

NEW BRUNSWICK

ENVIRONMENTAL BILL OF RIGHTS

Preamble

WHEREAS the people of New Brunswick share a deep concern for the natural environment 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;

AND 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;

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 and may include air contained in a building, but does not include the atmosphere within a building or within the underground workings of a mine;

“children” means persons who have not yet attained the age of majority for the purposes of this Act;

“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 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, 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 normal enjoyment of life or use or enjoyment of property, or
- d) 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 well-being whether they emanate from air, water, land or any other sources;

“health” means a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity;¹

“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.

“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;

“land” includes soil, earth and the terrain;

“Minister” means the Minister of Environment 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.

¹ Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

“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*.

“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 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);

“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 protect children’s health from environmental hazards and guarantee that children in New Brunswick have a right to live and thrive in an environment free from environmental hazards;
- c) To confirm the Government of New Brunswick’s public trust duty to protect the environment under its jurisdiction; and
- d) To protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this Act.

3(2) The purposes set out in subsection (2) include the following:

- a) 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;

- b) The protection and conservation of biological, ecological and genetic diversity; and
- c) The protection and conservation of natural resources, including plant life, animal life and ecological systems.

3(3) In order to fulfil the purposes set out in subsections (2) and (3), this Act provides for,

- a) Means by which residents of New Brunswick may become informed and participate in the making of environmentally significant decisions 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 Canada and Her Majesty in right of New Brunswick are bound by the provisions of this Act.

4(2) The provisions of this Act apply to all decisions emanating from the Province 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 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 sustainable development;
- d) the principle of intergenerational equity; and
- e) the principle of environmental justice.

PART II
ENVIRONMENTAL RIGHTS AND OBLIGATIONS

7(1) Every resident of New Brunswick, including every child, have 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, within its jurisdiction, to protect the right of every resident of New Brunswick, including children, to a healthy and ecologically balanced environment.

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 is the trustee of New Brunswick's environment, within its jurisdiction, and has the obligation to preserve it in accordance with the public trust 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 before the Government of New Brunswick makes decisions on certain kinds of environmentally significant proposals for policies, Acts, regulations and instruments.

8(2) This Part does not limit any rights of the public participation otherwise available.

Right to Access Environmental Information

9 In order to contribute to the protection of the environmental rights of New Brunswick residents, especially children, the Government of New Brunswick shall ensure effective access to environmental information by rendering such information available on request to the public in a reasonable, timely, and affordable fashion.

Right to Participate in Government Decision-Making

10(1) In order to contribute to the protection of the environmental rights of New Brunswick residents, the Government of New Brunswick shall ensure opportunities for effective, informed and timely public participation in decision-making related to provincial policies, Acts,

regulations and statutory instruments.

10(2) Every resident of New Brunswick, including children, has an interest in environmental protection and the Government of New Brunswick may not deny, oppose or otherwise contest the standing of any resident, including a child, to participate in environmental decision-making or to appear before the courts in environmental matters solely because they lack a private or special legal interest in the matter.

Environmental Registry

11(1) The Minister shall establish an environmental 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 right to a healthy environment and children's right to protection from environmental hazards.

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) activities done under this Act.

Statement of Environmental Values

12(1) The Minister shall prepare a Statement of Environmental Values, that:

- a) explains how the purposes of this Act are to be applied when Government of New Brunswick decisions that might affect the environment or children's environmental health are made;
- 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 public for comment at least 3 months before the Statement is finalized.

12(3) The Minister shall consider comments received from the public and shall make public a summary of the comments and the Minister's response to those comments.

12(4) A final 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 decisions that might significantly affect the health of the environment or children's environmental health, or cause environmental harm are made, including decisions on policy, statutes and regulations.

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

- a) the extent and nature of the measures that might 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;
- 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 public and shall incorporate comments received from members of the public.

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 cause environmental harm or cause harm to children's environmental health.

PART IV
THE ENVIRONMENTAL COMMISSIONER

Environmental Commissioner

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

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

Functions of the Environmental Commissioner

15(1) In addition to fulfilling his or her other duties under this Act, it is the function of the Environmental 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 the department on how to comply with the requirements of this Act, including guidance on,
- c) at the request of a minister, assist the 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 use of the registry;
- g) review the exercise of discretion by ministers under this Act;
- h) review recourse to the rights provided in this Act;
- i) review the receipt, handling and disposition of applications for review under this Act and applications for investigation under this Act;
- j) review department plans and priorities for conducting reviews under this Act;
- k) review the use of the right of action set out in this Act, the use of defences set out in this Act; and
- l) review recourse to the procedure under this Act for complaints about employer reprisals.

15(2) In addition to subsection 15(1) the Environmental 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) if advocacy, mediation or other dispute resolution process has not resulted in an outcome the Environmental Commissioner considers satisfactory, 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 or an authority about legislation, policies and practices respecting the environmental health needs and rights of children.

