

**DRAFT: Overview of Environmental Legislation in Newfoundland and
Labrador**
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BACKGROUND

What is Environmental Law?

Environmental law is not a specific type of law. It is a mix of many areas of law involving human activity and our natural environment, including federal, provincial, and municipal legislation, judicial case law and administrative remedies.

What is Environmental Legislation?

Environmental legislation refers to acts (also known as statutes) and regulations that govern issues dealing with the environment. Generally, an environmental act provides a framework for human activity and industrial development, and regulations specify how the act will be implemented. It is beneficial to determine what legislation applies to a given environmental issue so that you can identify and work with the government department responsible.

All legislation can be found online or by contacting the appropriate government department. The goal of this guide is to help point you in the right direction.

Who is in Charge of Making Environmental Legislation?

Responsibility for making environmental legislation is divided between governments at the municipal, provincial, and federal levels. Section 92 of the *Constitution Act, 1867* gives the provinces power over environmental matters of a local or private nature. Each province may delegate some of this authority to municipalities within provincial boundaries. The scope of this overview is limited to provincial acts and regulations within Newfoundland and Labrador. This legislation applies to all individuals and businesses in the province, along with all provincial government departments, agencies, boards, and commissions.

ENVIRONMENTAL PROTECTION

Environmental Protection Act, SN 2002, c E-14.2 "EPA"

The purpose of the EPA is to manage, control, improve, remediate and protect the environment in Newfoundland and Labrador. It is an umbrella act that covers a broad range of environmental issues including the disposal of waste and litter,

environmental education and research, air quality management, contaminated sites, and environmental assessments and approvals

Additionally, the EPA contains provisions dealing with its enforcement, including sections regarding inspection and investigation, orders, appeals, remedies, regulations, offences, and penalties.

Importantly, the EPA allows for the creation of regulations covering a wide array of environmental subject matters. Several of these regulations are outlined below.

The Minister of Environment and Conservation is responsible for the administration of the EPA and associated regulations.

Air Pollution Control Regulations, NLR 39/04

These regulations define the ambient air quality standards for the province and set out steps the Minister may take to reduce the emissions of a particular individual or facility including the creation of enforceable management plans. The regulations set out administrative penalties, which may be ordered by the Minister if certain requirements are not followed.

Environmental Assessment Regulations, NLR 54/03

These regulations set out the detailed, multi-stage process of conducting an environmental assessment, including environmental impact statements and environmental preview reports. Unlike in some jurisdictions, the scope of activity that may trigger an environmental assessment in Newfoundland and Labrador is quite broad.

In cases where an undertaking poses no environmental or public concerns, or those concerns are mitigated under another act, the Minister may release the undertaking from the environmental assessment process. In cases where there is insufficient information, the Minister may order an environmental preview report. In cases where the Minister determines there may be significant environmental or public concerns, an environmental impact statement may be required.

The regulations contain many specific undertakings and exceptions for varied industries including aquaculture, oil and gas, mining, air transportation, waste management, and oil and coal products.

Halocarbon Regulations, NLR 41/05

These regulations deal with the disposal or handling of equipment such as fire extinguishers, refrigerators, or other products containing refrigerants, fluorocarbons, or halons. The regulations prohibit the release of these substances, require the reporting of any leaks, and require persons handling such products to have completed certain safety courses.

Pesticides Control Regulations, NLR 26/12

These regulations forbid those who do not hold an operating licence from using pesticides and those who do not hold a vendor's licence from selling and distributing pesticides, unless that person fits under an exemption. Certain pesticides are exempted for some personal and commercial uses. The regulations contain licensing provisions and a penalties section.

Storage of PCB Wastes Regulations, NLR 61/03

These regulations deal with storage sites containing PCB's in a quantity exceeding 1.0 kilogram, PCB liquids of a volume greater than 100 litres; or PCB solids of a weight greater than 100 kilograms. Owner/operators of such storage sites must have emergency fire and escape plans, proper clean up and fire prevention/protection equipment and proper warning signs. Additionally, Owner/operators are required to conduct regular inspections and perform repairs immediately. Detailed records of where PCBs must be maintained.

