

NOVA SCOTIA
ENVIRONMENTAL BILL OF RIGHTS

A Project of the Nova Scotia
Environmental Rights Working Group

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PREAMBLE

CONSIDERING THAT the people of Nova Scotia recognize the inherent and intrinsic value of the environment for the prosperity of the province;

AND RECOGNIZING that a healthy and ecologically balanced environment is inextricably linked to the health of communities, families and individuals in Nova Scotia;

AND RECOGNIZING that the people of Nova Scotia should have the means to ensure that decisions affecting the environment are achieved in an effective, timely, open and fair manner;

AND RECOGNIZING the cultural and spiritual significance of the environment to Indigenous Peoples who have lived here since time immemorial;

AND ACKNOWLEDGING that there is a history of environmental racism in Nova Scotia that has disproportionately and negatively affected historically marginalized, vulnerable, and economically disadvantaged individuals, groups or communities, particularly Indigenous People and African Nova Scotians;

AND WHEREAS the people of Nova Scotia share the responsibility to protect, conserve and restore the environment for the benefit of present and future generations;

AND WHEREAS the Government of Nova Scotia, as the representative of the people, is the trustee of the environment;

AND WHEREAS the Government of Nova Scotia has the primary responsibility to protect, conserve and restore the environment within its jurisdiction;

AND AFFIRMING that the people of Nova Scotia have a right to a healthy and ecologically balanced environment;

THEREFORE, the Legislative Assembly of Nova Scotia enacts as follows:

PART I

PURPOSES AND GUIDING PRINCIPLES OF THE ACT

Purposes of the Act

1(1) The General Purposes of this Act are:

- (a) To safeguard the rights of all present and future generations of Nova Scotia to a healthy and ecologically balanced environment by supporting and promoting the protection, enhancement and prudent use of the environment;
- (b) To protect the people of Nova Scotia from environmental hazards and guarantee that everyone living in Nova Scotia has a right to live and thrive in a healthy and ecologically balanced environment;
- (c) To understand and address environmental racism that has and continues to disproportionately and negatively affect historically marginalized, vulnerable, or economically disadvantaged individuals, groups or communities, particularly Indigenous People and African Nova Scotians;
- (d) To confirm the Government's public trust duty to protect the environment; and
- (e) To protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this Act.

1(2) The Procedural Purposes of this Act are:

- (a) To foster transparency, inclusiveness and accountability and provide the people of Nova Scotia with the legal tools to enable them to protect the environment;
- (b) To ensure that the people of Nova Scotia have access to the information about decisions that affect the health and integrity of the environment;
- (c) To ensure the people of Nova Scotia have access to justice to take action to uphold their right to a healthy and ecologically balanced environment;
- (d) To protect the people of Nova Scotia against malicious or strategic lawsuits that are designed to intimidate and dissuade participation in decision making or seeking environmental justice; and

(f) To enable the people of Nova Scotia to participate in environmental governance and decision making;

1(3) – The Substantive Purposes of this Act are:

(a) To incorporate principles of environmental law;

(b) To articulate and guarantee the fundamental environmental amenities necessary for the health, well-being, dignity and justice of the people of Nova Scotia;

(c) To acknowledge the intrinsic and fundamental value of the environment to all Nova Scotians and in particular Indigenous culture and traditions;

(d) To articulate the responsibilities of the people of Nova Scotia and the Government with respect to the environment.

Guiding Principles

2 The Act is to be applied in a manner consistent with the following principles:

(1) The Precautionary Principle - Where there are threats of serious or irreversible damage to the environment, lack of full scientific certainty should not be used as a reason for postponing action to protect the environment.

(2) The Polluter Pays Principle - A polluter shall bear the cost of measures to restore environmental damage caused by pollution based on either:

(a) The extent of the damage done to the environment; or

(b) The extent to which standards prescribed by law that regulate the release of pollution are exceeded.

(3) Where pollution poses a health risk to any person or where there is a risk of pollution spreading into the neighboring environment, including any body of water or into the air, which results in immediate action or remedial work being necessary to protect, preserve, or where reasonable, restore the environment, the Government has a responsibility to ensure that those actions or remedial work are performed in a timely manner and shall not use the Polluter Pays Principle as an excuse not to undertake any necessary immediate action;

(4) The Non-Regression Principle - Existing laws and regulations that protect, preserve and, where reasonable, restore the environment serve as a baseline and shall not be repealed by the Government.

(5) The Principle of Intergenerational Equity - Current generations of people living in Nova Scotia hold the environment in trust for future generations and have an obligation to use the environment and its resources in a way that leaves that environment in the same, or better, condition for future generations.

(6) The Principle of Environmental Justice and Equity - There shall be a just and equitable distribution of environmental benefits and burdens among all people of Nova Scotians without discrimination on the basis of any ground prohibited by law.

