

New Brunswick Environmental Bill of Rights: An Act to Protect Children, All New Brunswickers and Nature*

**The Environmental Bill of Rights: An Act to Protect Children, All New Brunswickers and Nature has been an ongoing project of the New Brunswick Environmental Rights Caucus and has had different names through its iterations, including: New Brunswick Environmental Bill of Rights: An Act to protect the right of New Brunswickers, particularly children, to a healthy environment and the New Brunswick Children's Environmental Bill of Rights. These names may be used interchangeably to refer to this document.*

Preamble

WHEREAS the people of New Brunswick share a deep concern for the natural environment and its sustainability, and recognize its inherent value;

WHEREAS the people of New Brunswick understand that a healthy and ecologically balanced environment is inextricably linked to the health of communities, families and individuals, and particularly children's health;

WHEREAS the people of New Brunswick have as a common goal the protection, conservation and restoration of the environment for the benefit of present and future generations;

WHEREAS scientific research demonstrates that children, particularly the very young (0-6 years), are much more vulnerable to environmental hazards than adults;

WHEREAS the Government of New Brunswick, as representative of the residents of New Brunswick, is the trustee of the environment and has the primary responsibility for achieving the conservation and restoration of the environment within its area of jurisdiction;

WHEREAS New Brunswick has obligations under the United Nations *Convention on the Rights of the Child* and recognizes that children have rights and freedoms, and have special guarantees of their rights and freedoms;

WHEREAS the people, and particularly the children, of New Brunswick have individual and collective rights to a healthy and balanced environment and to hold the Government of New Brunswick accountable for the environmental protection responsibilities within its jurisdiction;

WHEREAS young children are not cognizant of ambient environmental dangers that can bring them harm and are completely reliant on their parents for their safety and care;

WHEREAS pregnant women are vulnerable to unknowingly transmit harm from environmental hazards to their unborn children;

AND WHEREAS the government of New Brunswick recognises that the rapidly changing climate is threatening the wellbeing and safety of today's children, and that of their children to come, and failure to take action on climate change would be an act of injustice to all children.

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NOW THEREFORE, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of New Brunswick, enacts as follows:

Short Title

1 This Act may be cited as the *New Brunswick Environmental Bill of Rights (NBEER)*.

**PART I
DEFINITIONS AND PURPOSES**

Definitions

2 In this Act,

“air” means the atmosphere but does not include the atmosphere within a building or within the underground workings of a mine (air);

“child” means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier and includes:

- (a) a stillborn child;
- (b) an unborn child.

“children’s environmental health” means the aspects of children’s health, including quality of life, that are determined by physical, chemical, and biological factors in the environment;

“contaminant” means any solid, liquid, gas, micro-organism, odour, heat, cold, sound, vibration, radiation or combination of any of them, present in the environment,

- a) that is foreign to or in excess of the natural constituents of the environment,
- b) that adversely affects the natural, physical, chemical or biological quality or constitution of the environment, or
- c) that endangers the health of human, plant or animal life or the safety or comfort of a human, or
- d) that causes damage to property or plant or animal life or renders them unfit for use by persons or that interferes with visibility, the normal conduct of transport or business or the reasonable enjoyment of life or use or enjoyment of property, or
- e) that is designated by the Minister as a contaminant under this Act or the *Clean Air Act*, *Clean Environment Act* or *Clean Water Act*;

“costs” includes expenses, disbursements, losses, damages and charges;

“environment” means the components of the Earth and includes:

- a) air, land and water including all layers of the atmosphere;
- b) all organic matter and living organisms;
- c) biodiversity within and among species; and
- d) the interacting natural systems that include components referred to in paragraphs (a) to (b);

“environmental harm” means any contamination or degradation of the environment and includes harm caused by the release of any contaminant;

“environmental hazard” includes all threats to human physical and mental wellbeing whether they emanate from air, water, land or any other sources;

“health” means a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity;

“healthy and ecologically balanced environment” means an environment of a quality that protects human and cultural dignity, human health and wellbeing and in which essential ecological processes are preserved for their own sake, as well as for the benefit of present and future generations.

