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(Bill No. 108)

Environmental Bill of Rights

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PRIVATE MEMBER'S BILL

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**For House
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AMENDMENTS

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CHAIR, IN COMMITTEE



ENVIRONMENTAL BILL OF RIGHTS

BILL NO. 108

2021

WHEREAS residents recognize the inherent and intrinsic value of the environment for the prosperity of the province;

AND WHEREAS a healthy and ecologically balanced environment is inextricably linked to the health of communities, families and individuals in Prince Edward Island;

AND WHEREAS residents should have the means to ensure that decisions affecting the environment are achieved in an effective, timely, open and fair manner;

AND WHEREAS the Legislative Assembly recognizes the cultural and spiritual significance of the environment to Indigenous peoples who have lived in Prince Edward Island since time immemorial;

AND WHEREAS the Legislative Assembly acknowledges that there is a history of environmental racism in Prince Edward Island that has disproportionately and negatively affected historically marginalized, vulnerable and economically disadvantaged individuals, groups and communities, particularly Indigenous people and people of colour;

AND WHEREAS residents share the responsibility to protect, preserve and restore the environment for the benefit of present and future generations;

AND WHEREAS the Government of Prince Edward Island, as the representative of the people, is the trustee of the environment;

AND WHEREAS the Government has the primary responsibility to protect, preserve and restore the environment within its jurisdiction;

AND WHEREAS the Legislative Assembly affirms that residents have a right to a healthy and ecologically balanced environment;

AND WHEREAS the Government recognizes the socio-economic and ecological threats posed by anthropogenic climate change;

AND WHEREAS the *United Nations Declaration on the Rights of Indigenous Peoples* affirms Indigenous peoples' rights to healthy environments and the Government recognizes the value of implementing that *Declaration* provincially;

THEREFORE BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

PART 1 – INTERPRETATION AND PURPOSES

1. Definitions

In this Act

- (a) “**Assembly**” means the Legislative Assembly of the province;
- (b) “**Board**” means the Employment Standards Board established under the *Employment Standards Act* R.S.P.E.I. 1988, Cap.E-6.2;
- (c) “**Commissioner**” means the Environmental Commissioner appointed under subsection 14(2);
- (d) “**department**” means a department or office of the public service created by or under the *Public Departments Act* R.S.P.E.I. 1988, Cap. P-29;
- (e) “**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;
- (f) “**minister**” means a member of Executive Council;
- (g) “**municipality**” means a municipality as defined in the *Municipal Government Act* R.S.P.E.I. 1988, Cap. M-12.1;
- (h) “**public land**” means land that
 - (i) belongs to Her Majesty in right of the province or to a municipality, or
 - (ii) is subject to a restrictive covenant under the *Natural Areas Protection Act* R.S.P.E.I. 1988, Cap. N-2,but does not include land that is leased from a person referred to in subclause (i) and that is used for agricultural purposes;
- (i) “**public resource**” means
 - (i) air,
 - (ii) water,



- (iii) unimproved public land,
- (iv) any parcel of public land that is larger than five hectares and is used for
 - (A) recreation,
 - (B) conservation,
 - (C) resource extraction,
 - (D) resource management, or
 - (E) a purpose similar to one mentioned in paragraphs (A) to (D), and
- (v) any plant life, animal life or ecological system associated with any air, water or land described in subclauses (i) to (iv);
- (j) **“registry”** means the environmental registry established under section 3 of this Act;
- (k) **“resident”** means a person legally entitled to remain in Canada and who makes his or her home in and is ordinarily present in Prince Edward Island, but does not include a tourist, a visitor to the province, a member of the Canadian Armed Forces ordinarily resident in another jurisdiction, or a student ordinarily resident in another jurisdiction.
- (l) **“undertaking”** means any construction, industry, operation or other project or any alteration or modification of any existing undertaking that will or may
 - (i) cause the emission or discharge of any contaminant into the environment,
 - (ii) have an effect on any unique, rare or endangered feature of the environment,
 - (iii) have a significant effect on the environment or necessitate further development which is likely to have a significant effect on the environment, or
 - (iv) cause public concern because of its real or perceived effect or potential effect on the environment.

2. Purpose

- (1) The general purpose of this Act is to
 - (a) safeguard the right of all present and future generations of residents to a healthy and ecologically balanced environment by supporting and promoting the protection, enhancement and prudent use of the environment;
 - (b) protect residents from environmental hazards and guarantee that everyone living in Prince Edward Island has a right to live and thrive in a healthy and ecologically balanced environment;
 - (c) address environmental racism that disproportionately and negatively affected, and continues to affect, historically marginalized, vulnerable or economically disadvantaged individuals, groups and communities, particularly indigenous peoples and people of colour;
 - (d) confirm the Government's duty to protect the environment as a public trust; and
 - (e) protect, preserve and, where reasonable, restore the integrity of the environment by the means provided in this Act.

Purpose – procedural

- (2) The procedural purpose of this Act is to
 - (a) foster transparency, inclusiveness and accountability, and provide residents with legal tools to enable them to protect the environment;
 - (b) ensure that residents have access to information about decisions that affect the health and integrity of the environment;

- (c) ensure that residents have access to justice to take action to uphold their right to a healthy and ecologically balanced environment;
- (d) protect residents against malicious or strategic lawsuits that are designed to intimidate and dissuade participation in decision-making or seeking environmental justice; and
- (e) enable residents to participate in environmental governance and decision-making.

Purpose – substantive

- (3) The substantive purpose of this Act is to
 - (a) establish principles of environmental law;
 - (b) articulate and guarantee the fundamental environmental needs that are necessary for the health, well-being, dignity and social equity of residents;
 - (c) acknowledge the intrinsic and fundamental value of the environment to all residents, and to Indigenous cultures and traditions in particular; and
 - (d) articulate the responsibilities of residents and the Government with respect to the environment.

