

# Property Rights Advocate Office 2017 Annual Report



Fair and equitable property rights for all Albertans

DECEMBER 21, 2018

Alberta

Justice and Solicitor General, Government of Alberta  
December 21, 2018  
Property Rights Advocate Office 2017 Annual Report  
ISBN 978-1-4601-4171-7 (Print)  
ISBN 978-1-4601-4172-4 (PDF)  
ISSN 2368-0059 (Print)  
ISSN 2368-0067 (Online)  
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# Letter of Transmittal

 Justice and  
Solicitor General

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Dear Speaker,

It is an honor and a privilege to submit this 2017 annual report with you as the Speaker of the Legislative Assembly in accordance with the requirements of section 5 of the *Property Rights Advocate Act*.

Sincerely,

*Original Signed*

Karen A. Johnson, MBA, RI  
Property Rights Advocate  
Edmonton, Alberta

December 21, 2018

Enclosure

# Message

## From the Property Rights Advocate

It continues to be my privilege to act as Alberta's Property Rights Advocate and I want to express my gratitude for the opportunity to advocate for fairness and equity regarding property rights. As I enter my third year of service in this role, I look back with pride at the achievements of this office. This year's annual report shares some of the outcomes from our activities.



Since 2013, the office has undergone significant change but our primary goals of raising awareness of the importance of property rights and of advocating for fairness and equity regarding property rights have not changed.

In July 2017, the office achieved cost and operational efficiencies by consolidating the Lethbridge and Edmonton offices. The office is now located in Edmonton where it continues to serve stakeholders across Alberta. To serve Albertans better, a toll-free telephone number was established. Additionally, an Intake Officer/Administrative Assistant was placed in the Edmonton office to receive information from stakeholders across the province and to document the issues.

The office was created in response to requests received by the 2011 Alberta Property Rights Task Force and remains the only property rights office of its kind in Canada. This puts the office on the leading-edge, though modelled on the few similar offices in North America. With any innovative new structure it is appropriate to evaluate effectiveness and review goals and that is why the Property Rights Advocate Office's 2016 annual report contained a recommendation to review the *Property Rights Advocate Act* and the Property Rights Advocate Office. The Standing Committee on Resource Stewardship endorsed that recommendation and this office looks forward to learning the results of that review.

Various ministries effected changes to property rights related Acts and this office is proud to have participated by communicating the concerns and suggestions shared by our stakeholders. The input provided by our office received careful consideration and, since much of the office's input reflects what stakeholders are telling us, the voice of Albertans contacting our office received consideration as part of the legislative and policy changes.

Most of the property rights related legislative changes are recent and, in some cases, additional related regulations have yet come into effect. Because the changes are new, the office has not received many comments from our stakeholders regarding the effects of those changes. We do still hear concerns from stakeholders who would benefit from the changes once they are operational. The Property Rights Advocate Office continues to monitor the impact of those

changes as they come into effect. Feedback is a beneficial way for Alberta's legislators to learn how Alberta's laws and policies affect Albertans; to identify how property rights legislation operates "on the ground".

The Property Rights Advocate Office's 2015 annual report recommended the creation of a process for following up on progress by government ministries in implementing the recommendations of this office. Alberta Justice and Solicitor General determined the best method for providing updates is to include this information in this office's annual reports. As a result, and for the first time, this office invited the Ministries of Energy, Environment & Parks, Justice & Solicitor General, Municipal Affairs and Service Alberta to each provide submissions on progress their ministries are making toward a more fair and equitable property rights system. I am grateful for the hard work and for the thoughtful responses provided by each of the ministries from whom I requested submissions.

The Standing Committee on Resource Stewardship continues to be an important facilitator of positive change regarding property rights and I would like to acknowledge that contribution. The committee members' questions sometimes provoke lively debate and discussion among committee members, giving those in attendance an opportunity to witness the contemplation that frames each decision. The deliberations of the Committee ultimately result in the Committee's own report back to the Legislature on action government should take, based on this office's annual reports. The committee's endorsements of this office's recommendations often act as a catalyst for the process of change to begin.