“instrument” means any document of legal effect issued under an Act and includes a permit, licence, approval, authorization, direction or order issued under an Act, but does not include a regulation;

“Indigenous peoples” has the meaning assigned by the definition of aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*

“land” includes soil, earth and the terrain;

“Minister” means the Minister of Environment and Local Government and includes any person designated by the Minister to act on the Minister’s behalf;

“Minister of Health” means the Minister of Health and includes any person designated by the Minister of Health to act on the Minister of Health’s behalf.

“person” in addition to the meaning ascribed to it by the *Interpretation Act*, includes a municipality, a rural community, Her Majesty in right of Canada and Her Majesty in right of New Brunswick;

“policy” means a program, plan or objective and includes guidelines or criteria to be used in making decisions about the issuance, amendment or revocation of statutory instruments, but does not include an Act, a regulation or an instrument;

“polluter-pays principle” means the principle that a polluter must bear the cost of measures to reduce pollution based on either the extent of the damage done to society or the extent to which an acceptable level (standard) of pollution is exceeded;

“precautionary principle” means the principle that 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;

“principle of environmental justice” means the principle that there should be a just distribution of environmental benefits and burdens among New Brunswickers without discrimination on the basis of any ground prohibited by the *Canadian Charter of Rights and Freedoms* and including race, national or ethnic origin, colour, religion, sex, age, income, sexuality, gender identity and mental or physical disability;

“principle of intergenerational equity” means the principle that current generations of New Brunswickers hold the environment in trust for future generations and have an obligation to use its resources in a way that leaves that environment in the same, or better, condition for future generations;

“principle of non-regression” means the principle that environmental laws enacted by the Government of New Brunswick must not be weakened and will not be repealed unless they are being replaced by stronger and more effective laws to protect the environment and environmental rights of New Brunswickers;

“principle of sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs;

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

“registry” means the Environmental Registry established under section 11(1);

“sustainability” means meeting current human needs without undermining the capacity of the environment to provide for those needs over the long term; and

“water” means flowing or standing water whether on or below the surface of the earth and whether naturally or artificially created, and the ice of any body of water.

Purposes of Act

3(1) The purposes of this Act are,

- a) To safeguard the rights of all present and future residents of New Brunswick to a healthy and ecologically balanced environment;
- b) To aid in the prevention, reduction and elimination of the use, generation and release of contaminants that cause harm to the integrity of the environment and the health of New Brunswick residents, especially children;
- c) To protect children's health from environmental hazards and guarantee that everyone living in New Brunswick has a right to live and thrive in a healthy and ecologically balanced environment;
- d) To ensure that the present and future impacts of the climate emergency on children's health is the primary consideration when creating or amending any and all climate emergency related laws and government policies.
- e) To confirm the Government of New Brunswick’s public trust duty to protect the environment under its jurisdiction;
- f) To protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this Act;
- g) To confirm the Government of New Brunswick’s responsibility to prevent climate change;
- h) To reduce the Province’s of New Brunswick’s release of greenhouse gas emissions according to the targets set in the Climate Change act; and

- i) To protect and conserve biological, ecological and genetic diversity, and natural resources, including plant life, animal life and ecological systems;

3(2) In order to fulfil the purposes set out in subsection (1), this Act provides for:

- a) means by which residents of New Brunswick may become informed and participate in environmental decision making by the Government of New Brunswick;
- b) increased accountability of the Government of New Brunswick for its environmental decision-making;
- c) increased access to the courts by residents of New Brunswick for the protection of the environment, and the protection of children from environmental hazards; and
- d) enhanced protection for all residents of New Brunswick who take action in respect of environmental harm.

Application

4(1) Her Majesty in right of New Brunswick is bound by the provisions of this Act.

4(2) The provisions of this Act apply to all decisions emanating from the Government of New Brunswick or related to provincial land or a provincial work or undertaking.