PART 2 – ENVIRONMENTAL REGISTRY

3. Environmental Registry

- (1) The Commissioner shall establish an environmental registry containing
 - (a) proposals that in the Commissioner’s opinion have significant impact on the environment;
 - (b) all proposed public works and undertakings;
 - (c) orders, directives, appeals, decisions and hearings under the *Environmental Protection Act* R.S.P.E.I. 1988, Cap. E-9;
 - (d) policies, programs, standards, guidelines, objectives and approval processes established by the Minister of Environment, Energy and Climate Action;
 - (e) convictions, penalties and other enforcement actions brought under this Act;
 - (f) information or documents required by the regulations to be included in the registry;
 - (g) reports of the Commissioner made under section 23 and any other reports that the Commissioner considers should be placed in the registry for the purpose of this Act; and
 - (h) any other information or document considered appropriate by the Commissioner.

Registry to be available electronically

- (2) The registry shall be made available to the public on a website on the Internet to provide access to the public about information on the environment.

PART 3 – PUBLIC PARTICIPATION IN GOVERNMENT DECISION-MAKING

4. Public participation

- (1) This Part of the Act sets out minimum levels of public participation that must be met before the Government makes decisions on certain kinds of environmentally significant proposals for policies, Acts, regulations and instruments.



Other rights not limited

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

Responsible department

- (3) For the purpose of sections 5, 6 and 7, where a proposal is under consideration in more than one department, “department” means the department with primary responsibility for the proposal and “minister” means the minister responsible for that department.

5. Proposal for policy or Act

- (1) Where a minister considers that a proposal under consideration in the minister's department for a policy or Act could, if implemented, have a significant effect on the environment, and the minister considers that the public should have an opportunity to comment on the proposal before implementation, the minister shall do everything in the minister's power to give notice of the proposal to the public at least 30 days before the proposal is implemented.

Financial or administrative matters excepted

- (2) Subsection (1) does not apply to a policy or Act that is predominantly financial or administrative in nature.

6. Proposal for regulation

- (1) Where a minister considers that a proposal under consideration in the minister's department for a regulation under an Act could, if implemented, have a significant effect on the environment, the minister shall give notice of the proposal to the public at least 30 days before the proposal is implemented.

Financial or administrative regulations excepted

- (2) Subsection (1) does not apply to a regulation that is predominantly financial or administrative in nature.

7. Proposal for instrument

- (1) A minister shall do everything in the minister's power to give notice to the public of a proposal for an instrument under consideration in the minister's department at least 30 days before a decision is made whether or not to implement the proposal.

Factors to be considered

- (2) For the purpose of subsection (1), a proposal for an instrument is under consideration in a department if
- (a) it is possible that a decision whether to implement the proposal will be made under an Act by the minister for the department or by a person employed in the department; or
 - (b) it is possible that a decision whether to implement the proposal will be made under an Act administered by the minister for the department.

Exception where effect insignificant

- (3) Notwithstanding subsection (1), the minister need not give notice of a proposal to amend or revoke an instrument if the minister considers that the potential effect of the amendment or revocation on the environment is insignificant.

8. Notice of proposal

- (1) Notice of a proposal under subsection 5(1), 6(1) or 7(1) shall be given in the registry and by any other means the minister giving the notice considers appropriate.

Contents of notice

- (2) Notice of a proposal given under subsection 5(1), 6(1) or 7(1) in the registry shall include
- (a) a brief description of the proposal;
 - (b) a statement of the manner by which and time within which members of the public may participate in decision-making on the proposal;
 - (c) a statement of where and when members of the public may review written information about the proposal;
 - (d) an address to which members of the public may direct
 - (i) written comments on the proposal, and
 - (ii) written questions about the rights of members of the public to participate in decision-making on the proposal;
 - (e) any information prescribed by the regulations; and
 - (f) any other information that the minister giving the notice considers appropriate.

9. Exceptions regarding notice

- (1) Sections 5, 6 and 7 do not apply if, in the minister's opinion, the delay involved in giving notice to the public, in allowing time for public response to the notice or in considering the response to the notice would result in
- (a) danger to the health or safety of any person;
 - (b) harm or serious risk of harm to the environment; or
 - (c) injury or damage or serious risk of injury or damage to any property.

Notice of minister's decision

- (2) Where a minister decides under subsection (1) not to give notice of a proposal under subsection 5(1), 6(1) or 7(1), the minister shall give notice of the decision to the public and to the Commissioner.

10. Exception where alternative processes apply

- (1) Sections 5, 6 and 7 do not apply if, in the minister's opinion, the environmentally significant aspects of a proposal for a policy, Act, regulation or instrument
- (a) have already been considered in a process of public participation, under this Act, under another Act or otherwise, that was substantially equivalent to the process required in relation to the proposal under this Act; or
 - (b) are required to be considered in a process of public participation under another Act that is substantially equivalent to the process required in relation to the proposal under this Act.

Notice of minister's decision

- (2) Where a minister decides under subsection (1) not to give notice of a proposal under subsection 5(1), 6(1) or 7(1), the minister shall give notice of the decision to the public and to the Commissioner.



Timely notice

- (3) Notice under subsection (2) shall be given as soon as reasonably possible after the decision is made and must include a brief statement of the minister's reasons for the decision and any other information about the decision that the minister considers appropriate.

11. Notice in registry

Notice to the public under subsection 9(2) or 10(2) must be given in the registry and by any other means the minister considers appropriate.