The role of this office is to identify what is working well and what needs improvement regarding property rights. Based on what our stakeholders share with us, this office provides observations and recommendations regarding property rights. Built on the recommendations endorsed by the Standing Committee, the ministries carry out the heavy lifting.

It is with respect and admiration that I watch the changes resulting from the role this office plays in bringing the voice of Albertans, who take the time to contact our office, to Alberta's legislators and ministries. It most truly is a privilege and an honor to serve in this role.

Sincerely,

*Original Signed*

Karen A. Johnson, MBA, RI  
Property Rights Advocate  
Edmonton, Alberta

December 21, 2018

# Executive Summary

This year's report reflects on 2017 as a year of change for the Property Rights Advocate Office and shares some of the outcomes of the office's activities. The primary goals of raising awareness of the importance of property rights and of advocating for fairness and equity regarding property rights continue to be the primary purpose of the office.

In July 2017, the office achieved cost and operational efficiencies by consolidating the Lethbridge and Edmonton offices. The office is now located in Edmonton where it continues to serve stakeholders across Alberta. To serve Albertans better, a toll-free telephone number was established. Additionally, an Intake Officer/Administrative Assistant was placed in the Edmonton office to receive information from stakeholders across the province and to document the issues.

Although Alberta's Property Rights Advocate Office was modelled on the few similar offices in North America, this office continues to be a groundbreaking innovation as the only office of its kind in Canada. With any innovative new structure, it is appropriate to evaluate effectiveness and review goals and that is why the Property Rights Advocate Office's 2016 Annual Report recommended the *Property Rights Advocate Act* and the Property Rights Advocate Office undergo a review. The Standing Committee on Resource Stewardship endorsed that recommendation and this office looks forward to learning the results of that review.

Various ministries effected changes to property rights related laws and this office is proud to have participated by communicating the concerns and suggestions shared by stakeholders. The input provided by the office to these ministries received careful consideration and, since much of the office's input reflects what stakeholders are saying, the voice of Albertans contacting the office also received consideration as part of those legislative and policy changes.

The Property Rights Advocate Office continues to monitor the impact of those changes as they come into effect. Feedback is a beneficial way for Alberta's legislators to learn how Alberta's laws and policies affect Albertans; to identify how property rights legislation operates "on the ground."

The role of this office is to identify what is working well and what needs improvement regarding property rights. Based on what stakeholders share with the office, this office provides observations and recommendations regarding property rights. Built on the recommendations endorsed by the Standing Committee, the ministries carry out the heavy lifting.

The Standing Committee on Resource Stewardship continues to be an important facilitator of positive change regarding property rights. The committee members' questions sometimes provoke lively debate and discussion among committee members, giving those in attendance an opportunity to witness the contemplation that frames each decision. The committee's endorsements of this office's recommendations often act as a catalyst for the process of change to begin.

The Property Rights Advocate Office continues to listen to and actively consider concerns raised by individuals, businesses or industry - whether the issue is urban or rural, or regarding an owner or a tenant/lessee. The office registers and initiates records of issues and concerns as they are shared and promotes awareness of the importance of protecting property rights.

The office also informs relevant ministries and other organizations about general property rights matters, or specific property rights issues, and launches discussions with other ministries as required. Advocating for fairness and equity regarding property rights is advanced by the office through the filing of an annual report with the Speaker of the Legislative Assembly and through recommendations for enhanced fairness and equity regarding property rights. The annual report is a powerful communication tool for Albertans and the province's legislators.

For the future, the Property Rights Advocate Office is working to enhance its ability to analyze and research information reported by stakeholders in a consistent, efficient and accurate manner. The office also wishes to increase stakeholder awareness of sources for property rights information and assistance and to expand the office's reach through awareness and through electronic tools, allowing Albertans opportunities to share information with the office at a time and place that is convenient.

As in other years, during 2017 this office heard about a variety of property rights issues and concerns. Some issues will likely be addressed by recent modernization of laws and policies, however it is too soon to expect to see changes in regards to the frequency of those concerns until the changes have been in place for a longer period of time.