Used Oil Control Regulations, NLR 82/02

These regulations deal with used oil and grease, and set guidelines for their proper combustion and disposal. In particular, used oils can only be disposed in specific storage facilities, the characteristics and required maintenance of which are detailed in the regulations. Unless an exemption is given, the facility manager must have approval under the *Environmental Protection Act*. The regulations also require specific procedures to collect and transport

used oils. These also require certificates of approval under the *Environmental Protection Act*.

Waste Diversion Regulations, NLR 57/05

These regulations give the Minister the authority to ban a material from disposal into one or more waste sites. When a ban has been made, a person may not dispose of the banned material nor may a disposal site operator accept a banned material into their site.

Sustainable Development Act, SN 2007, c S-34

The purpose of the *Sustainable Development Act* is to promote sustainable development, cooperation, and education. It is binding on the Crown.

To achieve its purposes, the Act provides guidelines for the composition and funding for a Round Table, composed by the Lieutenant Governor. The role of the Round Table is to facilitate the Act's main goals, provide annual reports and development plans to the Lieutenant Governor, and coordinate sustainable development with other public bodies.

In particular, the Round Table is to develop a Strategic Environmental Management Plan in consultation the public and the Minister. The Minister sets the Table's regulations and provides sustainability indicators for the province in order to guide the Table's recommendations.

WATER RESOURCES

Water Resources Act, SN 2002, c W-4.01 "WRA"

The purpose of the WRA is to ensure the availability of clean water for the environmental, social, and economic well-being of Newfoundland and Labrador. The WRA is based on the same principles as the EPA.

The WRA states that all bodies of water in the province are owned by the Crown. Such ownership is subject to rights acquired by other parties by way of a grant, lease, licence, or statute. Regardless of any such rights, it is not permissible to cause damage to or impair a body of water or to cause injury to any animal, plant, or human that is in or adjacent to that water. The WRA provides a limited exemption for persons using water for typical domestic purposes.

Additionally, the WRA allows the province to regulate activities that may adversely affect water. Key areas of Ministerial authority include flood controls, water and sewer works, water supply areas, and dams and reservoirs.

A Ministerial permit is required to, among other things, develop or distribute water or water power, the storage or diversion of water, the construction of buildings, or the collection of data regarding activities or buildings.

Aquaculture Act, SN 1990, c A-13 “AA”

The object of the AA is to regulate Newfoundland’s aquaculture industry and to promote its development, preserve property rights, mitigate problems with competing uses and interests, and aid the province and Canada in collaborative decision making of this nature.

The AA allows only those who hold licences to engage in aquaculture. It prescribes the requirements for an application and gives the Minister the power to incorporate plans into the licence regarding environmental, health, and safety matters and impose certain restrictions or specifications regarding how the licensee is to carry on their business of aquaculture.

The AA mandates that the licensee immediately report any pathogenic infection to an aquaculture inspector or the Minister. The licensee must also do everything possible to mitigate the pathogen’s development and to prevent its spread. Further, the AA prohibits the transfer of live aquatic animals or plants from one aquaculture facility or body of water to another unless approved by the Minister.

The AA creates penalties for those who contravene it, including fines or imprisonment.

Fish Inspection Act, SN 1990, c F-12, “FIA”

The FIA provides a framework for the licensing and enforcement of the provincial fishery. Inspectors are given the powers of peace officers and are generally given a wide berth to conduct inspections. They may enter premises, seize documents and product, and issue tickets.

The FIA contains a blanket prohibition against selling tainted, decomposed, or unwholesome fish or marine plants.

The FIA provides that the Minister may issue licences and special permits, refuse a licence without reason, or issue an injunction where there has been a violation.

The associated regulations prohibit anyone from buying, selling, processing, or marketing fish products without a licence.

ENERGY

Energy Corporation of Newfoundland and Labrador Water Rights Act, SN 2008, c E-11.02

This Act elaborates the province's rights and obligations with respect to the Churchill River, in terms of access, use, and parts. It removes Crown liability for results of water diversion and extinguishes the rights of other parties to divert water resources beyond those permitted in the Act: the Lieutenant Governor can grant water rights by request of the Energy Corporation of Newfoundland. The Act outlines procedures for the application of, and resolution with, the *Electrical Power Control Act*.