Conflict

5 Where there is a conflict between this Act and any other enactment, this Act prevails.

Interpretation

6 (1) This Act must be interpreted consistently with existing and emerging principles of environmental law, including but not limited to:

- a) the precautionary principle;
- b) the polluter pays principle;
- c) the principle of intergenerational equity;
- d) the principle of environmental justice;
- e) the principle of non-regression; and
- f) the principle of sustainable development.

6 (2) For greater certainty, nothing in this Act is to be construed as abrogating or derogating from the protection provided for the rights of Indigenous peoples by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.

PART II ENVIRONMENTAL RIGHTS AND OBLIGATIONS

7(1) Every person living in New Brunswick, including every child, has a right to a healthy and ecologically balanced environment.

7(2) Every child has the right to be protected from environmental hazards.

7(3) The Government of New Brunswick has an obligation to protect the right to a healthy and ecologically balanced environment of every resident of New Brunswick, particularly children and other vulnerable populations.

7(4) The Government of New Brunswick has an obligation, within its jurisdiction, to protect children from environmental hazards.

7(5) The Government of New Brunswick holds the environment within its jurisdiction in trust for the public's benefit, including for the benefit of present and future generations.

PART III PUBLIC PARTICIPATION IN GOVERNMENT DECISION-MAKING

8(1) This Part sets out minimum levels of public participation that must be met by the Government of New Brunswick when making environmental decisions including policies, acts, regulations, and instruments

8(2) Nothing in this Act shall be interpreted or applied so as to abrogate or derogate from protections provided for the Aboriginal and treaty rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982.

Right to Access Environmental Information

9 In order to contribute to the protection of the environment, and protect the environmental rights of people living in New Brunswick, the Government of New Brunswick shall ensure access to environmental information by rendering such information available on request to the public in a reasonable, timely, accessible and affordable manner.

Right to Participate in Government Decision-Making

10(1) **As part of the environmental rights set out in this Act**, the Government of New Brunswick shall ensure opportunities for effective, informed, accessible, and timely public participation in decision-making related to provincial policies, Acts, regulations and statutory instruments.

10(2) Every person living in New Brunswick has an interest in environmental protection and decision-making [and] every person living in New Brunswick has public interest standing before the courts of New Brunswick in environmental matters.

Environmental Registry

11(1) The Minister shall establish a public environmental rights registry, as prescribed by regulation, within 1 month of this Act coming into force.

11(2) The purpose of the registry is to provide a means of giving information about the environment to the public to protect their environmental rights as provided in section 7.

11(3) For the purposes of subsection (2), information about the environment includes, but is not limited to, information about:

- a) proposals, decisions, actions and events that could affect the environment;
- b) proposals, decisions, actions and events that could particularly affect children's environmental health;
- c) actions brought under this Act; and
- d) Statements of Environmental Values done under this Act.

Statement of Environmental Values

12(1) The Minister and the Minister of Health, in consultation with the Chief Medical Officer of Health, shall jointly prepare a Statement of Environmental Values, that:

- a) explains how the purposes of this Act are to be applied when Government of New Brunswick makes decisions that might affect the environment or children's environmental health;
- b) explains how consideration of the purposes of this Act should be integrated with other considerations, including social, economic and scientific considerations, that are part of Government of New Brunswick decision-making; and
- c) sets measurable short, medium, and long-term goals for protection of environmental health and children's environmental health and how the goals will be met by the Government of New Brunswick.

12(2) A draft Statement of Environmental Values shall be released to the Office of the Child and Youth and Seniors Advocate and the public for comment at least 3 months before the Statement is finalized.

12(3) The Minister and the Minister of Health shall consider comments received from the public in an informed, effective, timely, and accessible way.

12(4) An official Statement of Environmental Values shall be made public within 12 months of this Act coming into force.

12(5) The Minister and the Minister of Health shall ensure that the Statement of Environmental Values is considered before making decisions, including decisions on policy, statutes and regulations, that significantly affect the environmental rights and obligations set out in section 7.

