The Law of Parks and Protected Areas in Alberta

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In the last several years the Province of Alberta has been engaged in a vigorous public debate respecting those areas set aside as parks and protected areas. One part of this debate has focussed on the question of the ability of provincial legislation to assure the continued security of these areas.

This discussion culminated in the Spring of 1999 with the introduction to the Alberta legislature of the *Natural Heritage Act*, a highly controversial piece of legislation intended to consolidate and reform the existing legislation. That legislation, after being greeted with a storm of protests, was withdrawn, and further public consultation sought. With the results of that consultation now in hand, the need for legislative reform is increasingly urgent. The provincial government, however, is divided on how to proceed, and the matter remains in limbo.

The Function of Protected Areas

For several years the Province of Alberta has been publicly committed, at least at the level of rhetoric, to the concept of sustainable development. An important component of that concept is the establishment and maintenance of protected areas. These are commonly accepted to be areas, designated by law, where the top priority is the preservation of nature, as free as possible from human-induced stresses. As such, they are to be legally free of industrial and commercial activities. While kept free of intensive and destructive recreational activities, in most cases they would be open for nature-based recreation, such as hiking, camping, cross-country skiing, fishing, and hunting.

Protected areas perform a variety of functions within the general concept of sustainable development:

1) From an ecological perspective, if properly configured, they preserve a full functional eco-system, including all of its component species and functions, which is a much more efficient means of environmental protection than species-specific measures. Entire systems are much more resilient than their individual components. By

preserving an adequate population of each species, they act as reservoirs of genetic diversity found within each species. As well, because we do not understand all of the dynamics of eco-systems, and have not even identified a significant portion of the Earth's species, the preservation of a whole system serves as a safeguard against inadvertent losses due to our ignorance.

2) From a scientific perspective, protected areas serve as natural laboratories for study and research. This is important from an academic point of view, as we strive to expand our knowledge of how nature works. It is perhaps more important, however, as a guideline to how we handle ourselves outside of protected areas. As industry strives to operate in an environmentally-sensitive manner, protected areas serve as benchmarks against which impacts on non-protected areas may be measured. In the words of science, protected areas are the controls in our ongoing experiment in the development of our world.

3) The recreational and spiritual value of natural areas, free from the concerns of the populated world, cannot be underestimated. Protected areas give us places of beauty, of adventure, and of solitude. They connect us with our history, as a species and as a nation. In extremes, they can put us in touch with the very challenge of survival in as faced by our ancestors.

By enshrining the designation of such sites in law there is an assurance that they will endure for the benefit of generations to come.

The Alberta Experience

Most of the protected land in Alberta falls within national parks. These constitute just over eight percent of the landbase of the province. They obviously fall exclusively within the jurisdiction of the federal government, and are subject to their own legal and policy dynamics. The extent to which they ought to be taken into account in considering provincial responsibilities is a matter of frequent debate, and a cause of much confusion. The national parks will not be dealt with in this article, but please see our **National Parks page** for more on the issues surrounding them.

It is unfortunate that for all the positive things one can say about nature and natural areas, the legislation needed to protect them is necessarily primarily negative in nature. At essence, protected areas legislation serves to prohibit and restrict human activities. This is because one cannot legally constrain or direct nature, only the human beings who would harm it.

Alberta has not had a single law or piece of legislation to deal with protected areas. Rather, a series of unrelated enactments have sprung up through the years. Thus we

currently have three pieces of legislation in force to deal with this subject, giving us a total of eight different types of protected areas. These are as follows:

LEGISLATION	DESIGNATIONS ESTABLISHED
Wilderness Areas, Ecological Reserves and Natural Areas Act ("WAERNA Act")	Wilderness Areas Ecological Reserves Heritage Rangelands Natural Areas
Provincial Parks Act	Provincial Parks Wildland Provincial Parks Recreation Areas
Willmore Wilderness Park Act	Willmore Wilderness Park

I shall describe these areas in roughly declining order in terms of the degree of restriction they impose on human use, and thus the degree of protection they provide to the natural landscape.

1) *Wilderness Areas* - This is the highest level of protection available in Alberta, essentially prohibiting all human activity with the exception of foot access. There are only three such areas, all in fairly remote mountain areas on the eastern boundaries of Banff and Jasper National Parks. These were established at the time their legislation was passed in the 1960's and none have been established since.

2) *Ecological Reserves* - Carrying the rather vague legislated purpose of "preserv(ing) public lands for ecological purposes", this designation places a high level of protection, most often for purposes of protecting particularly sensitive landscapes. Ecological reserves are generally very small mites with some outstanding characteristic, such as the key habitat of an endangered species.

3) *Willmore Wilderness Park* - The Willmore Wilderness Park is a single protected area, passed under "stand alone" legislation in 1959. Within its approximately 46,000 km^2 hunting, fishing, and some limited amount of trapping is allowed. By amendments to its legislation in 1995, industrial activity was categorically prohibited from this park.