12. Exception regarding instruments

- (1) Section 7 does not apply if, in the minister's opinion, the issuance, amendment or revocation of an instrument would be a step towards implementing an undertaking or other project approved by
- (a) a decision made by a tribunal under an Act after affording an opportunity for public participation; or
 - (b) a decision made under section 9 of the *Environmental Protection Act*.

***Environmental Protection Act* exemption**

- (2) Section 7 does not apply if, in the minister's opinion, the issuance, amendment or revocation of an instrument would be a step towards implementing an undertaking that has been exempted by a regulation under section 9 of the *Environmental Protection Act*.

Decision or exemption for a class

- (3) A decision about a class of undertaking is a decision within the meaning of subsection (1) and an exemption for a class of undertaking is an exemption within the meaning of subsection (2).

13. Exception regarding budget or statement

- (1) A minister need not give notice under subsection 5(1), 6(1) or 7(1) of a proposal that would, if implemented, form part of or give effect to a budget or economic statement presented to the Assembly.

Exception regarding related financial information

- (2) A minister need not give notice under subsection 5(1), 6(1) or 7(1) of a proposal that would, if implemented, change
- (a) a policy that forms part of a budget or economic statement presented to the Assembly; or
 - (b) a bill, Act, regulation or instrument that gives effect to a budget or economic statement presented to the Assembly.

PART 4 – ENVIRONMENTAL COMMISSIONER

14. Environmental Commissioner

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

Appointment

- (2) The Commissioner shall be appointed by the Assembly

- (a) on the recommendation of the Standing Committee on Legislative Assembly Management; and
- (b) following a resolution of the Assembly supported by at least two-thirds of the members present.

Term of office

- (3) The Commissioner holds office for a term of five years and may be re-appointed for one or more further terms.

Removal for cause

- (4) The Legislative Assembly may, by a resolution passed by two-thirds of the members present, suspend or remove the Commissioner from office for cause or incapacity.

No other work or office

- (5) The Commissioner shall not do any work or hold any office that interferes with the performance of the duties of the Commissioner.

Exception

- (6) Subsection (5) does not prevent the person appointed as Commissioner from concurrently holding a similar office under an enactment of New Brunswick or Nova Scotia if appointed to such office under that enactment or in accordance with an agreement between the Lieutenant Governor in Council and the government of that province.

15. Remuneration

- (1) Subject to section 49, the Commissioner shall be paid, out of the Operating Fund, a salary to be determined by the Standing Committee on Legislative Assembly Management.

Salary reduction

- (2) The salary of the Commissioner shall not be reduced except on the recommendation of the Assembly.

16. Pension

Subject to section 49, the Commissioner is a member for the purposes of the *Public Sector Pension Plan Act* R.S.P.E.I. 1988, Cap. P-32.11, and is entitled to benefits in accordance with the provisions of that Act.

17. Oath of office

Before commencing the duties of office, the Commissioner shall take an oath, to be administered by the Speaker of the Assembly, that the Commissioner will faithfully and impartially exercise the functions of the office of the Commissioner.

18. Temporary Commissioner

- (1) Where the Commissioner dies, resigns or is unable or neglects to perform the functions of the office while the Assembly is not sitting, the Lieutenant Governor in Council may, before the Assembly next sits, appoint a temporary Environmental Commissioner to hold office for a term of not more than six months.



Effect of appointment

- (2) A temporary Environmental Commissioner has the powers and duties of the Commissioner and is entitled to the remuneration and allowances fixed by the Lieutenant Governor in Council.

19. Employees of Commissioner

- (1) Subject to section 49 and the approval of the Standing Committee on Legislative Assembly Management, the Commissioner may employ such employees as the Commissioner considers necessary for the efficient operation of the office of the Commissioner, and may determine their salaries or wages and the terms and conditions of their employment.

Comparable salaries

- (2) Salaries or wages determined under subsection (1) must be comparable to the salaries or wages for persons employed in similar positions in the Civil Service.

Comparable benefits

- (3) Subject to section 49, the benefits with respect to the following matters for persons employed in similar positions in the Civil Service who are not within a bargaining unit apply to the employees of the office of the Commissioner:
- (a) cumulative vacation and sick leave credits for regular attendance and payments in respect of those credits;
 - (b) plans for group life insurance, medical-surgical insurance or long-term income protection;
 - (c) the granting of leaves of absence.

Discretion regarding benefits

- (4) For the purpose of subsection (3), where a benefit applicable to an employee of the office of the Commissioner is contingent on the exercise of a discretionary power or the performance of a discretionary function, the power may be exercised or the function may be performed by the Commissioner or any person authorized in writing by the Commissioner.

Pension plan

- (5) Subject to section 49, the employees of the office of the Commissioner are members for the purposes of the *Public Sector Pension Plan Act*, and are entitled to benefits in accordance with the provisions of that Act.

20. Directives

The Standing Committee on Legislative Assembly Management may from time to time issue directives to the Commissioner with respect to the expenditure of funds and the Commissioner shall follow the directives.

21. Annual audit

The accounts and financial transactions of the office of the Commissioner shall be audited annually by the Auditor General.

22. Functions of Commissioner

In addition to fulfilling the other duties of Commissioner under this Act, it is the function of the Commissioner to

- (a) review this Act and compliance by ministers and departments with the requirements of this Act;
- (b) at the request of a minister, provide guidance to the minister's department on how to comply with the requirements of this Act;
- (c) at the request of a minister, assist the minister's 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 the receipt, handling and disposition of applications for review under Part 5 and applications for investigation under Part 6;
- (i) review department plans and priorities for conducting reviews under Part 5;
- (j) review the use of the right of action set out in section 30, the use of defences set out in section 31, and reliance on section 41 respecting public nuisance actions; and
- (k) review recourse to the procedure under Part 8 for complaints about employer reprisals.