(7) Future decisions that affect the health or integrity of the environment must consider the disproportionate burden facing historically marginalized, vulnerable, or economically disadvantaged individuals, groups or communities, particularly Indigenous Peoples and African Nova Scotians.

PART II

ADMINISTRATION AND INTERPRETATION

Interpretation

3 In this Act,

“Community” means an identifiable whole or part of the population, and is not limited to a geographical area;

“Environmental Hazard(s)” includes all threats to human physical and mental well-being and to the intrinsic value of the environment, whether they emanate from air, water, land or any other sources;

“Environmental Protection Action” means any legal claim brought to the court or to an Environmental Review Tribunal created under this Act;

“Environmental Racism” means an activity or decision about the environment that disproportionately affects historically marginalized, vulnerable or economically disadvantaged individuals, groups and communities, particularly Indigenous Peoples and African Nova Scotians;

“Government” means the Government of Nova Scotia, an agency of the Government, or a person acting on behalf of the Government;

“Healthy and ecologically balanced environment” means an environment of a quality that protects human and cultural dignity, human health and well-being and in which essential

ecological processes are preserved for their own sake, as well as for the benefit of present and future generations, and includes clean air and clean water;

“Minister” means the Minister of Environment;

“Public trust” means the Government’s responsibility to preserve and protect the collective interest of the people in the quality of the environment for the benefit of present and future generations;

Conflict

4(1) In the case of a conflict between legislation, the provisions of this Act prevail;

(2) The provisions of this Act apply to all statutes, regulations and decisions emanating from the government or related to provincial land or to a provincial work or undertaking;

(3) Where there is any ambiguity over the legal interpretation of statutes, regulations or policies that protect, preserve or restore the environment, the ambiguity is resolved in favour of the protection, preservation, and where reasonable, restoration of the environment.

PART III

ENVIRONMENTAL RIGHTS AND OBLIGATIONS

Environmental Rights

5(1) Every resident of Nova Scotia has a right to a healthy and ecologically balanced environment and the right to be protected from environmental hazards.

Government Obligation to Protect the Environment

6(1) The Government of Nova Scotia has an obligation, within its jurisdiction, to protect the right of every resident of Nova Scotia to a healthy and ecologically balanced environment;

(2) The Government of Nova Scotia is the trustee of Nova Scotia’s environment and has an obligation to protect, preserve, and where reasonable, restore the environment in accordance with its public trust duty;

(3) The Government of Nova Scotia has an obligation to protect, preserve, and where reasonable, restore the environment for the benefit of present and future generations.

Public Obligation to Protect the Environment

7 Nova Scotians have an individual and collective obligation, where reasonable, to protect, preserve and restore the health and integrity of the environment for present and future generations.

PART IV

PARTICIPATION IN DECISION MAKING

Minimum Level of Public Participation

8(1) This Part sets out the minimum levels of public participation that must be met before the Government can make a decision that affects the health or integrity of the environment.

(2) Every resident of Nova Scotia has a fundamental interest in the health and integrity of the environment and the Government may not deny, oppose or otherwise contest the standing of any resident to be involved in any decision-making process that affects the environment.

(3) The Government shall accommodate historically marginalized, vulnerable, or economically disadvantaged individuals, groups or communities, particularly Indigenous Peoples and African Nova Scotians, in order to allow them to participate in environmental decision-making.

(4) This Part does not limit any rights to public participation otherwise available.

Right to Participate in Government Decision-Making

9 The Government shall ensure opportunities for effective, informed and timely public participation in decisions that affect the health or integrity of the environment, including all decisions related to provincial statutes, regulations, policies, proposals, approvals, permits or other instruments.

Environmental Rights Registry

10(1) The Minister shall maintain an Environmental Rights Registry, as prescribed.

(2) The Environmental Rights Registry shall be used to provide information to the public regarding all proposals, applications and decisions made by the Government that may affect the health and integrity of the environment.

(3) Where the Government is in possession of information about the health or integrity of the environment, including data collected by the Government on soil, water or air quality, that information shall be made available in the Environmental Rights Registry, upon request.

(4) The Government shall ensure equitable and reasonable access to the Environmental Rights Registry by providing information to the public in a reasonable and timely manner and without cost.

(5) Any resident who has a genuine interest may apply to the Minister for access to information about the health or integrity of the environment, including data on soil, water or air quality, and the Minister shall respond to the request.

(6) The Government shall make the Environmental Rights Registry accessible through its online website within five (5) years of the date that this Act comes into force.