## Concerns heard by the office in 2017







This year's report discusses fair treatment and protection of property rights related to renewable energy development by applying some important lessons from Alberta's history of oil and gas operations. These are important lessons about challenges in harmonizing the competing interests of the greater public good, energy corporations, and individual Albertans.

Comprehensive consideration of relevant factors and planning for the right balance is important. Now is the right time to develop a proactive approach since waiting can only lead to a reactive response at best. Today is an opportunity to address foreseeable problems proactively.

Corporations have very persuasive dominance financially, legally and technically that can eclipse a landowners' property rights. In this equation, landowner rights require protection, not over corporate property rights, but to balance the significantly fewer resources available to most landowners to pursue a legal remedy when disputes later arise. Government should ensure landowners are provided with systems that promote greater certainty companies will adhere to negotiated contractual terms.

When it comes to enforcing rights, property owners are in a significantly weaker position than developers are. Laws should be established, or in some cases changed, to protect landowners more and to provide a better balance between the positions.

While the inequality in power is an important element, in regards to property rights and renewable energy development, there are other concepts to also consider. Government should deliberate on and clarify its position regarding these elements so corresponding policies that align with desired outcomes can be developed. Factors to consider include:

- increased potential for larger installations (wind towers, solar fields) to have negative impacts on neighbours, particularly in more urban settings
- lack of mutual incentive for partners to treat one another fairly because landowners cannot simply take their land back from underneath a structure after it is built
- need for a process where affected parties can bring their grievances forward, have them heard, and enforceable decisions made in a timely, cost effective manner

- potential merits of a standardized agreement to prompt landowners to ask the right questions and so contractual terms can be more easily enforced
- possible benefits of requiring operators to register with government copies of their agreements with landowners
- full disclosure to landowners regarding adverse events and indemnification of the landowner for any actions resulting from that event
- enforcement for the protection of Albertan citizens, collectively and individually
- the wisdom of independently verifying the accuracy of information provided by companies to better inform government decisions
- reframing environmentally responsible development to ensure decommissioning of infrastructure is done in a timely manner at the expense of the operator
- “polluter pays” applies even to renewable energy development
- policies and procedures that ensure corporations cannot transfer liability for reclamation costs or issues related to operation of their infrastructure

The following recommendations were shaped by this report’s discussion on renewable development to contemplate options that establish greater fairness and equity:

**2017.01** The Property Rights Advocate Office recommends Alberta Energy and Alberta Environment and Parks develop policy and legislative options to promote greater fairness in the treatment of landowners by operators who lease private property for renewable energy development.

**2017.02** The Property Rights Advocate Office recommends Alberta Energy and Alberta Environment and Parks develop policy and legislative options to increase access to justice through processes external to the courts that are designed to promote resolution of disputes between property owners and developers.

This year's report also examines the meaning of "compensable takings."

The *Property Rights Advocate Act* defines a compensable taking as "...in respect of land, the diminution or abrogation pursuant to an enactment of a property right, title or interest giving rise to compensation in law or equity." This definition is not particularly helpful to Albertans in clarifying what comprises a compensable taking or how the concept is applied in Alberta.

What may be lacking is a framework on which Albertans can build an understanding of when property rights can be denied or diminished and the right to compensation can also be denied. This lack of clarity may be what some Albertans are interpreting as a lack of property rights or lack of confidence their property rights are secure.

This office continues to hear from Albertans who believe they have experienced a compensable taking and who want to know where to go for compensation. Albertans express frustration when they suffer a loss and feel entitled to compensation yet no compensation is forthcoming.

Clarification of what the term "compensable taking" means would be helpful. Along with a clear definition, a framework of real property compensation principles should outline factors

to determine appropriate compensation. The definition and framework should clarify when the framework applies and under what circumstances. In addition to predictability offered by a clear definition, principles on how to quantify the value of a taking should provide consistency for its application.

When a taking is under dispute, options for an accessible, timely and cost effective means to determine whether a taking occurred should also be available. Ideally, an administrative process or quasi-judicial tribunal could be set up to hear evidence and make determinations and rulings.

Another option to consider is a public education program, available on-line or through outreach agencies, to clarify in a concrete and practical form the rights a property owner possesses when they purchase real property in Alberta. Along with education about property rights, it is important for Albertans to know property rights are more than a concept. Albertans will want to know how the rights they hold will be enforced against those who would contravene those rights.