23. Annual report

- (1) The Commissioner shall report annually to the Speaker of the Assembly who shall table the report in the Assembly as soon as reasonably possible.

Contents of report

- (2) The annual report required under subsection (1) shall include
 - (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 22;
 - (c) a list of all proposals of which notice has been given under subsection 5(1), 6(1) or 7(1) during the period covered by the report;
 - (d) any information prescribed by the regulations; and
 - (e) any information that the Commissioner considers appropriate.

Special reports

- (3) The Commissioner may make a special report to the Speaker of the 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 table the report in the Assembly as soon as reasonably possible.

24. Special assignments

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



PART 5 – APPLICATION FOR REVIEW

25. Application for review of existing policy

- (1) Any two residents who believe that an existing policy, Act, regulation or instrument of the Province should be amended, repealed or revoked in order to protect the environment may apply to the Commissioner for a review by the appropriate minister of the policy, Act, regulation or instrument.

Application for review of suggested policy

- (2) Any two residents who believe that a new policy, Act or regulation of the Province should be made or passed in order to protect the environment may apply to the Commissioner for a review by the appropriate minister of the need for the new policy, Act or regulation.

Contents and form of application

- (3) An application under subsection (1) or (2) must be in the form provided for that purpose by the office of the Commissioner and shall include
- (a) the names and addresses of the applicants;
 - (b) an explanation of why the applicants believe that the review applied for should be undertaken in order to protect the environment; and
 - (c) a summary of the evidence supporting the applicants' belief that the review applied for should be undertaken in order to protect the environment.

Clear identification of subject

- (4) An application under subsection (1) shall clearly identify the policy, Act, regulation or instrument in respect of which a review is sought.

26. Referral of application

Within 10 days of receiving an application for review, the Commissioner shall refer the application to the minister for any department that the Commissioner considers appropriate to review the matters raised in the application.

PART 6 – APPLICATION FOR INVESTIGATION

27. Application for investigation

- (1) Any two residents who believe that an Act, regulation or instrument has been contravened may apply to the Commissioner for an investigation by the appropriate minister of the alleged contravention.

Exemption

- (2) The Lieutenant Governor in Council may prescribe in the regulations certain Acts, regulations and instruments to which subsection (1) does not apply.

Form of application

- (3) An application under subsection (1) must be in the form provided for that purpose by the office of the Commissioner and must include
- (a) the names and addresses of the applicants;
 - (b) a statement of the nature of the alleged contravention;

- (c) the names and addresses of each person alleged to have been involved in the commission of the contravention, to the extent that this information is available to the applicants;
- (d) a summary of the evidence supporting the allegations of the applicants;
- (e) the names and addresses of each person who might be able to give evidence about the alleged contravention, together with a summary of the evidence the person might give, to the extent that this information is available to the applicants;
- (f) a description of any document or other material that the applicants believe should be considered in the investigation;
- (g) a copy of any document referred to in clause (f), if reasonably available to the applicants; and
- (h) details of any previous contacts with the office of the Commissioner or any department regarding the alleged contravention.

Statement of belief

- (4) An application under subsection (1) shall include a statement by each applicant or, where an applicant is a corporation, by a director or officer of the corporation, that the person believes that the facts alleged in the application are true.

Statement sworn or affirmed

- (5) The statement referred to in subsection (4) shall be sworn or solemnly affirmed before a person authorized by law to administer oaths and take and receive affidavits, declarations and affirmations within the province.

28. Referral of application

Within 10 days of receiving an application under subsection 27(1), the Commissioner shall refer it to the minister responsible for the administration of the Act under which the contravention is alleged to have been committed.

PART 7 – RIGHT OF ACTION

29. Application

Sections 30 to 41 apply in respect of a contravention of any Act, regulation or instrument that occurs after the Act, regulation or instrument is made, unless the Act, regulation or instrument has been exempted under subsection 27(2).

30. Action regarding contravention

- (1) Where a person has contravened or will imminently contravene an Act, regulation or instrument not exempted under subsection 27(2) and the actual or imminent contravention has caused or will imminently cause significant harm to a public resource of the province, any resident may bring an action against the person in the court in respect of the harm and is entitled to judgment if successful.

Restriction on bringing action

- (2) Notwithstanding subsection (1), an action may not be brought under that subsection in respect of an actual contravention unless the plaintiff has applied for an investigation into the contravention under Part 6.



Further restriction regarding farm practices

- (3) Notwithstanding subsection (1), an action may not be brought under subsection (1) in respect of actual or imminent harm to a public resource of the province from odour, noise, dust, vibration, light, smoke or another disturbance resulting from a normal farm practice unless the plaintiff has applied to the Farm Practices Review Board under subsection 5(1) of the *Farm Practices Act* R.S.P.E.I. 1988, Cap. F-4.1, with respect to the odour, noise, dust, vibration, light, smoke or other disturbance and the Farm Practices Review Board has disposed of the application.

No delay due to restrictions

- (4) Subsections (2) and (3) do not apply if the delay involved in complying with them would result in significant harm or serious risk of significant harm to a public resource.

Onus on plaintiff

- (5) The onus is on the plaintiff in an action under subsection (1) to prove the contravention or imminent contravention on a balance of probabilities.

Other rights not limited

- (6) This section does not limit any other right to bring or maintain a proceeding.

31. Clarity – contravention

- (1) For the purpose of section 30, an Act, regulation or instrument is not contravened if the defendant satisfies the court that the defendant exercised due diligence in complying with the Act, regulation or instrument.