4) *Wildland Provincial Park* - Within the general category of Provincial Park, wildlands is a special sub-category established by a set of regulations established in 1996. Based closely on the Willmore model, this was intended to allow for the establishment of large protected areas where a wide variety of nature-based recreation could be enjoyed.

5) *Heritage Rangelands* – Added to the WAERNA Act in the Spring session of the legislature, 2000, this designation seeks to accommodate responsible ranching practices within protected areas. Using appropriate cattle grazing as the primary management tool, this category is particularly significant for the establishment of protection on grasslands and parklands.

6) *Provincial Park* - The *Provincial Parks Act* contains very few restrictions or prohibitions on the uses which may be made of lands designated as parks, referring much of that work to regulations. Because of the flexibility which regulations provide, the activities allowed vary widely from one site to another. The designation itself can mean virtually everything from a highly commercialized and developed beach resort, to a roadside picnic area, to a remote and highly-protected wilderness.

7) *Natural Area* - Likewise, the designation of an area as Natural Area carries with it a minimum of substance. He legislation provides only that the responsible Minister of the Crown (i.e., Environmental Protection) may prescribe what uses may be made of land so designated. This is usually done by the development of a site-specific management plan, though many Natural Areas do not have such management plans in place. Again, therefore, the character of such areas varies widely.

7) *Recreation Area* - This category hold no promise of the protection of nature. These areas are established solely for the purpose of "facilitat(ing) their use and enjoyment for outdoor recreation."

Clearly there is no coherent system or rationale overlying these different categories. Brought in at different times, some are extremely vague; others extremely specific in the activities they allow or prohibit. Some overlap in their intent. In many cases the use of terminology is not consistent between the various enactments. This makes for administrative inefficiency. More importantly, the hodge-podge of acts and regulations fails to give a coherent picture of a vision or purpose for parks and protected areas.

The Special Places Review

This situation received little public attention until the mid-1990's. At that time the Province of Alberta embarked on the highly flawed Special Places 2000 program to establish a coherent network of protected areas by the year 2000, and in the process discovered the inadequacies of the laws which were to provide the basis for that effort.

The genesis of Special Places was the Endangered Spaces Campaign of a coalition of environmental groups led by World Wildlife Fund Canada in 1989. It advocated that each jurisdiction in Canada establish a network of protected areas that would be representative of the various landscapes and eco-systems found within that jurisdiction.

By 1992 this idea, and the general value of protected areas, had sufficient political momentum that all of Canada's political jurisdictions committed to such a plan. Alberta's commitment came in the dramatic form of an announcement from then-Environment Minister Ralph Klein on the occasion of a visit by Prince Philip, the Duke of Edinburgh and President of World Wildlife Fund International.

Special Places was announced in 1995, said to be the "made in Alberta" program to fulfill this commitment. Within months of being convened the Special Places Provincial Co-ordinating Committee (PCC), the multi-stakeholder group charged with the design and implementation of the Special Places program, advised the Minister of Environmental Protection that their collective experience led them to believe that legislative reform respecting protected areas was long overdue.

With the blessing of the Minister, a sub-committee of the PCC was established to embark on outlining what reforms were needed. At the same time the Minister commissioned a review and critique of the legislation form the Environmental Law Centre, an independent think tank based in Edmonton. Both of these reviews reached the same conclusion: Alberta needs a single consolidated statute that would set out a comprehensive and cohesive law of protection for natural lands.

Both also identified certainty as the key interest to be served by such legislation. All potential users of the land have to be able to determine exactly what activities are, and are not, allowed on any given protected site. They also have to be able to determine clearly where the boundaries of a site are located, and have the security of knowing that boundaries will not shift without due public notice and consultation. (Both uses and boundaries had been subjects of public controversy when they had failed to meet certain stakeholders' expectations, or had been changed without adequate consultation to serve particular needs.)

The Environmental Law Centre report also identified one of the most serious challenges in the quest to protect natural landscapes, the lack of co-ordination between protective designations on land and those dispositions granted by government to industrial interests who would develop the same land. This issue would become a major stumbling block in Special Places, as the Provincial Co-ordinating Committee sought to identify sites with intact eco-systems, only to find time and again that these sites had several layers of undeveloped dispositions already granted upon them. The Government's policy to date has been to grant priority to these development rights, meaning that good quality sites would likely have new industrial development taking place upon them even after having been designated as protected areas. This contradiction was one of the factors which led the Canadian Parks and Wilderness Society (CPAWS) and the Federation of Alberta Naturalists (FAN) to ultimately withdraw from the Special Places process in 1998.

The Special Places Legislation Sub-Committee ultimately recommended that the proposed new legislation contain at least five types of land designations, representing a spectrum of the strictness of prohibitions, and consequently the level of protection. Each was recommended to have a clear description of its purpose, which could be used by administrators as a rationale for decision-making, and by the courts if statutory interpretation was required.