12(6) In making decisions in accordance with section 12(5), the Minister and the Minister of Health shall consider the following factors:

- a) the extent and nature of the measures that may be required to mitigate or prevent environmental harm or harm to children's environmental health that could result from a decision whether or not to implement the proposal;

- b) the geographic extent, whether local, regional or provincial, of any environmental harm or harm to children's environmental health that could result from a decision whether or not to implement the proposal;
- c) the nature of the private and public interests, including governmental interests, involved in the decision of whether or not to implement the proposal; and
- d) any other matter that the Minister considers relevant.

12(7) The Statement of Environmental Values shall be reviewed every two years. The review shall be made public and shall incorporate comments received from members of the public, the Office of the Child and Youth and Seniors Advocate and the Medical Officer of Health.

Consultation on Government Proposals

13 The Minister and the Minister of Health shall consult with the public on any proposed policy, instrument or regulation that may impact the environmental rights and obligations as set out in section 8.

PART IV THE ENVIRONMENTAL RIGHTS COMMISSIONER

Environmental Rights Commissioner

14(1) There shall be an Environmental Rights Commissioner, who is an officer of the Legislative Assembly.

14(2) The Lieutenant Governor in Council shall appoint the Environmental Rights Commissioner on the address of the Legislative Assembly.

Functions of the Environmental Rights Commissioner

15(1) In addition to fulfilling his or her other duties under this Act, it is the function of the Environmental Rights Commissioner to:

- a) review the implementation of this Act and the compliance of the Government of New Brunswick with the requirements of this Act;
- b) at the request of a minister, provide guidance to their department on how to comply with the requirements of this Act,
- c) at the request of a minister, assist their department in providing educational programs about this Act;
- d) provide educational programs about this Act to the public;
- e) provide advice and assistance to members of the public who wish to participate in decision-making about a proposal as provided in this Act;
- f) review the government's obligations as pertaining to the use of the registry;
- g) review the use of the rights provided in this Act;
- h) review the receipt, handling and disposition of applications for review under this Act and applications for investigation under this Act;
- i) review department plans and priorities for conducting reviews under this Act;
- j) review the use of the right of action set out in this Act and the use of defences set out in this Act;
- k) review recourse to the procedure under this Act for complaints about employer reprisals; and

- l) provide a review and analysis of the yearly progress report required under section 3 of the New Brunswick *Climate Change Act*.

15(2) In addition to the functions described in subsection 15(1) the Environmental Rights Commissioner may do any of the following on petition or on his or her own initiative to address matters related to children's environmental health:

- a) receive and review a matter relating to children's environmental health;
- b) advocate, mediate or use another dispute resolution process on behalf of a child or group of children related to children's environmental health;
- c) The Environmental Rights Commissioner can conduct an investigation on behalf of the child, youth or group of children;
- d) inform the public about the environmental health needs and rights of children; and
- e) make recommendations to the Government of New Brunswick about legislation, policies and practices respecting the environmental health needs and rights of children.

Access to information

16(1) Notwithstanding any other Act, and subject to subsection (3), the Environmental Rights Commissioner has a right to access all information and documentation that is necessary to enable them to perform the duties and exercise the powers under this Act.

16(2) Subject to subsection (3), if the Environmental Rights Commissioner requests a person to provide information relating to a matter they are investigating or reviewing, and is of the opinion that the person is able to provide the information, the person shall provide the information and produce any documents or papers that, in the opinion of the Environmental Rights Commissioner, relate to the matter and that may be in the possession or under the control of the person.

16(3) The Environmental Rights Commissioner does not have a right to the following information or documents:

- a) information or documents protected by a claim of solicitor-client privilege; and
- b) information or documents certified by the Attorney General as disclosing the following
 - (i) the deliberations of the Executive Council; or
 - (ii) the proceedings of the Executive Council or a committee of the Executive Council.

16(4) Subject to subsection (3), a rule of law that authorizes or requires the following does not apply to an investigation or review by the Environmental Rights Commissioner:

- a) the withholding of a document, paper or thing on the ground that disclosure of the document, paper or thing would be injurious to the public interest; or
- b) the refusal to answer a question on the ground that answering the question would be injurious to the public interest.