Act or omission otherwise permitted

- (2) For the purpose of section 30, an Act, regulation or instrument is not contravened if the defendant satisfies the court that the act or omission alleged to be a contravention of the Act, regulation or instrument is authorized by an Act of the province or the Parliament of Canada or by a regulation or instrument under an Act of the province or the Parliament of Canada.

Defence of reasonable interpretation

- (3) For the purpose of section 30, an instrument is not contravened if the defendant satisfies the court that the defendant complied with an interpretation of the instrument that the court considers reasonable.

Other defences not limited

- (4) This section does not limit any defence otherwise available.

32. Service on Attorney General

- (1) The plaintiff in an action under subsection 30(1) shall serve the statement of claim on the Attorney General not later than 10 days after the day on which the statement of claim is served on the first defendant served in the action.

Role of Attorney General

- (2) The Attorney General is entitled to present evidence and make submissions to the court in the action, to appeal from a judgment in the action and to present evidence and make submissions in an appeal from a judgment in the action.

33. Notice in registry

- (1) The plaintiff shall give notice of an action under subsection 30(1) to the public in the registry and by any other means ordered by the court.

Delivery to Commissioner

- (2) The plaintiff shall give notice in the registry under subsection (1) by delivering the notice to the Commissioner who shall promptly place it in the registry.

34. Additional notice

- (1) At any time in an action under subsection 30(1), the court may order any party to give any notice that the court considers necessary to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the action.

Order relating to additional notice

- (2) The court may make any order relating to the notice, including an order for the costs of the notice, that the court considers appropriate.

35. Court may permit participation

- (1) In order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the action, the court may permit any person to participate in an action under subsection 30(1), as a party or otherwise.

Manner of participation

- (2) Participation under subsection (1) must be in the manner and on the terms, including terms as to costs, that the court considers appropriate.

Civil Procedure Rules not limited

- (3) This section does not limit the orders the court may make under the Prince Edward Island Rules of Civil Procedure or otherwise.

36. Court may stay or dismiss

- (1) The court may stay or dismiss an action under subsection 30(1) if to do so would be in the public interest.

Matters to be considered

- (2) In making a decision under subsection (1), the court may consider
- (a) environmental, economic and social concerns;
 - (b) whether the issues raised by the proceeding would be better resolved by another process;
 - (c) whether there is an adequate government plan to address the public interest issues raised by the proceeding; and
 - (d) any other relevant matter.

37. Discontinuation

- (1) An action under subsection 30(1) may be discontinued or abandoned only with the approval of the court, on the terms that the court considers appropriate.

Settlement to be approved

- (2) A settlement of an action is not binding unless approved by the court.

Settlement is binding

- (3) A settlement of the action that is approved by the court binds all past, present and future residents.

Court to consider notice

- (4) In considering whether to dismiss the action without a finding as to whether the plaintiff was entitled to judgment, whether for delay, for public interest reasons or for any other reason, or in considering whether to approve a discontinuance, abandonment or settlement of the action, the court shall consider whether notice should be given under subsection 34(1).

38. Consideration of special circumstance

In exercising its discretion under the Prince Edward Island Rules of Civil Procedure as to whether to excuse compliance with the requirement that the plaintiff, when making a motion for an interim or interlocutory injunction, file an undertaking to indemnify another party for losses caused by the interim or interlocutory injunction, the court may consider any special circumstance, including whether the action is a test case or raises a novel point of law.

39. Powers of court

- (1) Where the court finds that the plaintiff is entitled to judgment in an action under subsection 30(1), the court may
- (a) grant an injunction against the contravention;
 - (b) order the parties to negotiate a restoration plan in respect of harm to the public resource resulting from the contravention and to report to the court on the negotiations within a fixed time;
 - (c) grant declaratory relief; and
 - (d) make any other order, including an order as to costs, that the court considers appropriate.

No damages

- (2) No award of damages may be made under subsection (1).

Farm Practices Act to prevail

- (3) No order may be made under subsection (1) that is inconsistent with the *Farm Practices Act*.

40. Limitations

- (1) No person may bring an action under subsection 30(1) in respect of a contravention that caused harm after the earliest of
- (a) the second anniversary of the day on which the person bringing the action first knew
 - (i) that the harm had occurred,
 - (ii) that the harm was caused by the contravention,
 - (iii) that the contravention was that of the person against whom the action is brought, and
 - (iv) that, having regard to the nature of the harm, an action under subsection 30(1) would be an appropriate means to seek to address it;

- (b) the second anniversary of the day on which a reasonable person with the abilities and in the circumstances of the person seeking to bring the action first ought to have known of the matters referred to in clause (a); or
- (c) the second anniversary of the day on which public notice of an action in respect of the contravention and the harm was given under subsection 33(1).

Exceptions

- (2) Notwithstanding subsection (1), where clause (1)(a) or (b) applies to establish the limitation period under subsection (1), a person may bring the action after the end of that period, to the extent permitted by subsections (3) and (4).

Effect of application for investigation

- (3) Where the person bringing the action applied under subsection 27(1) for an investigation of the contravention before the end of the period established under subsection (1) by the application of clause (1)(a) or (b), the person may bring the action within 120 days after the day on which the application was made.

Effect of application under *Farm Practices Act*

- (4) Where the person bringing the action applied under subsection 5(1) of the *Farm Practices Act* with respect to the harm before the end of the period established under subsection (1) by the application of clause (1)(a) or (b), the person may bring the action within 120 days after the day on which the Farm Practices Review Board disposed of the application.