One of the innovative proposals to come out of the Special Places review was the suggestion of a category of protected area known as "Heritage Rangeland". In policy documents this class of area were described as "Native rangelands designated and managed to ensure lasting ecological integrity and biological diversity using livestock grazing as the primary management tool." The category was intended to recognize that in large parts of Alberta's grasslands and parklands domestic livestock grazing had become an ecological substitute for the grazing of bison. The category was also a nod to ranching community, whose careful stewardship of these lands was responsible in the past for maintaining their ecological integrity. As seen above, this concept was accepted into legislation in 2000.

The Natural Heritage Act

In March, 1998, the Alberta government took many of these recommendations of these studies and released them for public feedback in the form of a "Proposed Policy Foundation for the *Natural Heritage Act*". The Policy Foundation went far beyond the recommendations, however, stating boldly that the policy of honouring existing dispositions should be enshrined in law.

The Policy Foundation was the object of considerable feedback from the environmental, industrial, and recreational users of land. In general the reaction was positive, though the Department of Environmental Protection's summary of it noted that the majority of respondents found the policy of honouring existing industrials dispositions to be contradictory of the stated goal of protection.

The *Natural Heritage Act* was introduced as Bill 15 into the Alberta legislature on March 1, 1999, by Environmental Protection Minister Ty Lund. It was greeted with a storm of protest from both environmental and industry groups, focussing initially on the policy of honouring existing dispositions. The environmental groups said that this would mean new protected areas would be subject to new industrial development. Forestry and petroleum industry spokespersons said that this would force industry into areas where they did not want to be, and where they would quickly become the focus of public controversy.

The petroleum industry and environmentalists banded together to call for some fair means of compensating those holding these dispositions, in order to allow for the dispositions to

be withdrawn from the land before development occurred. In this they were aided by a Consensus Statement between the Canadian Association of Petroleum Producers and three environmental groups arrived at in February, 1998. The Consensus Statement outlined a variety of tools which might be used for that purpose, including landswaps and royalty incentives.

The political difficulties facing Bill 15 were compounded when the Environmental Law Centre issued a review highly critical of the bill. The ELC report focussed on the degree of discretion granted to the Minister of Environmental Protection and department officials, concluding that the Bill could allow virtually any type of activity in "protected" areas, and thus offer little legal protection at all.

The ELC report, entitled *"In Response to Bill 15: the Natural Heritage Act"* may be downloaded in PDF format from the "Briefs and Submissions" section of the **ELC website.**

In a climate of fervent public debate and with the Official Opposition threatening to filibuster, Bill 15 was allowed to linger on the order paper, and die at the end of this spring's sitting of the Legislature.

The MLA Committee Consultations

The close of the Spring 1999 sitting of the legislature also saw a cabinet shuffle. Ty Lund, the environment minister who had presided over so much of the failure of Special Places and was the architect of the *Natural Heritage Act*, was replaced by Gary Mar. Shortly thereafter Premier Klein appointed a committee of six government MLA's to conduct a public consultation on some of the most contentious aspects of Bill 15.

Under chair Janis Tarchuk, MLA for Banff-Cochrane, this process consisted of a workshop for invited stakeholder groups, focus groups sessions involving randomly selected Albertans, and a public mail-in process. After completing these processes the MLA committee made a series of recommendations aimed at strengthening the protective tools of the proposed legislation. Among the most significant of these was:

> "Consideration should be given to establishing mandatory requirement for the Minister of Environment and Minister of Resource Development to review existing oil and gas dispositions in all areas and to develop a transitions plan for the management and ultimate phase out of the activity over time, in situations where existing rights exist that have no restrictions on surface access."

A similar recommendation was made with respect to mining rights. While these recommendations would allow the Minister of Resource Development to retain an effective veto on strong protective measures, they also signaled a clear acceptance of the

idea that industrial development has no place in protected areas, and that proactive steps have to be taken to prevent new development on existing dispositions.

A copy of the "*MLA Committee Report and Recommendations on Key Issues*" can be downloaded in PDF format from the **Provincial Government Natural Heritage Act Site**.

Armed with the MLA Committee's report, the shared concern of environmental and industry groups, and public and media criticism of the *Natural Heritage Act*, the provincial government worked through the spring of 2000 to develop a new and stronger piece of protected areas legislation aimed at the goals of unification, coherence, certainty, and strong protection.

These items ground to a halt, however, with media reports in April that a confrontation between Environment Minister Gary Mar and Natural Resources Minister Steve West had reached a point where no further progress could be made. West was reported to have categorically refused to consider any plan that would remove oil and gas or mineral rights from protected areas. Since that time all consideration of the new legislation has been put on hold.

We at CPAWS are appalled that intransigence of one minister could bring years of good faith consultation and negotiation to a grinding halt. We have called for Premier Klein to intervene in this situation to assure that this important initiative continues to move forward, so Alberta can finally have rational and principled protected areas legislation.

See our media release of April 12, 2000: "**Conservation Groups Call For Premier's Intervention in Reported Protected Areas Dispute**"

Also, see our **letter to Premier Klein of April 12, 2000** on this issue.