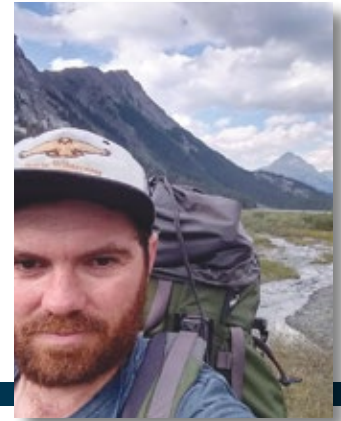


Four Years On: A Review of Provincial Environmental Policies Since 2019

By Nathaniel Schmidt



Alberta, like all Canadian provinces and territories, has some tough environmental reckoning to do in the face of climate change and biodiversity collapse. Laws, regulations, and policies implemented at all levels of government are crucial to leading our response and addressing these complicated issues. With a provincial election expected this coming May, now is the time to review and assess where four years of UCP leadership has left the state of environmental decision-making in Alberta and look forward towards the tools that are needed to properly address these complex issues. Their tenure began with the passing of numerous laws and shifts in regulation and policy characterized by the easing of government oversight, prioritizing land use over planning and protection, and prioritizing private interest groups.

The most familiar may be the proposed changes to Alberta Parks that would have seen large-scale delisting of areas from the parks system and the widespread downloading of parks management responsibilities to private partnerships. This saw strong opposition from all corners of Alberta, resulting in a reversal from the provincial government. The Kananaskis Conservation Pass which instated a user fee for park users also galvanized opposition among many in southern Alberta. Both received widespread media attention driven by an outcry over what Albertans saw as an attack on our universal public goods — which are becoming increasingly rare in the neoliberal push towards privatization.

Both initiatives were ambiguous in their implementation and long-term effects. In the case of parks, we were assured that despite 175 areas being removed from the parks system, they would remain protected.

However, assurances are not legally binding, and it was unclear what the long-term effects of these removals and reversion to unprotected Crown land would mean. Meanwhile, it was also unclear how the funds from the Kananaskis Conservation Pass would be used. This remains a question mark more than a year and a half since its implementation in June 2021.

Other new laws also lacked clarity, leading to questions about their true purpose and effects, showing a trend in UCP's approach. The *Trails Act* is a good example. On the surface, the government introduced the Act, stating that it was an improvement to the recreational trails system in Alberta. However, as professor Shaun Fluker noted in his ABLawg (the University of Calgary Faculty of Law Blog) analysis of the Act, the *Trails Act* is “another example of ‘framework legislation’: A statute that consists almost entirely of permissive statements which authorize a minister or other member of the executive branch to enact all the substantive legal rules sometime later outside of the legislative process.”

The Red Tape Reduction initiative is a similar example of this concentration of power in the executive branch. Bill 21, the *Red Tape Reduction Act*, was touted as legislation that would improve regulatory efficiency and save Albertans money. But hidden behind this cost-savings maneuver was a shift in how our public lands are managed and how this management is communicated to the public. Section 1.1(1) of the Act allows the Minister to adopt rules “without limitation” and without any responsibility to bring amendments to the Lieutenant Governor and have them published in the Alberta Queen's Printer with notices on ministerial websites. This

already ineffective process has now been made even weaker.

Results of this are already being seen with the release of the *Provincial Parks General Directive* in September 2022. This made changes to things like the use of dogs for hunting and bear baiting. Most concerning, however, was that it was done with almost no scrutiny thanks to minimal or non-existent requirements for consultation and public announcements.

These actions erode transparency in environmental decision-making and gradually dismantle the system that is supposed to treat our natural assets as a public good. We saw the impacts of this ideology in action during the pandemic when the Alberta government suspended environmental reporting requirements for industry in 2020, justified by emergency powers related to COVID-19.

The decision to scrap the *Coal Policy* without warning or consultation was a similar move that, like the proposed changes to Provincial Parks, came back to haunt the UCP government.

The *Trails Act* and *Red Tape Reduction Act* will make it easier for future governments to make these kinds of sweeping changes with limited scrutiny in the crucial period before they come into effect. Should this approach be duplicated by emboldened future governments, we can only expect more surprising shifts in law, regulation and policy to fall further under the radar.

The last four years also saw shifts in forestry management that prioritized industry interests. AWA has followed this issue closely and it is deserving of increased scrutiny. The passage of Bill 40 *Growing Alberta's Forest Sector Amendment Act*, 2020 was touted as a “modernization” of

the *Forests Act*. However, its most notable amendment was a 13 percent increase to Alberta's annual timber take. The government overview of Bill 40 focuses entirely on effects to industry, stating that "We work hard and carefully to ensure our legislation balances the forest sector's success and growth." It also appears that industry was the only stakeholder engaged in the amendment process, making this outcome predictable and once more focusing on resource extraction over protection, in favour of private interests.