41. Actions for direct loss or injury not barred

- (1) No person who has suffered or may suffer a direct economic loss or direct personal injury as a result of a public nuisance that caused harm to the environment is barred from bringing an action without the consent of the Attorney General in respect of the loss or injury only because the person has suffered or may suffer direct economic loss or direct personal injury of the same kind or to the same degree as other persons.

Right or defence under *Farm Practices Act* not limited

- (2) Subsection (1) does not limit a right or defence available under the *Farm Practices Act*.

PART 8 – EMPLOYER REPRISALS

42. Complaint regarding alleged reprisals

- (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.

Actions comprising reprisals

- (2) For the purpose 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.

Prohibited grounds

- (3) For the purpose 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 policy, an Act, a regulation or an instrument as provided in Part 3;
- (b) apply for a review under Part 5;
- (c) apply for an investigation under Part 6;
- (d) comply with or seek the enforcement of an Act, regulation or instrument not exempted by the regulations for the purpose of Part 6;
- (e) give information to an appropriate authority for the purpose of an investigation, review or hearing related to a policy, Act, regulation or instrument not exempted by the regulations for the purpose of Part 6;
- (f) give evidence in a proceeding under this Act or under an Act not exempted by the regulations for the purpose of Part 6.

43. Inquiry by Board

- (1) The Board may inquire into a complaint filed under subsection 42(1).

Onus on employer

- (2) In an inquiry under subsection (1), the onus is on the employer to prove that the employer did not take reprisals on a prohibited ground.

44. Determination by Board

- (1) Where the Board, after inquiring into a 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.

Remedies

- (2) A determination under subsection (1) may include one or more of
- (a) an order directing the employer to cease doing any act complained of;
 - (b) an order directing the employer to rectify any act complained of; and
 - (c) an order directing the employer to reinstate in employment or hire the employee, with or without compensation, or to compensate instead of hiring or reinstatement for loss of earnings or other employment benefits in an amount assessed by the Board against the employer.

PART 9 – STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

45. Improper legal action or pleading

- (1) A judge may, on request or on the judge's own initiative, after having heard arguments from the appropriate parties on the matter, declare any legal action or other pleading against a person improper and impose a sanction on a party where the judge determines that
- (a) the person initiated or concluded a legal action or other pleading pursuant to this Act, or an Act, regulation or instrument prescribed by the regulations for the purpose of Part 7; and
 - (b) the legal action or other pleading was
 - (i) unfounded,
 - (ii) frivolous,
 - (iii) vexatious,

- (iv) delayed,
- (v) quarrelsome,
- (vi) made in bad faith,
- (vii) unreasonable,
- (viii) prejudicial, or
- (ix) retaliatory.

Matters to be considered

- (2) The judge, in making a declaration pursuant to subsection (1), shall take into particular consideration prejudice or discrimination against historically marginalized, vulnerable or economically disadvantaged groups and communities, particularly those that are Indigenous or people of colour.

PART 10 – GENERAL

46. Environmental rights of residents

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

Government duty to protect

- (2) The Government, within its jurisdiction, shall protect the right of every resident to a healthy and ecologically balanced environment.

47. Government is trustee of the environment

The Government, within its jurisdiction,

- (a) is the trustee of the province's environment; and
- (b) shall preserve the province's environment in accordance with the public trust for future generations.

48. Regulations

- (1) The Lieutenant Governor in Council may make regulations
- (a) prescribing Acts for the purpose of subsection 6(1);
 - (b) prescribing information that is to be included in a notice of a proposal given under subsection 5(1), 6(1) or 7(1) in the registry;
 - (c) prescribing information that is to be included in the annual report of the Commissioner;
 - (d) prescribing any Act, regulation or instrument that are exempt for the purpose of Part 6.

Prescribing Acts, regulations and instruments of Canada

- (2) The authority in this Act to prescribe an Act, regulation or instrument includes the authority to prescribe an Act of the Parliament of Canada or a regulation or instrument under an Act of the Parliament of Canada.



Portions of Acts or regulations may be prescribed

- (3) The authority in this Act to prescribe an Act or regulation includes the authority to prescribe one or more provisions of the Act or regulation.

49. Appropriation Required

The moneys required for the purpose of this Act shall be paid out of moneys appropriated for that purpose by the Legislature.

EXPLANATORY NOTES

SECTION 1 establishes definitions to be used for the purposes of the Act, including definitions of “Board”, “Commissioner”, “department”, “instrument”, “minister”, “municipality”, “public land”, “public resource”, “registry”, “resident” and “undertaking”.

SECTION 2 sets out the general, procedural and substantive purposes of the Act.

SECTION 3 requires the Environmental Commissioner to establish an environmental registry to provide the public with information about the environment and sets out the various types of information that are to be contained in the registry.

SECTION 4 provides that the purpose of Part 3 of the Act is to set out minimum levels of public participation that must be met before the Government makes decisions on certain kinds of environmentally significant proposals for policies, Acts, regulations and instruments, without limiting any rights of public participation otherwise available.

SECTION 5 places a duty on a minister when the minister considers that a proposal under consideration in the minister's department for a policy or Act, that is not predominantly financial or administrative in nature, which could have a significant effect on the environment, and that the public should have an opportunity to comment on the proposal before implementation, the minister shall do everything in the minister's power to give notice of the proposal to the public at least 30 days before the proposal is implemented.

SECTION 6 places a duty on a minister when the minister considers that a proposal under consideration in the minister's department for a regulation, that is not predominantly financial or administrative in nature, which could have a significant effect on the environment, and that the public should have an opportunity to comment on the proposal before implementation, the minister shall do everything in the minister's power to give notice of the proposal to the public at least 30 days before the proposal is implemented.