Statement of Environmental Values

11(1) Any Minister responsible for a Government Department whose mandates includes management or protection of the environment shall prepare a Statement of Environmental Values that:

- (a) Explains how the purposes and principles of this Act are to be applied when the Government makes decisions that affect the health or integrity of the environment;
- (b) Sets measurable short-, medium-, and long-term goals for the protection, preservation, and where reasonable, restoration of the environment.

(2) A draft statement of environmental values shall be made available on the Environmental Rights Registry at least three (3) months before the statement is finalized.

(3) The responsible Minister shall consider the comments received, particularly comments from disproportionately and negatively affected historically marginalized, vulnerable, and economically disadvantaged individuals, groups and communities.

(4) The responsible Minister shall place a summary of the comments and the Government response to the comments on the Environmental Rights Registry.

(5) The Government shall consider the Statement of Environmental Values before making decisions that affect the health or integrity of the environment, or the public right to a healthy and ecologically balanced environment.

(6) A final Statement of Environmental Values shall be made public on the Environmental Rights Registry within twelve months of this Act coming into force.

(7) The Statement of Environmental Values shall be reviewed, and may be amended, every 4 years.

(8) Each review of the Statement of Environmental Values shall be open to public discussion and must incorporate comments received.

PART V

ENVIRONMENTAL COMMISSIONER

Appointment

12 The Governor in Council shall appoint an Environmental Commissioner who will be an officer of the Legislative Assembly.

Functions of the Environmental Commissioner

13 The functions of the Environmental Commissioner include, but are not limited to:

- (a) Ensuring the implementation of this Act;
- (b) Ensuring that the Government complies with this Act;
- (c) Ensuring that comments and concerns raised by any resident and in particular disproportionately and negatively affected historically marginalized, vulnerable, and economically disadvantaged individuals, groups and communities, are duly considered in accordance with this Act.
- (d) Providing guidance to any department of the Government on how to comply with this Act upon the request of a minister;
- (e) Assisting any department of the Government in providing educational programs pursuant to the purposes of this Act upon request by a minister;
- (f) Providing education and information about this Act to the public;
- (g) Providing advice and assistance to the people of Nova Scotia who wish to participate in decisions that affect the health and integrity of the environment;

- (h) Ensuring that the Environmental Rights Registry is being adequately maintained and updated;
- (i) Considering applications for review and applications for investigation under this Act;
- (j) Reviewing all other decisions made by the Government pursuant to this Act.

Reports of the Environmental Commissioner

14(1) The Environmental Commissioner shall report annually to the Legislative Assembly.

(2) The Annual Report of the Environmental Commissioner shall include but not be limited to:

- (a) A summary of the work of the Environmental Commissioner on whether any department of the Government affected by this Act has cooperated with requests by the Environmental Commissioner for information;
- (b) A summary of the information gathered by the Environmental Commissioner as a result of performing the functions of the Environmental Commissioner under this Act;
- (c) A summary of information gathered by the Environmental Commissioner on the compliance of responsible Ministers with section 11 respecting the Statement of Environmental Values.
- (d) Any information prescribed by the regulations made pursuant to this Act; and
- (e) Any information that the Environmental Commissioner considers appropriate.

(3) The first report made by the Environmental Commissioner pursuant to subsection (1) must be submitted within one year of the date this Act comes into force.

Special Reports

15(1) The Environmental Commissioner may make a special report to the Speaker of the Legislative Assembly at any time on any matter related to this Act that, in the opinion of the Environmental Commissioner, should not be deferred until the annual report, and the Speaker shall lay the report before the Legislative Assembly as soon as reasonably possible.

(2) Within 2 years of this Act coming into force, the Environmental Commissioner shall complete a special report to the Legislative Assembly on environmental racism in Nova Scotia, which shall include appointment of an independent panel to conduct public consultations and in particular consultation with disproportionately and negatively affected historically marginalized,

vulnerable, and economically disadvantaged individuals, groups and communities in the province.

Right to Request a Review or Investigation

16 Any resident may make an application to the Environmental Commissioner for a review where:

- (a) The person believes that an existing statute, regulation or policy of the Government should be amended, repealed or revoked in order to comply with this Act; or
- (b) The person believes that a new statute, regulation or policy of the Government should be made or passed in order for the Government to be in compliance with this Act.

17 Any resident may make an application for an investigation by the Environmental Commissioner where the applicant believes that Government action or inaction has failed to meet the requirements of this Act, or any other statute, regulation or policy whose purpose is the management, protection, preservation or restoration of the environment;

18(1) Within 10 days of receiving an application made pursuant to section 16 or 17 the Environmental Commissioner shall:

- (a) Acknowledge receipt of the application to review to the applicant; and
- (b) Refer the application to the Minister of any department that the Environmental Commissioner considers appropriate to review the matters raised in the application.

