type: none"> • extended to all members



Final Thoughts

- Role of an EBR is to protect the right of all Albertans to a healthy environment
- Enhanced tools to protect a person's interests in land
 - Improved consultation and public participation
 - Improved access to courts
 - Improved enforcement options
- Not meant to impose another layer of regulation upon the use of land and other natural resources



Contact the ELC

Telephone: (780) 424-5099

Fax: (780) 424-5133

Toll-free: 1-800-661-4238

Email: bhpowell@elc.ab.ca

Website: www.elc.ab.ca

Blog: <http://elc.ab.ca/blog/>

Facebook: <http://www.facebook.com/environmentallawcentre>

Twitter: https://twitter.com/ELC_Alberta

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Questions?

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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