

MEDIA BACKGROUNDER

Canadian Environmental Bill of Rights

Introduction

The goal of the proposed Canadian Environmental Bill of Rights (CEBR) is to ensure that the right to a healthy environment is upheld in relation to the federal government's environmental responsibilities. It prioritizes the values of transparency, access to information, accountability, public participation in decision-making, and adequate enforcement. It establishes a right to a healthy environment, and imposes a public trust duty upon the federal government to adequately protect the environment. It empowers Canadians, in specific and limited circumstances, to access justice by bringing legal proceedings where federal enforcement is lacking.

The CEBR should be seen as a kind of "environmental contract" between the federal government and the citizens of Canada. Under the CEBR, Canadians explicitly entrust the federal government with the primary responsibilities for environmental protection. However, where such responsibilities are abdicated, Canadian citizens may hold government to account. By empowering Canadians, the CEBR will better ensure that our right to a healthy environment will be respected. In doing so, governments will earn the trust of Canadians on an issue that we cannot afford to mishandle.

No fewer than 118 countries across the world already recognize the right to a healthy environment in their constitutions. Therefore, the Canadian Environmental Bill of Rights is not a new or radical concept. The provisions of this model legislation were drawn from, or inspired by existing environmental statutes across Canada, including the Ontario *Environmental Bill of Rights*, the Yukon *Environment Act*, the N.W.T. *Environmental Rights Act*, and Quebec's *Environmental Quality Act*.

The Canadian Environmental Bill of Rights would apply only to areas of federal jurisdiction over the environment. It does not encroach upon provincial responsibilities. As well, the proposed CEBR acknowledges and respects constitutionally protected aboriginal rights.

Key Provisions

The key provisions of the proposed bill include the following:

1. Establishment of an Environmental Right

- This is the core of the EBR, from which the other provisions flow. By granting citizens the individual and collective right to a healthy and ecologically balanced environment, they are equipped to address threats to their local environment.
- Canadians would be vested with a right of action against the federal government for breach of this environmental right.

2. Establishment of a Public Trust Duty

- The federal government would be required to uphold its public trust duty to manage and protect the environment for the benefit of current and future generations.
- Canadians would be vested with a right of action against the federal government for breach of this public trust duty.

3. Access to Environmental Information

- Only through unfettered access to environmental information can citizens make informed decisions about how best to protect their environment.

4. Right to Participate in Environmental Decision-Making

- Environmental impacts of government decisions can have significant and wide-ranging impacts on individual and community interests. Citizens must be guaranteed the opportunity to participate in decisions that impact on federal environmental responsibilities.

5. Right to Request Review of Policies, Regulations and Laws

- All Canadians have an interest in ensuring that our environmental policies, regulations and laws are as efficient and effective as possible. By granting citizens a right to request their review we ensure that these instruments will remain most effective.

6. Right to Apply for an Investigation

- If Canadians believe that their environmental rights have been violated, they should have the opportunity to request government investigations.

7. Access to Justice: Right to Bring an Action

- Citizens must be empowered to bring a legal action in court against the federal government to uphold the right to a healthy and ecologically balanced environment, and to ensure the fulfillment of the federal public trust duty.
- Citizens must be empowered to bring a legal action in court against parties who are harming the environment in violation of a statute, regulation, or permit.
- These enforcement mechanisms are important given that the federal government often does not, for reasons of resource shortages or a lack political will, adequately enforce its laws and regulations. It is anticipated that such actions will be used sparingly, and will create an incentive for better enforcement.

8. Whistleblower Protection

- For the CEER to function optimally it must protect employees under federal jurisdiction from employer reprisal when they assist in [the enforcement of environmental laws, regulations, and policies under the Act.
- Without such environmental whistleblower protection, employees may be intimidated into silence to the detriment of all Canadians.

The organizations

Ecojustice, formerly Sierra Legal Defence Fund, is Canada's leading non-profit organization of lawyers and scientists devoted to protecting the environment. Since 1990, we have helped hundreds of groups, coalitions and communities expose law-breakers, hold governments accountable and establish powerful legal precedents in defence of our air, water, wildlife and natural spaces. www.ecojustice.ca

Friends of the Earth Canada is a charitable, non-profit environmental organization that serves as a national voice for the environment, working with others to inspire the renewal of our communities and the Earth, through research, education and advocacy. It is the Canadian voice for FoE International, the world's largest grassroots environmental network, uniting 70 national member groups. www.foecanada.org

Sierra Club Canada is a grassroots network with offices across Canada working to protect the integrity of global ecosystems since 1963 www.sierraclub.ca