SECTION 7 places a duty on a minister when the minister considers that a proposal under consideration in the minister's department for an instrument, that the minister considers is significant in its effect on the environment, the minister shall do everything in the minister's power to give notice of the proposal to the public at least 30 days before a decision is made to implement the proposal.

SECTION 8 requires notice of a proposal under sections 5, 6 and 7 to be filed in the registry and sets out what the contents of such a notice are to be.

SECTION 9 provides that sections 5, 6 and 7 do not apply if, in the minister's opinion, the delay involved in giving notice to the public, in allowing time for public response to the notice or in considering the response to the notice would result in danger to the health or safety of any person; harm or serious risk of harm to the environment; or injury or damage or serious risk of injury or



damage to any property, and requires the minister to give notice of minister's decision to the public and to the Commissioner.

SECTION 10 provides that sections 5, 6 and 7 do not apply if, in the minister's opinion, the environmentally significant aspects of a proposal for a policy, Act, regulation or instrument have already been considered in a process of public participation, under the Act, under another Act or otherwise, that was substantially equivalent to the process required in relation to the proposal under the Act; or are required to be considered in a process of public participation under another Act that is substantially equivalent to the process required in relation to the proposal under the Act. The section also requires the minister to give timely notice of such decision, including reasons, to the public and to the Commissioner.

SECTION 11 requires notice to the public under subsection 9(2) or 10(2) to be given in the registry and by any other means the minister considers appropriate.

SECTION 12 provides that Section 7 does not apply if, in the minister's opinion, the issuance, amendment or revocation of an instrument would be a step towards implementing an undertaking or other project approved by a decision made by a tribunal under an Act after affording an opportunity for public participation; or a decision or exempting regulation made under the *Environmental Protection Act*, and allows that a decision or exemption about a class of undertaking may be made.

SECTION 13 provides that a minister need not give notice of a proposal that would, if implemented, form part of or give effect to a budget or economic statement presented to the Assembly, or which would, if implemented, change a policy that forms part of a budget or economic statement presented to the Assembly, or a bill, Act, regulation or instrument that gives effect to a budget or economic statement presented to the Assembly.

SECTION 14 provides for the appointment of an Environmental Commissioner as an officer of the Assembly who holds office for a term of five years and may be re-appointed for more terms. The section also provides for removal of the Commissioner for cause and that the Commissioner shall not do any work or hold any office that interferes with the performance of his or her duties, but allows that this does not prevent the person appointed as Commissioner from concurrently holding a similar office under an enactment of New Brunswick or Nova Scotia.

SECTION 15 provides for the remuneration of the Commissioner.

SECTION 16 sets out that the Commissioner is an employee for the purposes of the *Public Sector Pension Plan Act*.

SECTION 17 requires the Commissioner to take an oath to faithfully and impartially exercise the functions of the office.

SECTION 18 provides for the appointment of a temporary Commissioner where the Commissioner dies, resigns or is unable or neglects to perform the functions of the office while the Assembly is not sitting.

SECTION 19 allows the Commissioner to employ employees necessary for the operation of the office of the Commissioner, and to determine their salaries or wages and the terms and conditions of their employment, which must be comparable to the salaries or wages and the benefits for persons employed in similar positions in the Civil Service. The section also provides that where a benefit applicable to an employee of the office of the Commissioner is contingent on the exercise of a discretionary power or the performance of a discretionary function, the power may be exercised or the function may be performed by the Commissioner or any person authorized in writing by the Commissioner. The section also provides that the employees of the office of the Commissioner are employees for the purposes of the *Public Sector Pension Plan Act*.

SECTION 20 provides that the Standing Committee on Legislative Assembly Management may issue directives to the Commissioner with respect to the expenditure of funds and requires the Commissioner to follow the directives.

SECTION 21 requires that the accounts and financial transactions of the office of the Commissioner be audited annually by the Auditor General.

SECTION 22 sets out that it is the function of the Commissioner to do a number of things, including to: review the Act and compliance by ministers and departments with the requirements of the Act; at the request of a minister, provide guidance to the minister's department on how to comply with the requirements of the Act and to assist the minister's department in providing educational programs about the Act; provide educational programs about this Act and advice and assistance to members of the public who wish to participate in decision-making about a proposal under the Act; and review various government operations under the Act.

SECTION 23 requires the Commissioner to report annually to the Speaker of the Assembly who shall table the report in the Assembly as soon as reasonably possible, and sets out what the report must contain. The section also provides that the Commissioner may make special reports at any time on any matter related to the Act that, in the opinion of the Commissioner, should not be deferred until the annual report.

SECTION 24 requires the Commissioner to perform special assignments for the Assembly, but that such assignments do not take precedence over the other duties of the Commissioner under the Act.

SECTION 25 allows any two residents who believe that an existing policy, Act, regulation or instrument of the Province should be amended, repealed or revoked in order to protect the environment, or that a new policy, Act or regulation of the Province should be made or passed in order to protect the environment, may apply to the Commissioner for a review by the appropriate minister of the policy, Act, regulation or instrument, or the need for the new policy, Act or regulation. The section also sets out the contents required for an application.



SECTION 26 requires the Commissioner to refer the application to the minister for any department that the Commissioner considers appropriate to review the matters raised in the application within 10 days of receiving it.

SECTION 27 allows any two residents who believe that an Act, regulation or instrument has been contravened to apply to the Commissioner for an investigation by the appropriate minister of the alleged contravention. The section sets out the required contents of an application and requires that it be accompanied by a sworn statement of belief of alleged facts.

SECTION 28 requires the Commissioner to refer the application to the minister responsible for the administration of the Act under which the contravention is alleged to have been committed within 10 days of receiving it.