An administrative or quasi-judicial process that can determine when a taking is compensable and how compensation is to be determined could help build a collective public understanding about takings and when or how they are compensable. Access to a tribunal with specialized knowledge geared toward clarifying when the taking of a property right is compensable could increase access to justice for Albertans who have experienced a taking. Government should consider ways to make determinations on takings and compensation that is efficient, effective, affordable and outside of the courts.

The following recommendation encourages examination by government to find ways of promoting a greater sense of predictability and consistency and is based on this report's discussion on compensable takings:

**2017.03 The Property Rights Advocate Office recommends Alberta Justice and Solicitor General develop policy and legislative options to promote a greater sense of understanding by Albertans on what compensable takings are and how appropriate compensation is determined. Options to be considered include whether to create a real property bill of rights or public education initiatives.**

In the Property Rights Advocate Office's 2015 Annual Report, a recommendation was included that a process be developed to follow up on progress of government ministries toward implementing the recommendations of this office. Alberta Justice and Solicitor General determined the best method for providing updates is in this office's annual reports. Accordingly, and for the first, time, this office invited the ministries of Energy, Environment and Parks, Justice and Solicitor General, Municipal Affairs, and Service Alberta to provide submissions on the progress their ministries are making toward a more fair and equitable property rights system.

The responses by those ministries are included in this annual report as appendices C to G.

The addition of these responses help to strengthen accountability to Albertans by creating a public record that allows stakeholders to monitor progress on those recommendations.

## Terms used in this document

The Property Rights Advocate Office hears about real or “fixed” property rights related to land and permanent structures on the land such as homes, tenancies, leases of land, apartments, condominiums, easements, right of ways, mineral rights (freehold or mineral lease tenure) etc. For the purposes of the Property Rights Advocate Office, property does not include personal assets such as a car, tools, movable equipment, furnishings or intellectual property such as a patent or new invention.

References to “the Advocate” in this report refer to the person appointed by cabinet to fulfil the advocate role created under the *Property Rights Advocate Act*, including the Acting Property Rights Advocate.

This document refers to the “**Property Rights Advocate Office**”, “**PRAO**” and “**office**” interchangeably; except where indicated, such as reference to another office.

The voice of Albertans in this report is not a comprehensive catalogue of all potential opinions or experiences and reflects information received from stakeholders who contacted the office.

This document references “**stakeholders**” “**Albertans**” or “**the public**” interchangeably. In the context of the Property Rights Advocate Office, these terms refer to Albertan men, women and families; grass roots organizations; industry; regulators; quasi-judicial boards; academic, legal, and Indigenous members, etc.

The Property Rights Advocate Office welcomes feedback and perspective from all persons who consider themselves a stakeholder and who have an issue, or are interested in, property or in property rights.

Land reclamation refers to the process of returning the land back to the owner with usefulness equivalent to what it was prior to its alternate use, such as green space used for an oil well. In this report, references to land or property reclamation usually assumes completion of any remediation requirements as part of that process.

Section 1 (c) of the *Property Rights Advocate Act* defines a compensable taking as “*in respect of land, the diminution or abrogation pursuant to an enactment of a property right, title, or interest giving rise to compensation in law or in equity.*” More work is necessary to better define what a compensable taking means. See this report’s discussion on this topic beginning on page 32.

The term “renewable development” is used in this document in reference to larger infrastructure or projects (generally developments for power distribution) such as wind turbines and solar farms. Please refer to **Appendix B** at the end of this report for more detailed definitions and information.