FARMING PRACTICES AND FOOD PRODUCTION

Farm Practices Protection Act, SN 2013, c F-21.1 "FPP"

The FPP sets out the complaint process that is followed if someone is aggrieved by a farm's operation. It protects farmers and their practices from nuisance actions unless the Farm Practices Review Board approves a complaint application. If an application is approved, the FPP provides a number of potential outcomes and dictates the process to follow. It also gives the Board the responsibility of receiving applications to be a farm and of providing advice to the Minister regarding whether or not an application should be approved.

Food Premises Act, SN 2013, c F-21, "FPA"

The FPA prohibits selling, distributing, handling, displaying, or transporting food "unfit for human consumption". It requires that food be obtained from a government-approved source with proper inspection procedures in place.

The FPA delegates to the Minister the power of granting food premises licences, without which one must not operate food premises. Inspection provisions allow food inspectors a wide authority to carry out their duties. In non-compliance situations, there is a range of remedies available for the inspector from partial

injunctions to full closure of the food premises. In more serious cases, a judge may order an investigation. The FPA contains penalty provisions for those found in contravention of it.

PLANTS AND FORESTRY

Forest Protection Act, SN 1990, c F-22

This Act gives the Lieutenant Governor in Council power to deliver agreements with companies and individuals to establish the Newfoundland and Labrador Forest Protection Association. The association's objectives are forest conservation, education programs, and publicity designed for forest growth and preservation. This Act establishes the requirements of the association's constitution, and its power to make by-laws. The association is also approved to receive funding for their objectives and the Act states the conditions which must be met to receive funding.

Forestry Act, SN 1990, c F-23 "FA"

The FA is an umbrella act that deals with harvesting, processing, and inspection of forest products.

The FA sets out when government departments and the public need to be consulted regarding forestry projects and when consultation lies at the discretion of the Minister. It establishes a framework whereby forestry management districts can be created, and stipulates which factors must be considered in determining the annual allowable cut for a given district. The FA governs the types of timber that can be cut, and the areas they can be cut in. A permit is required to harvest on Crown land. The conditions for timber sale agreements are laid out in the Act.

The FA provides the Minister with the power to protect forests, including regulating or prohibiting pesticide use, intentional forest fires, the construction of access roads, and timber scaling.

Additionally, the FA sets out the terms under which a mill may be established, licenced, or removed.

Sustainable Forest Management Planning Regulations, NLR 61/13

These regulations mandate that those obligated to submit a “5 year operating plan” under the *Forestry Act* must consult the provincial and federal government, the local forestry business and members of the public who have an interest in the plan.

The regulations stipulate the requirements for the plan and direct that it be submitted 75 days prior to the plan’s commencement date at latest. The Minister must review and provide notice of any deficiencies to the applicant in writing within 14 days of receiving the plan.

An annual operating plan does not require consultation. This plan must be submitted 45 days prior to commencement and the Minister must review and provide notice in writing regarding any deficiencies within 30 days of submission. Annual reports must be submitted by September 30 and are used as support for making modifications to the 5-year plans if necessary.

Plant Protection Act SN 1990, c P-16

This Act imposes on a person a duty to report should they possess an infected plant. It gives rights and responsibilities to inspectors to ensure people are complying with this Act and levy penalties for those who are not.

MINING

Mining Act, SN 1999, c M-15.1 “MA”

The *Mining Act* deals mainly with the responsible operation of mines and mills in Newfoundland. In particular, the MA provides standards and procedures to acquire mining rights in the province. The Minister may grant access to mining areas if he or she is satisfied that the applicant has provided pre-development plans regarding proposed methods and operations, post-development plans for site rehabilitation, and financial assurances on the development’s funding.

The standards for these applications are determined by the Minister. If the lessee fails to implement the proposed plans, the Minister may enforce them or demand

the required money to complete closing and rehabilitation. To ensure the procedures are followed through, the Minister appoints inspectors who have full access to development information. This information is confidential between the inspector and operator.