SECTION 29 provides that sections 30 to 41 apply in respect of a contravention of any Act, regulation or instrument that occurs after the Act, regulation or instrument is made, unless the Act, regulation or instrument has been exempted under subsection 27(2).

SECTION 30 establishes a right of action that where a person has contravened or will imminently contravene an Act, regulation or instrument not exempted under subsection 27(2) and the actual or imminent contravention has caused or will imminently cause significant harm to a public resource of the province, any resident may bring an action against the person in the court in respect of the harm. Before a resident can initiate such an action in respect of an actual contravention, they must first have applied for an investigation. The section contains the limitation that an action may not be brought in respect of actual or imminent harm to a public resource of the province from odour, noise, dust, vibration, light, smoke or another disturbance resulting from a normal farm practice unless the plaintiff has applied to the Farm Practices Review Board with respect to the problem and the Review Board has disposed of the application. The onus is on the plaintiff to prove the contravention or imminent contravention on a balance of probabilities, and this section does not limit any other right to bring or maintain a proceeding.

SECTION 31 provides that for the purpose of section 30, an Act, regulation or instrument is not contravened if the defendant satisfies the court that the defendant exercised due diligence in complying with the Act, regulation or instrument, or that the act or omission alleged to be a contravention is authorized by an Act, regulation or instrument of the province or the Parliament of Canada. The section also provides that an instrument is not contravened if the defendant satisfies the court that the defendant complied with an interpretation of the instrument that the court considers reasonable and that the section does not limit any defence otherwise available.

SECTION 32 requires a plaintiff in an action under subsection 30(1) to serve the statement of claim on the Attorney General within 10 days after the day on which the statement of claim is served on the first defendant served in the action, and allows the Attorney General to present evidence and make submissions to the Court in the action, to appeal from a judgment in the action and to present evidence and make submissions in an appeal from a judgment in the action.

SECTION 33 requires a plaintiff to give notice of an action under subsection 30(1) to the public in the registry, by delivering it to the Commissioner, and by any other means ordered by the court.

SECTION 34 allows the court to order any party to give any notice that the court considers necessary to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the action, and to make any order relating to the notice, including an order for the costs of the notice.

SECTION 35 allows the court to permit any person to participate in an action under subsection 30(1), as a party or otherwise, on the terms, including terms as to costs, that the court considers appropriate.

SECTION 36 allows the court to stay or dismiss an action and allows the court to consider environmental, economic and social concerns; whether the issues raised by the proceeding would be better resolved by another process; whether there is an adequate government plan to address the public interest issues raised by the proceeding; and any other relevant matter.

SECTION 37 provides that an action under subsection 30(1) may be discontinued, abandoned or settled only with the approval of the court, and that a settlement that is approved by the court binds all past, present and future residents. The section also provides that in considering whether to dismiss the action without a finding as to whether the plaintiff was entitled to judgment, whether for delay, for public interest reasons or for any other reason, or in considering whether to approve a discontinuance, abandonment or settlement of the action, the court must consider whether notice should be given under subsection 34(1).

SECTION 38 provides that in exercising its discretion under the Rules of Civil Procedure, the court may consider any special circumstance, including whether the action is a test case or raises a novel point of law.

SECTION 39 sets out the powers of the court where it finds that the plaintiff is entitled to judgment in an action, but provides that no order can be made that awards damages or is inconsistent with the *Farm Practices Act*.

SECTION 40 establishes a limitation of action period that is generally two years, but for which there are several exceptions.

SECTION 41 provides that no person who has suffered or may suffer a direct economic loss or direct personal injury as a result of a public nuisance that caused harm to the environment is barred from bringing an action without the consent of the Attorney General in respect of the loss or injury, and that this does not limit a right or defence available under the *Farm Practices Act*.

SECTION 42 permits any person to file a complaint with the Employment Standards Board that an employer has taken reprisals against an employee on a prohibited ground by the employer having



dismissed, disciplined, penalized, coerced, intimidated or harassed, or attempted to coerce, intimidate or harass, the employee, and sets out a list of prohibited grounds.

SECTION 43 permits the Board to conduct an inquiry into a complaint and provides that in such an inquiry the onus is on the employer to prove that the employer did not take reprisals on a prohibited ground.

SECTION 44 provides that if the Board 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, and sets out a list of remedies available to the Board.

SECTION 45 allows a judge to declare any legal action or other pleading against a person improper and impose a sanction on a party where the judge determines that the legal action or pleading is unfounded, frivolous, vexatious, delayed, quarrelsome, made in bad faith, unreasonable, prejudicial or retaliatory, and in making such a declaration, the judge must take into particular consideration prejudice or discrimination against historically marginalized, vulnerable or economically disadvantaged groups and communities, particularly those that are Indigenous or people of colour.

SECTION 46 declares that every resident has a right to a healthy and ecologically balanced environment and the right to be protected from environmental hazards, and imposes a duty on the Government, within its jurisdiction, to protect that right of every resident.

SECTION 47 provides that the Government, within its jurisdiction, is the trustee of the province's environment, and shall preserve the province's environment in accordance with the public trust for future generations.

SECTION 48 establishes regulation-making powers for the purposes of the Act.

SECTION 49 provides for the moneys needed for the purposes of this Act to be paid out of moneys appropriated for that purpose by the Legislature.

(Bill No. 108)

Environmental Bill of Rights

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable Antoinette Perry, Lieutenant Governor

Honourable Colin LaVie, Speaker

Joseph Jeffrey, Clerk

Lynne Lund
MLA

PRIVATE MEMBER'S BILL

2021
2nd SESSION, 66th GENERAL ASSEMBLY