Reports of the Environmental Commissioner

16(1) The Environmental Commissioner shall report annually to the Speaker of the Legislative Assembly, who shall lay the report before the Assembly as soon as reasonably possible.

16(2) The report of the Environmental 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 co-operated 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 subsection s.13 during the period covered by the report;
- d) any information prescribed by the regulations; and
- e) any information that the Commissioner considers appropriate.

16(3) The first report under subsection (1) must be submitted within one year of the date this Act comes into force must cover the period beginning on the day this Act comes into force and ending on December 31st of that year.

Special Report

17 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 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

18 The Environmental 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

19 The Environmental 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

20(1) Any two residents of New Brunswick who believe that an existing policy, Act, regulation or instrument of New Brunswick should be amended, repealed or revoked in order to protect the environment or children's environmental health may apply to the Environmental Commissioner for a review of the policy, Act, regulation or instrument.

20(2) Any two residents of New Brunswick who believe that a new Act, regulation or policy of New Brunswick should be made or passed in order to protect the environment or children's environmental health may apply to the Environmental Commissioner for a review of the need for the new Act, regulation or policy.

20(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 Commissioner.

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

20(5) Within 90 days of receiving an application the under subsection 20(1) or 20(2) the Environmental 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

21(1) Any two residents of New Brunswick who believe that a prescribed Act, regulation or instrument has been contravened may apply to the Environmental Commissioner for an investigation of the alleged contravention by the minister responsible for the Act, regulation or instrument.

21(2) The application must include a solemn affirmation or declaration stating

- a) the name and address of the applicant;
- b) that the applicant is at least 18 years old and a resident of Canada and whether they are applying for themselves or as a guardian of a child;
- c) the specific Act or regulation or other statutory instrument alleged to have been contravened;
- d) 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
- e) in concise form, the evidence supporting the applicant's allegations.

21(3) The responsible minister shall acknowledge receipt of the application within 20 days after receiving it and, subject to subsections (4) and (5), investigate all matters that the Minister considers necessary to determine the facts relating to the alleged offence.

21(4) No investigation is required if the responsible minister determines that the application is frivolous or vexatious.

21(5) Where the responsible minister decides not to conduct an investigation, the minister must, within 60 days after the application for investigation is received, give notice of the decision, with reasons, to the applicant.

21(6) Where the responsible minister conducts an investigation the minister must report to the applicant and to the Environmental Commissioner on the progress of the investigation every 90 days until resolution of the investigation.

21(7) The responsible minister shall communicate the final results of the investigation in writing to the applicant and to the Environmental Commissioner.

PART VII REMEDIES AND LEGAL ACTIONS

Judicial Review

22(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 Provincial Court to bring an application for the review of a government decision that would otherwise be open to judicial review under section _____ of the _____ provided that

- a) the matter arises in the context of environmental protection;
- b) the applicant raises a serious issue;
- c) the applicant has a genuine interest in the matter; and
- d) there is no other reasonable or effective way for the matter to get before the court.

22(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

23(1) Every resident of New Brunswick may seek recourse in the Provincial Court to protect the environment by bringing an environmental protection action against the Government of New Brunswick for

- a) failing to fulfill its duties as trustee of the environment;
- 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.

23(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.

23(3) It is not a defence to an environmental protection action under subsection (1) that the Government of New Brunswick has or has exercised the power to authorize an activity that may result in environmental harm.

Environmental Protection Action Against a Person

24(1) Every resident of New Brunswick may seek recourse in the 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.

Costs

25(1) A plaintiff bringing an action under subsections 23(1) or 24(1) may only be ordered by the court to pay costs if the action is found to be frivolous or vexatious.

26 The Act does not limit any other right to bring or maintain a proceeding.

PART VIII EMPLOYER REPRISALS

Meaning of “Board”

27 In this Part,

“Board” means the New Brunswick Labour and Employment Board.

Complaint about Reprisals

29(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.

29(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.

29(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

30(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.

30(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

31(1) A Judge of the Court of Queen's Bench of New Brunswick may, at any time, on request or on his or her own initiative after having heard the parties on the point, declare an action or other pleading improper and impose a sanction on the party concerned.

31(2) The procedural impropriety may consist in a claim or pleading that is clearly unfounded, frivolous or dilatory or in conduct that is vexatious or quarrelsome. It may also consist in bad faith, in a use of procedure that is excessive or unreasonable or causes prejudice to another person, in particular if it restricts freedom of expression in public debate.

31(3) If a legal person or an administrator of the property of another resorts to an improper use of procedure, the directors and officers of the legal person who took part in the decision or the administrator may be ordered personally to pay damages.

PART X

SPECIAL PROHIBITION TO PROTECT CHILDREN

32(1) No one may knowingly subject any child to an environmental hazard.

32(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 offense.

PART XI

GENERAL PROVISIONS

Regulation-making Authority

33(1) 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 Commissioner;
- d) prescribing any Act, regulation or instrument for the purpose of Part VI.

34 The Environmental Commissioner may 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.

35 This Act shall be reviewed every 7 years.

36 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.