Confidentiality of information

17(1) The Environmental Rights Commissioner, employees of the Office of the Environmental Rights Commissioner and any person appointed to assist the Environmental Rights Commissioner pursuant to a contract for professional services shall keep confidential all information and other matters that come to their knowledge in the exercise of their duties or functions under this Act, unless

required to disclose it by law or in furtherance of the Environmental Rights Commissioner mandate under this Act.

17(2) Notwithstanding subsection (1), and subject to subsections (3) and (4), the Environmental Rights Commissioner may disclose in a report made under this Act those matters which the Environmental Rights Commissioner considers necessary to disclose in order to establish grounds for his or her conclusions and recommendations.

17(3) A report referred to in subsection (2) shall not disclose the name of, or any identifying information about a child or youth or a parent or guardian of a child or youth unless consent has first been obtained from the child or youth and the parent or guardian.

17(3.1) A report referred to in subsection (2) shall not disclose the name of, or any identifying information about an adult or a senior unless consent has first been obtained from the adult or senior.

17(4) The Environmental Rights Commissioner, employees of the Office of the Environmental Rights Commissioner and any person appointed to assist the Environmental Rights Commissioner pursuant to a contract for professional services shall not disclose to any person the following information, unless the information is disclosed in accordance with the provisions of the relevant Act:

- a) information that if disclosed would, in the opinion of the Minister who holds the information, be detrimental to the wellbeing, security, health or care of any person;
- b) information that would identify a person without the person's consent; and
- c) information that the Environmental Rights Commissioner does not have a right of access to under section 16.

17(5) Failure by an employee to comply with subsection (1), (3) or (4) is sufficient grounds for dismissal or other disciplinary action as the Environmental Rights Commissioner considers appropriate.

Reports of the Environmental Rights Commissioner

18(1) The Environmental Rights Commissioner shall report annually to the Speaker of the Legislative Assembly, who shall lay the report before the Assembly within the next sitting of the legislature.

18(2) The report of the Environmental Rights Commissioner shall include but not be limited to:

- a) a report on the work of the Commissioner and on whether the departments affected by this Act have cooperated with requests by the Commissioner for information;
- b) a summary of the information gathered by the Commissioner as a result of performing the functions set out in section 15;
- c) a list of all proposals of which notice has been given under section 13 during the period covered by the report;
- d) provide a review and analysis of yearly progress report required under section 3 of the New Brunswick Climate Change Act;
- e) any information prescribed by the regulations; and
- f) any information that the Commissioner considers appropriate.

18(3) The first report under subsection (1) must be submitted within one year of the date this Act comes into force and must cover the period beginning on the day this Act comes into force and ending on December 31st of that year.

Special Report

19 The Environmental Rights Commissioner may make a special report to the Speaker of the Legislative Assembly at any time on any urgent matter related to this Act that, in the opinion of the 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.

Special Assignments

20 The Environmental Rights Commissioner may perform special assignments as required by the Legislative Assembly, but such assignments shall not take precedence over the other duties of the Commissioner under this Act.

Examination on oath or affirmation

21 The Environmental Rights Commissioner may examine any person on oath or solemn affirmation on any matter related to the performance of the Commissioner's duties under this Act and may in the course of the examination require the production in evidence of documents or other things.

PART V APPLICATION FOR REVIEW

Right to Request a Review

22(1) Any two residents of New Brunswick, including children who believe that new or existing policies, laws, Acts, regulations or instruments of New Brunswick should be made, amended, repealed or revoked in order to protect the environment or children's environmental health may apply to the Environmental Rights Commissioner for a review of the policies, Acts, regulations or instruments.

22(3) An application under subsection 20(1) or 20(2) must be in the form provided for that purpose by the office of the Environmental Rights Commissioner.

22(4) Within 10 days of receiving an application under subsection 20(1) or 20(2), the Environmental Rights Commissioner shall acknowledge receipt and shall refer the application to the minister for any department that the Environmental Rights Commissioner considers appropriate to review the matters raised in the application.