If there are any conflicts with regards to mining rights, the *Labrador Mining and Exploration Company Limited Act* and *The Nalco-Javelin (Mineral Lands) Act* will take precedence. The MA also defers to regulations made under the *Occupational Health and Safety Act* for all matters affecting the health and safety of workers at a project to which the MA applies. Any regulation made under the *Mines Act* that is in force when the MA came into force is considered to have the same authority as the *Occupational Health and Safety Act*.

The Lieutenant Governor makes regulations that give the criteria needed for an operation to be considered small scale. The Lieutenant Governor may give small-scale operations an exemption from the MA. The Minister sets regulations for required information and standards for operator's plans at all stages of development – in line with the effective purpose of the MA.

The MA gives procedures for handling non-compliance and offences. Required adjudication is performed by the Mineral Rights Adjudication Board, as set up under the *Mineral Act*.

Mining Regulations, NLR 1151/96

Any operations under the MA must be continuously reported to, and approved by, the Minister under the Mining Regulations. These require that licence holders deliver updates at all stages: development, operational, rehabilitation, and closure. Annual reports are also necessary and must detail the results of operations as well as the progress of rehabilitation efforts.

Mineral Act, SN 1990, c M-12

The purpose of the *Mineral Act* is the conservation and use of the exhaustible mineral resources of the province to maximize the benefit for the province, its population, and its economy, or for regional economic development. Actions cannot lie against the Crown for the results of leases and cancellations made in the pursuit of this purpose.

The *Mineral Act* details procedures for the application, maintenance, and extension of licences, leases, mineral searches, reporting methods, mineral rights' transfers, and staking land/mineral claims. All rights with respect to these procedures are granted or withheld by the Minister. The Act restricts the Crown's powers over the landowners, but does allow the government powers to explore and acquire lands to the extent needed for the Act's purpose. Landowners can receive compensation.

Rights granted by lease and licences under the above procedures are subject to confidentiality agreements from the Crown. Lease and licence holders must report surveys to the Crown and submit to Crown inspections, to ensure leaseholders are meeting requirements. After consultations, the Minister may appoint the right to the demise of surface lands, cancel leases, or demand the licence holder remove chattel and structures.

The Lieutenant Governor is granted regulatory powers over licences, leases, rents, and finances. Fees and forms are regulated by the Minister. The Act also outlines recourse for offences committed against it, statutes of limitations, and procedures for the handling of out-of-production mines, the minerals and surface lands thereon.

Mineral Regulations, NLR 1143/96

These regulations set guidelines for licence holders or lessees who wish to extend operations. Operators are required to deliver, in good faith, detailed assessment plans for their future operations and explorations. Deviations from plans may be permitted if the environmental impact is minimal; changes that are in environmentally sensitive areas or are impactful on the environment will require entirely new plans with renewed approval. Plans must detail, among other things: where camps will be established; what types of equipment will be used; which roads, wood roads, and trails might be used; the planned depth and location of drilling operations.

Undeveloped Mineral Areas Act, SN. 1990, c U-2

The *Undeveloped Mineral Areas Act* seeks to help identify and develop undeveloped mineral sites. The Lieutenant Governor declares which sites are undeveloped and may choose to exempt certain areas for development. Development of an area is considered the extraction of minerals and construction of mining operations.

Once the Lieutenant Governor declares a site undeveloped and not exempt, the Minister's powers to develop the site are indefinite: he or she may make agreements with companies, parties, or persons for prospecting and development at any time after the declaration. The Act gives certain guidelines for these agreements and stipulates that they are binding on the Crown. In the alternative, the Minister may choose to enter, prospect, and develop a site alone, with the same rights as external parties.

PETROLEUM

Petroleum and Natural Gas Act, SN 1990, c P-10 "PNGA"

The PNGA deals primarily with crude oil and other hydrocarbons for the purposes of an orderly and efficient development of petroleum supplies. It does not deal with coal or natural gas. Petroleum is separate property from land and water it is in or on. The Crown's right to the petroleum extends from its land rights, as they are elaborated in the PNGA.