(2) Within 90 days of receiving an application made pursuant to section 16 or 17 the Environmental Commissioner shall report the following to the applicant:

- (a) The progress of the application; and
- (b) Any decision made pursuant to the application.

(3) Within 180 days of receiving an application made pursuant to section 16 or 17 the Environmental Commissioner shall provide a final report to the applicant with a decision and reasons for the decision.

PART VI

ENVIRONMENTAL REVIEW TRIBUNAL

19(1) The Governor in Council shall, within 2 years of the enactment of this Act:

(a) Establish an Environmental Review Tribunal for the province of Nova Scotia that will hear all legal claims, actions or other pleadings made pursuant to this Act and the Environment Act, as well as all legal claims, actions or other pleadings prescribed by the regulations made pursuant to this Act; or

(b) Begin negotiations in good faith with the appropriate Ministers of one or more of the Atlantic Provinces to establish a collaborative Atlantic Environmental Review Tribunal, to hear all legal claims, actions or other pleadings made pursuant to this Act, as well as all legal claims, actions or other pleadings prescribed by any other legislation or regulation made by the Government of any Atlantic Province that has as its primary purpose the protection, preservation or, where reasonable, restoration of the environment.

(2) Where negotiations under subsection 20(1)(b) fail to result in a Atlantic Environmental Tribunal or similar multi-jurisdictional tribunal, within 5 (five) years from the start of the negotiations, the Minister must establish an Environmental Tribunal pursuant to subsection 20(1)(a).

(3) The Environmental Review Tribunal will include at least one member of an Indigenous community and one member of the African Nova Scotian community.

PART VII

ACCESS TO ENVIRONMENTAL JUSTICE

Environmental Protection Action

20(1) Every resident of Nova Scotia has legal standing to bring an Environmental Protection Action against the Government for a failure to protect, preserve or, where reasonable, restore the environment pursuant to this Act, including but not limited to:

(a) Failing to fulfill its duties as trustee of the environment;

(b) Failing to protect the people of Nova Scotia from environmental hazards;

(c) Failing to enforce an environmental law; or

(d) Violating the right of the people of Nova Scotia to a healthy and ecologically balanced environment.

(2) An Environmental Protection Action under subsection (1) may be brought in relation to any action or inaction by the Government that has affected or will affect, in whole or in part, the health or integrity of the environment.

(3) It is not a defence to an Environmental Protection Action under subsection (1) that the Government has exercised the power to authorize an activity that may affect the health or integrity of the environment.

(4) It is not a defence to an Environmental Protection Action under subsection (1) that the Government has delegated its responsibilities with respect to protection, preservation or restoration of the environment.

Judicial Review

21(1) Every resident of Nova Scotia has standing before the Supreme Court of Nova Scotia or the Environmental Tribunal created under this Act to bring an application for the review of a decision by the Government that would otherwise be open to judicial review, provided that:

- (a) The matter arises in the context of a statute or regulations with their primary purpose being the protection, preservation or, restoration of the environment;
- (b) The applicant raises a justiciable issue; and
- (c) There is no other reasonable or effective way for the matter to get before the court.

Right of Action

22(1) Where a person has contravened or will imminently contravene an Act, regulation or instrument prescribed under this Act, any resident may bring an action against the person in the court in respect of the harm and is entitled to judgment if successful.

(2) Despite subsection (1), an action may not be brought under this section in respect of an actual contravention unless the plaintiff has applied for an investigation into the contravention pursuant to this Act or section 115 of the Environment Act and,

- (a) has not received one of the responses required under this Act or section 116 of the Environment Act within a reasonable time; or
- (b) has received a response under this Act or section 116 of the Environment Act that is not reasonable.

PART VIII

STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

23(1) A provincial judge of Nova Scotia may, on request or on his or her own initiative, after having heard arguments from the appropriate parties on the point, declare any legal action or other pleading against a person improper and impose a sanction on the party concerned where he or she determines that:

(a) The person initiated or concluded legal action or some other pleading pursuant to this Act, or any other legislation or regulations that have as their primary purpose the protection, preservation or, where reasonable restoration of the environment; and

(b) The legal action or other pleading against the person is:

- (i) Unfounded;
- (ii) Frivolous;
- (iii) Delayed;
- (iv) Vexatious;
- (v) Quarrelsome;
- (vi) Made in bad faith;
- (vii) Unreasonable;
- (viii) Prejudicial; or
- (ix) Retaliatory

(2) A provincial Judge of Nova Scotia shall take into particular consideration prejudice or discrimination against historically marginalized, economically disadvantaged groups or communities, particularly those that are Indigenous or African Nova Scotian.

PART IX

REGULATIONS, MISCELLANEOUS

Government Power to Make Regulations

24(1) The Government may make regulations pursuant to this Act.

Review

25(1) This Act shall be reviewed every 4 years.