22(5) Within 90 days of receiving an application the under subsection 20(1) or 20(2) the Environmental Rights Commissioner shall report on the progress of the application, including any decision made on the application.

PART VI INVESTIGATION OF OFFENCES

Right to Request an Investigation

23(1) Any two residents of New Brunswick, including children, who believe that a prescribed Act, regulation or instrument has been contravened may apply to the Environmental Rights Commissioner for an investigation of the alleged contravention by the minister responsible for the Act, regulation or instrument.

23(2) The application must include a solemn affirmation or declaration stating:

- a) the name and address of the applicants;
- b) the specific Act or regulation or other statutory instrument alleged to have been contravened;
- c) the nature of the alleged offence and the name of each person alleged to have committed the offence or acted in a manner contrary to the specified Act or to the specified regulation or other statutory instrument; and
- d) in concise form, the evidence supporting the applicants' allegations.

23(3) The Environmental Rights Commissioner shall acknowledge receipt of the application within 20 days after receiving it and, subject to subsections (4) and (5), shall investigate all matters that the Environmental Rights Commissioner considers necessary to determine the facts relating to the alleged offence.

23(4) No investigation is required if the Environmental Rights Commissioner determines that the application is frivolous or vexatious.

23(5) Where the Environmental Rights Commissioner decides not to conduct an investigation, the Environmental Rights Commissioner must, within 60 days after the application for investigation is received, give notice of the decision, with reasons, to the applicant.

23(6) Where the Environmental Rights Commissioner conducts an investigation the Environmental Rights Commissioner must report to the applicant and to the Minister on the progress of the investigation every 90 days until resolution of the investigation.

23(7) The Environmental Rights Commissioner shall communicate the final results of the investigation in writing to the applicant and to the Minister.

23(8) The Environmental Rights Commissioner shall make a recommendation to the Minister regarding the investigation.

PART VII REMEDIES AND LEGAL ACTIONS

Judicial Review

24(1) Any resident of New Brunswick, regardless of whether they are directly affected by the matter in respect of which relief is sought, has standing before the New Brunswick Court of Queen's Bench to bring an application for judicial review of a government decision provided that the matter arises in the context of environmental rights protection;

24(2) An application for judicial review brought under this section must be brought in accordance with the provisions of the *Provincial Courts Act* and *Provincial Courts Rules*.

Environmental Protection Action Against Government

25(1) Every resident of New Brunswick may seek recourse in the New Brunswick Court of Queen's Bench to protect the environment by bringing an environmental protection action against the Government of New Brunswick for

- a) failing to fulfill its duties referred to in section 7;
- b) failing to enforce an environmental law;
- c) failing to protect children from environmental hazards; or
- d) violating the right to a healthy and ecologically balanced environment.

25(2) Actions under subsection (1) may be brought in relation to any action or inaction by the Government of New Brunswick that has in whole or in part resulted, or is likely to result, in environmental harm.

25(3) In an environmental protection action under subsection (1) it is not a defence that the Government of New Brunswick has or has not authorised an activity that may result in environmental harm.

Environmental Protection Action Against a Person

26(1) Every resident of New Brunswick may seek recourse in the New Brunswick Court of Queen's Bench to protect the environment by bringing a civil action against a person who has contravened, or is likely to contravene, a provincial statute or a regulation or other statutory instrument, if the contravention has resulted or is likely to result in environmental harm.

PART VIII EMPLOYER REPRISALS

Meaning of "Board"

27 In this Part, "Board" means the New Brunswick Labour and Employment Board.

Complaint about Reprisals

28(1) Any person may file a written complaint with the Board alleging that an employer has taken reprisals against an employee on a prohibited ground.

28(2) For the purposes of this Part, an employer has taken reprisals against an employee if the employer has dismissed, disciplined, penalized, coerced, intimidated or harassed, or attempted to coerce, intimidate or harass, the employee.

