



# **Environmental Law Toolkit Webinar:**

## **Fight for Your Right to a Healthy Environment**

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# Disclaimer

The information in this presentation is not legal advice and should not be relied upon as such.

# Overview

- What is the right to a healthy environment?
- How does the right to a healthy environment actually drive environmental protection?

# Overview

- How can you use the law to fight for your right to a healthy environment?
  - Reforming our Constitution and laws
  - Litigation under existing laws

# What is the right to a healthy environment?

- Substantive rights
  - “Safe, clean, healthy and sustainable environment” in which ecological integrity is preserved
- Procedural rights
  - Right to know
  - Right to participate in environmental decisions
  - Access to courts to ensure accountability



en·vi·ron·men·tal jus·tice

The fair and consistent distribution of environmental benefits and burdens, without discrimination on the basis of grounds such as socio-economic status, race, ethnic origin, or residence on an Aboriginal reserve

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# Substantive right to a healthy environment

- Everyone has the right to live in a balanced environment which shows due respect for health.
  - France, Charter for the Environment, Article 1
- Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained.
  - Norway's Constitution, Article 112(a)

# Substantive right to a healthy environment

- Everyone shall possess the right to a healthy and ecologically balanced human living environment and the duty to defend it.
  - Portugal's Constitution, Article 66(1)
- The right of the population to live in a healthy and ecologically balanced environment that guarantees sustainability and the good way of living (sumac kawsay), is recognized.
  - Ecuador's Constitution, Article 14

# Environmental rights in Canada

- Constitution is silent on environment
- Supreme Court has recognized the fundamental importance of our environment
  - “...Our common future, that of every Canadian community, depends on a healthy environment...” – *114957 Canada Ltée (Spray-Tech, Société d’arrosage) v Hudson (Town)*
  - Environmental protection as a “fundamental value”

# Environmental rights in Canada

- Some provinces offer procedural environmental rights
  - Every person has a right to live in a healthful environment in which biodiversity is preserved, to the extent and according to the standards provided by law
    - Québec Charter of Human Rights and Freedoms, s 46.1
- Groundswell of municipal declarations
  - Blue Dot movement

# 3 WAYS ENVIRONMENTAL RIGHTS CAN MAKE A DIFFERENCE



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# Fighting for your right to a healthy environment

- Constitutional reform
- Legislative reform
- Litigation

# Constitutional reform

- Amending procedure set out in Part V, *Constitution Act, 1982*
- Several unsuccessful attempts at comprehensive change
  - Meech Lake, Charlottetown
- But also some successful amendments

# Legislative reform

- Already some provincial/territorial environmental rights statutes
  - Opportunities to reform these laws to recognize a substantive right
- Nothing at the federal level, but past and current efforts to introduce a federal Environmental Bill of Rights

# Case Study: NWT Environmental Rights Act

- Preamble:

Whereas the people of the Northwest Territories have the right to a healthy environment and a right to protect the integrity, biological diversity and productivity of the ecosystems in the Northwest Territories...

# Case Study: NWT Environmental Rights Act

- Section 6:

Every person resident in the Territories has the right to protect the environment and the public trust from the release of contaminants by commencing an action in the Supreme Court against any person releasing any contaminant into the environment.

- Bill 39

# Case Study: Federal EBR

- MP Linda Duncan has re-introduced a federal Environmental Bill of Rights bill – Bill C-438
- “Every person residing in Canada has the right to a healthy and ecologically balanced environment”
- “The Government of Canada has the duty to take all measures necessary to protect” that right

# Litigation

- Charter of Rights and Freedoms lacks explicit recognition of right to a healthy environment
- But it does contain several rights broad enough to protect the right to a healthy environment
- E.g., sections 2, 7 and 15

# Charter of Rights and Freedoms

- Depending on which right, protects “everyone,” “any person,” “any individual,” only citizens, etc.
- Applies to government laws and actions

# Charter of Rights and Freedoms

- Charter rights and freedoms aren't absolute
- Subject to “reasonable limits prescribed by law” that can be “demonstrably justified in a free and democratic society”
- “Override” clause

# Enforcing Charter rights

- Different remedies for breaches of Charter:
  - 1. Any remedy court considers appropriate and just in circumstances
  - 2. Declare the offending law invalid

# Section 2

Everyone has the following fundamental freedoms:

- a) freedom of conscience and religion;
- b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication

# Section 7

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

# Section 15(1)

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

# Questions?

Thank you

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