As the UCP's term in government progressed, they began to follow through on their promise to stand up to the federal government in the form of opposition to what they perceived as being federal overreach with regards to environmental laws and regulations. The government has devoted significant time, energy and resources to this fight especially under Premier Danielle Smith's new leadership. But this fight has also sapped the energy of others, energy that could be used more productively to enhance cooperation on shared goals such as the protection of species and ecosystems.

Efforts began with a legal challenge to the federal carbon tax, in the form of a legal reference to the Alberta Court of Appeal which was appealed to the Supreme Court of Canada. Legal references allow governments to raise questions with the courts beyond those arising from traditional disputes between parties. The constitutionality of the Carbon Tax was assessed by legal experts in the judiciary and the Supreme Court of Canada ultimately upheld the regime as constitutional. An upcoming challenge to the Federal *Impact Assessment Act* has also been brought to the courts for reference and will follow the same process as the Carbon Tax Reference.

Unsatisfied with these steps, the *Alberta Sovereignty Within a United Canada Act* (better known as the Sovereignty Act) was introduced, which intends to turn established processes on their head by giving the provincial cabinet the power to assess and reject federal laws they consider unconstitutional. This encroaches on the domain of the judicial branch to assess the constitutionality of laws and breaks

down the important separation of the three branches of power (judiciary, executive and legislative). Furthermore, it gives extraordinary power to people who may lack the subject-matter expertise to adequately assess constitutionality in a legal context.

Previous attempts to resist federal laws — as we saw with the carbon tax reference — regardless of its content, went through established norms and legal processes. In contrast, the Sovereignty Act takes us into uncharted waters, and should it ever be used, will set a dangerous precedent for future conflict between different levels of government and the rule of law. It further circumvents the important roles played by the three branches of power (legislative, executive, and judicial) and the systems of accountability they provide throughout the process of the creation and implementation of laws.

Looking ahead to the upcoming election, it is important to assess what issues we need to make headway on, such as species at risk, climate change and habitat destruction. Alberta is in need of scientifically informed legislation that takes into account a broader range of interests and priorities accounting for the urgency and complexity of the problems before us.

Like almost every province and territory in Canada, Alberta lacks legislation aimed at protecting species at risk. The Commissioner of Environment and Sustainable Development, appointed through the federal Auditor General, recently reported that there is insufficient reporting, monitoring and enforcement for species at risk across Canada. The federal *Species at Risk Act* is limited and can only provide protection for species on provincial Crown land in very specific circumstances. To ensure the survival of species like caribou, we need laws that enable meaningful action on provincial lands.

The *Water Act* is in need of reform to better integrate improved knowledge about water ecology into the process for approvals. As the Environmental Law Centre in Edmonton noted, tools in the Act for setting water conservation objectives have seen minimal use and meaningful reforms need to be made to integrate effective tools to address environmental risks. This could have broad positive results for aquatic

ecosystems and the surrounding ecosystems and species that rely on them.

Compared to other jurisdictions across Canada and the rest of the world, Alberta is lacking any formal commitment towards reducing greenhouse gas (GHG) emissions, in line with Canada's international commitments (i.e., Paris 2015) to achieve 40-45 percent reductions by 2030 and net-zero by 2050. In conjunction with a formal commitment of this sort, Alberta needs to implement a suite of supportive policies and regulations that enable (or enforce — if necessary) corporations, industries, and Albertans to transition to a lower carbon economy and lifestyle.

Finally, it is time to prioritize the completion of regional land-use plans through the *Alberta Land Stewardship Act*. These plans have the potential to be a crucial tool in environmental management and to-date only the Lower Athabasca Regional Plan and South Saskatchewan Regional Plan have been completed. The North Saskatchewan Regional Plan was initiated in 2014 but still needs to be completed while the remaining four plans have yet to begin. These land-use plans need to incorporate considerations for the cumulative impacts of all activities taking place across Alberta's landscape, to ensure that future development occurs in a way that minimizes harm to the environment as well as Indigenous communities across the province.

There is much that needs to be done to make up for the regression we have witnessed over the last four years with respect to environmental policies in Alberta. There is more than one way to address the environmental issues that we currently face, but from the available evidence, it seems clear that the policies and proposals over the past four years of government have not intended to remedy these issues. The blame doesn't solely rest at the feet of the UCP, as prior governments have played a role in exacerbating the dire situation facing Alberta's ecosystems, and any attempt at recovery will require greater political cooperation than we have seen in recent decades. Regardless of which party wins in the upcoming elections, we hope to see these concerns addressed, as it is well past time for our province's leadership to start prioritizing wilderness and wildlife. 🍄