The Lieutenant Governor declares areas capable and in need of development. The declaration can be revoked. If the declaration is still in effect, the Minister may organize the development of the area through agreements with external parties. If the petroleum resources are accessible through land not owned by the Crown, access can be granted by permit or licence to a lessee with compensation to the owners. The Crown must assure the lessee access to necessary Crown lands for efficient operation.

The Lieutenant Governor sets regulations generally to secure the orderly and efficient development of a supply of petroleum. This includes but is not limited to: the granting and renewing of licences, permits, and leases; the management of approved equipment, inspections, disposals, and extraction; landowners' and fisheries' compensation processes and claim criteria. In addition to these regulatory powers, the Lieutenant Governor may make orders to protect life during operation, or to force entry into the operation in the face of resistance.

There are special procedures for the compensation and damage management of fisheries affected by extraction operations. The PNGA sets up the Fisheries Compensation Board for Petroleum Related Damages, which may subrogate claims on behalf of fisheries up to 3 years after the damage. Claims may be appealed to the trial division for arbitration. If the Crown is involved in the complaint, the

Arbitration Act will apply. Procedures are detailed for dealing with offences against the Act.

In the event that royalties are unpaid or offences are committed regarding royalties such as the destruction, fraud, alteration, or omission of relevant information, the PNGA provides penalties and fines. In addition, the Act extends liability for the actions of employees and agents to the operator unless a total absence of knowledge can be shown.

Petroleum Drilling Regulations, NLR 1150/96

No drilling for development, exploration, or any other well is permitted without approval of these regulations. Well conditions must be continuously reported, including descriptions of the environmental conditions of the area and potential impacts. The regulations also require licence holders to submit pollution prevention plans. An operation which comes to threaten pollution must be stopped immediately. All waste disposal which could contribute to pollution is to be disposed of only in approved ways.

Petroleum Regulations, NLR 1151/96

These regulations outline the procedures for the administration of petroleum exploration and well licences. The government requests bids that may require different information depending on the area, such as environmental or social characteristics of the operation. Upon finding deposits, interest holders submit detailed development plans. The plans must include environmental impact assessments as detailed in the *Environmental Assessment Act* and a list of proposed measures to mitigate any damage. Any mishap that may cause substantial damage to the environment must be reported immediately.

PARKS AND NATURAL AREAS

Labrador Inuit Land Claims Agreement Act, SN 2004, c L-31 “LILCA”

LILCA is a treaty and a land claims agreement pursuant to sections 25 and 35 of the *Constitution Act, 1982*. It acknowledged Inuit ownership of Inuit lands in Newfoundland and Labrador, extinguishing any rights to these lands previously held

by non-Inuit persons. It also outlines the tax agreements and payment obligations. When other legislation is in conflict with this act, LILCA prevails.

Mineral Exploration Standards Regulations, NLR 39/07

These regulations set the standards for mineral exploration on Labrador Inuit Lands agreed to by the province of Newfoundland and Labrador and the Nunatsiavut Government. Applicants who wish to conduct a mineral exploration project must submit a detailed work plan, subject to approval by the Minister of Lands and Resources of the Nunatsiavut Government and the Minister of Natural Resources of the Government of Newfoundland and Labrador.

The Inuit people will have access to the exploration site at all times unless the Nunatsiavut Government has consented to restrictions on Inuit access in its approval of the work plan. The company is required to conduct public information sessions at the request of the Nunatsiavut Government's request prior, during, and following the exploration activities. Exploration on Labrador Inuit Lands should seek to maximize employment opportunities for Inuit people and whenever possible goods and services should be purchased from Labrador Inuit businesses.

These regulations also require the company conducting the mineral exploration to adhere to stricter environmental protection measures including conducting environmental baseline information, protection measures for wildlife, reclamation steps, emergency response, fuel storage handling and transport, vehicle and vessel use, clearing of vegetation, and water use and water quality protection. These measures are in addition to other environmental laws and regulations in the province.