28(3) For the purposes of this Part, an employer has taken reprisals on a prohibited ground if the employer has taken reprisals because the employee in good faith did or may do any of the following:

- a) participate in decision-making about a Department Statement of Environmental Values, a policy, an Act, a regulation or an instrument as provided in this Act;
- b) apply for a review under this Act;
- c) apply for an investigation under this Act;
- d) comply with or seek the enforcement of a prescribed Act, regulation or instrument;
- e) give information to an appropriate authority for the purposes of an investigation, review or hearing related to a prescribed policy, Act, regulation or instrument; or
- f) give evidence in a proceeding under this Act or under a prescribed Act.

Determination by the Board

29(1) If the Board, after inquiring into the complaint, is satisfied that the employer has taken reprisals on a prohibited ground, the Board shall determine what, if anything, the employer shall do or refrain from doing about the reprisals.

29(2) A determination under subsection (1) may include, but is not limited to, one or more of:

- a) an order directing the employer to cease doing the act or acts complained of;
- b) an order directing the employer to rectify the act or acts complained of;
- c) an order directing the employer to reinstate employment or hire the employee, with or without compensation; or
- d) an order to compensate for loss of earnings or other employment benefits in an amount assessed by the Board against the employer.

PART IX

PROTECTION AGAINST STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

30(1) The purposes of this section are:

- a) to encourage individuals to express themselves on environmental and climate matters of public interest;
- b) to promote public participation in debate on environmental and climate matters of public interest;
- c) to discourage the use of litigation as a means of unduly limiting expression on environmental and climate matters of public interest; and
- d) to reduce the risk that expression on environmental and climate matters of public interest will be hampered by fear of legal action.

30(2) In this section, "expression" means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity.

30(3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to an environmental or climate matter of public interest.

30(4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that

- a) there are grounds to believe that
 - i. the proceeding has substantial merit, and
 - ii. the moving party has no defence in the proceeding; and
- b) the harm likely to be or have been suffered by the responding party as a result of the moving party's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.

30(5) In weighing under subsection (4) the public interest in permitting the proceeding to continue against the public interest in protecting the moving party's expression, a judge shall

- a) consider indicia of strategic lawsuits against public participation; and
- b) give effect to the presumption that indicia of strategic lawsuits against public participation are contrary to the public interest in permitting the proceeding to continue.

30(6) Once a motion under this section is made, no further steps may be taken in the proceeding by any party until the motion, including any appeal of the motion, has been finally disposed of.

30(7) Unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding

- a) in order to prevent or avoid an order under this section dismissing the proceeding; or
- b) if the proceeding is dismissed under this section, in order to continue the proceeding.

30(8) If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceedings on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances.

30(9) If a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances.

30(10) If, in dismissing a proceeding under this section, the judge finds that the responding party brought the proceeding in bad faith or for an improper purpose, the judge may award the moving party such damages as the judge considers appropriate.

PART X SPECIAL PROHIBITION TO PROTECT CHILDREN

31(1) No one may knowingly subject any child to an environmental hazard or environmental harm.

31(2) A person who knowingly subjects any child to an environmental hazard commits an offence under Part II of the Provincial Offences Procedure Act as a Category J offence.

PART XI GENERAL PROVISIONS

Regulation-making Authority

32 The Government of New Brunswick may make regulations for carrying out the purposes and provisions of this Act,

- a) prescribing information that is to be included in the registry;
- b) prescribing the process for review of applications in Part V;
- c) prescribing information that is to be included in the annual report of the Environmental Rights Commissioner; and
- d) prescribing any Act, regulation or instrument for the purpose of Part VI.

33 The Environmental Rights Commissioner shall examine every regulation transmitted for registration under the *Statutory Instruments Act* and every bill introduced in or presented to the legislature by a minister in order to ascertain whether any of the provisions are inconsistent with the purposes and provisions of this Act, and the Auditor General must report any inconsistency to the legislature at the first convenient opportunity.

34 This Act shall be reviewed every 7 years.

35 The *Right to Information and Protection of Privacy Act* is amended to add the following section:
All documentation provided to a Department in application for an instrument posted to the Environmental Registry established under the Environmental Bill of Rights shall be made public upon request by the relevant Department without the need to file a request under this Act.