

Canada, the Antarctic and the Madrid Protocol

The House of Commons of Canada passed Bill C-42, An Act respecting the protection of the Antarctic Environment, in June 2003. By it, Canada ratifies the Protocol on Environmental Protection to the Antarctic Treaty (the “Madrid Protocol”), which designates Antarctica as a natural reserve, devoted to peace and science. Through this legislation, Canada will have the legal instruments to manage and monitor its citizens and others on Canadian projects in the Antarctic with respect to the environmental codes of conduct established by the Madrid Protocol.

Canadians have been involved in Antarctica since the first overwintering at the turn of the 19th century. The level of activity, over the years and today, is much greater than most people think. The Arctic Institute of North America, established in the 1940s, has always had an interest in both polar regions; its Act of Parliament refers to both hemispheres. In recent years, efforts have been made to strengthen formal relations between Canada (as distinct from Canadians) and Antarctica. These include nation-wide petitions from young Canadians involved in the Students on Ice program. These petitions and other references to this legislation in the House of Commons can be found in Hansard (House of Commons Debates, Canada).

Bill C-42, passed by the House of Commons on June 13, was an important step forward in the “formal relations.” The Bill was tabled in the Senate the same day and received Royal Assent on October 20.

The Antarctic Treaty of 1961 establishes that Antarctica shall be used for peaceful purposes only. It prohibits military activity, nuclear tests, and radioactive waste disposal. It promotes international cooperation in research and suspends all sovereignty claims.

The Antarctic Treaty System includes the Antarctic Treaty itself, the Convention for the Conservation of Antarctic Seals (CCAS, 1972), the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR, 1980), and the Protocol on Environmental Protection to the Antarctic Treaty (1991), also known as the Madrid Protocol. The Protocol designates Antarctica as a natural reserve, devoted to peace and science.

Canada acceded to the Antarctic Treaty and the CCAMLR in 1988 and to the CCAS in 1990.

The Madrid Protocol entered into force in 1998, ratified by 29 nations. Canada signed it (agreed to it in principle) in 1991, but did not ratify it. Bill C-42, An Act respecting the protection of the Antarctic Environment, is summarized as follows:

The purpose of this enactment is to protect the Antarctic environment, particularly by implementing the Protocol on Environmental Protection to the Antarctic Treaty.

This enactment provides a permitting regime that gives the Minister the necessary powers to ensure that the activities undertaken by Canadian expeditions, Canadian vessels and Canadian aircraft in the Antarctic are subject to an environmental impact assessment prior to their occurrence.

This enactment creates prohibitions to protect the Antarctic marine environment, specially protected areas and historic sites and monuments in the Antarctic, and species that are native to the Antarctic.

The provisions of the legislation, including regulations adopted pursuant to the bill, apply to all, regardless of nationality, on Canadian expeditions (that is, expeditions organized in or proceeding from Canada) to the Antarctic. They apply to all Canadians, Canadian vessels, and aircraft in the Antarctic and to anyone at a Canadian station there. There will be a permit system for people and activities covered by the legislation. This will encompass such things as environmental impact assessment, specially protected areas, waste management, and emergency plans.

Implementation of the bill means that Canadian operators must obtain permits that were not required previously, but the requirements will be similar to those that must be met by groups working in the Canadian Arctic. Antarctic expeditions usually involve participants

from other countries, and if Canadian nationals participate in an activity that already has a permit from another Party to the Environmental Protocol, this will be accepted by Canada. There is no need for a 'double permit.'

There are monitoring, reporting, and inspection provisions to allow enforcement. In Canada, the enforcement provisions are in line with the Fisheries Act, the Canadian Environmental Protection Act (CEPA), and the Species at Risk Act (SARA).

I am delighted that Canada has now formally accepted its share of responsibility for the protection of the Antarctic environment. As far as I know, Canadians operating in the Antarctic have invariably met or exceeded all environmental standards there. However, formal ratification of the Madrid Protocol shows our willingness as a nation to enforce these standards.

Canada is a full member of the Scientific Committee of Antarctic Research (SCAR). The Canadian Polar Commission (CPC), which by Act of Parliament is responsible for promoting knowledge of both polar regions, is Canada's adhering body to SCAR. Through the CPC, which established the Canadian Committee for Antarctic Research (CCAR) as Canada's National Committee for SCAR, we are also actively involved in a number of scientific groups established by SCAR. The Canadian Antarctic Research Network has worked hard to have this new legislation declared and enacted. I commend and thank those who have worked to keep Canada connected to the Antarctic and wish them well as the new regime comes into force.

The academic community in particular should realize that the development of legislation such as this is a complex and delicate process. In the beginning, there must be public interest linked to interest among legislators. This interest has to spread to Ministers, their staffs, and public servants. After that, appreciation of the purpose of the legislation has to spread more widely in the House of Commons and the Senate. Draft versions of the legislation have to be assessed critically, as flawed drafting has resulted in the loss of windows of opportunity on the floor of the House of Commons. Those with specialized knowledge of the topic dealt with in the proposed law, in this case the Antarctic and the Antarctic Treaty, can and should be involved at all of these evolutionary stages. However, they should always be very conscious that what appears self-evident to them is not self-evident to all. They should also be sensitive to the fact that the public and legislators are generally suspicious of what they perceive as self-interest.

I am grateful to David Anderson, Olav Loken, Fritz Koerner, and Students on Ice for their work on this fine project.

Let's not rest on our laurels!

Peter Adams
M.P., Peterborough