Muskrat Falls Project Land Use and Expropriation Act, SN 2012, c M-25

This Act gives the Provincial Government of Newfoundland and Labrador the power to issue notices of expropriation, and monitor and execute the expropriation process in the Muskrat Falls Project. The Provincial Government will be the body to approve the expropriation of land under the expropriation protocol. It creates an easement giving industry and corporations the right to develop the land, gain access to the land for the purposes of construction, development and maintenance and

restricts the uses to which the landowner can use the land as set out in the easement.

National Parks Land Act, SN 1990, c N-1

This act deals with the acquisition of land for the creation of national parks. It gives authority to either the Minister of Tourism and Culture to purchase the lands, or to the Minister of Works, Services and Transportation to acquire the lands under the *Expropriation Act*. The Lieutenant Governor in Council may transfer Crown lands to the Government of Canada for the purpose of the creation of a national park.

Provincial Parks Act, SN 1990, c P-32

This act explains that the Lieutenant-Governor in Council may create a provincial park using legislative monies designated for the purpose, may accept a gift of land for the purpose, or set apart Crown lands for provincial parks. The constitution of provincial parks dictates that the Lieutenant-Governor in Council may change the size of provincial parks and that there is to be no logging, mining, exploration, development etc. on lands designated for provincial parks.

Wilderness and Ecological Reserves Act, SN 1990, c W-9

This act permits the setting aside of wilderness and ecological reserves. The former may be set aside to ensure little to no human activity takes place on this area of land in order to preserve the natural environment for hunting, fishing, otherwise experiencing a natural environment, for undisturbed interactions between species and their environment and for species survival. Areas containing a unique or representative natural phenomena, species or ecosystem may be set aside as ecological reserves for scientific, educational and preservation purposes.

This act prohibits various activities from taking place on a reserve or a provisional reserve from erecting structures, cutting trees, mining, agriculture, alter the amount of or course of water, use motorized vehicles, land aircraft or use sprays. Regarding ecological reserves particularly, fishing and hunting are also prohibited. That said, the Lieutenant Governor in Council may make regulations that permit these activities under various circumstances. A person who breaches this Act is liable for various fines or terms of imprisonment.

Historic Resources Act, SN 1990, c H-4 “HRA”

The HRA sets out a framework whereby areas of historic significance are to be preserved and maintained. A person who discovers an object of potential significance is required to report the discovery. The Minister is empowered to order that an assessment be carried out prior to any activity that might alter or damage a historic resource. The Minister may attach conditions to any such activity. Additionally, the Lieutenant Governor may declare a historic resource or site to be provincial cultural property and may take steps to acquire same, including the payment of such compensation as approved by government or by expropriation.

Under the HRA, provincial or municipal government, or certain foundations may enter into a conservation easement or covenant and register this against property with the Registry of Deeds. Such easement or covenant runs with the land and may be assigned or enforced by the holder or assignee.

WILDLIFE***Endangered Species Act, SN 2001, c E-10.1 “ESA”***

The ESA establishes the requirements for a species to be designated as vulnerable, threatened endangered, extirpated or extinct. Differing processes and recovery plans are applied to a given species based on its designation. The Minister may issue a permit to interfere with a species or its habitat if the result is economically beneficial and there is no reasonable alternative. Information regarding such permits is to be published in an annual report.

The ESA establishes a framework to help recover an at-risk species, including the creation of a recovery plan, management plan, and consultation with both provincial and federal levels of government. The Minister may set aside land and dictate which activities may or may not take place there in order to protect the habitat of a given species.

Various enforcement powers are included in the ESA, including inspection, investigation, search and seizure, and arrest. Appropriate penalties are spelled out.

Wild Life Act, SN 1990, c W-8

This act allows the Minister to create regulations regarding the hunting and fishing of various species and to control what activities may take place in wildlife parks.

Wild Life Regulations, NLR 1156/96

These regulations set out the Minister's powers with regard to the granting of licences for fishing, hunting, trapping, and the sale and transport of fur-bearing animals. It is prohibited to partake in these activities without a licence.

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ECELAW welcomes questions and comments regarding this draft publication. Your feedback will help us improve our future publications. Please contact us at info@ecelaw.ca.