# What does the Property Rights Advocate Office Do?

## What the Property Rights Advocate Office does

- Listens to and actively considers concerns raised by individuals, businesses or industry whether the issue is urban or rural, or regarding an owner or a tenant/lessee
- Registers and initiates records of issues and concerns as they are shared
- Promotes awareness of the importance of protecting property rights
- Informs relevant ministries and other organizations about general property rights matters, or on specific property rights issues, and launches discussion with other ministries as required
- Advocates for fairness and equity regarding property rights through the filing of an annual report with the Speaker of the Legislative Assembly. The report contains recommendations to enhance fairness and equity regarding property rights

### The office engages with Albertans to:

- gain an ongoing understanding of how property rights laws and policies affect stakeholders during a specific point in time (and over time as laws and circumstances change)
- provide relevant suggestions and information or to direct stakeholders to organizations or services that may mediate their current situation
- review and consider information received from stakeholders to develop observations and recommendations for the Office's annual report

**The office consults with and informs ministries or other organizations responsible for implementing changes to laws or policies, or the way laws are interpreted and applied, to:**

- develop awareness of property rights issues and concerns
- examine potential unintended consequences of any changes (or lack of change)
- explore potential opportunities for sustainable solutions in the near and long term
- stimulate appropriate action

**The Advocate:**

- files an annual report with the Speaker of the Legislative Assembly
- tables the report directly with the Speaker which preserves independence of the office to ensure the Advocate can provide independent, impartial and nonpartisan advice to government and speak frankly to Alberta's legislators about what stakeholders are expressing
- presents the annual report to the Standing Committee on Resource Stewardship, to detail the key elements of the report and to answer the Committee members' questions

**An annual report must be filed under the *Property Rights Advocate Act***

The annual report is a powerful communication tool for Albertans and the Province's legislators. The report raises awareness of property rights issues disclosed by stakeholders and allows legislators to consider a broader collective voice when determining next steps.

The report's recommendations for enhancing fairness and equity regarding property rights form the basis for deliberations about future government action and direction regarding property rights.



**The annual report includes:**

- reflection about what transpired in that year regarding property rights
- an outline of issues stakeholders have raised
- constructive recommendations to drive fairness and equity regarding property rights; and
- outcomes provided by other ministries in response to the office's written request for submissions on progress toward implementing past recommendations

**The Advocate presents the annual report to the Standing Committee on Resource Stewardship (Committee)**

Once filed, the Speaker refers the annual report to a Standing Committee of the Legislature (the Committee) for review. This ensures the annual report receives an independent review and consideration by Alberta's legislators within a specified timeline. The Committee must meet these timelines to complete its review and file its own report with recommended actions for government.

The Advocate's presentation and the Committee deliberations provide transparency for the public by:

- providing a window into what the Advocate is hearing from stakeholders over a given year
- demonstrating how the Standing Committee on Resource Stewardship arrived at its own recommendations for action by government based on the annual report recommendations to enhance fairness and equity regarding property rights for all Albertans
- clarifying factors the Committee considered during deliberations and how Committee member voting transpired

Albertans can attend the Advocate's presentation and Committee deliberations:

- in person
- live online
- or later download the video, transcripts or Committee reports



## Ministries' progress toward implementation of recommendations

Starting this year, the office's annual report will include responses from ministries on their progress toward implementation of past recommendations of the office. Including this information strengthens accountability to Albertans by creating a public record and allowing stakeholders to monitor progress by government regarding the recommendations.

Number of Recommendations Made			
Annual Report Year	# of recommendations made in Annual Report	# Endorsed by Committee	
		# Endorsed	Recommendation #
2012	1	0	--
2013	5	2	2013.1 and 2013.3 <sup>1</sup>
2014	4	1	2014.1
2015	2	2	2015.1 and 2015.2
2016	2	2	2016.1 and 2016.2

<sup>1</sup> 2013.3 was endorsed "in principle"

### NOTES:

- Additional information or reviews were requested by the Committee for 2012.01; 2013.4; 2014.2; 2014.4
- Initially the Committee requested a review of 2014.03, but revisited and endorsed the recommendation in 2017.

To learn about the status of these recommendations, refer to the ministry response documents attached to this report as appendices C to G.

## Property Rights Advocate Office Values

After the Property Rights Advocate Office first opened its doors in 2012, the former Advocate chose operational values for the office:

**Honesty** – to keep an open mind and communicate the truth with clarity

**Consistency** – reasoning must be based on principles of law and ethics, not expediency, and

**Diligence** – work will be completed in an objective, even-handed, non-partisan manner

In 2015, the APS values of Respect, Accountability, Integrity, and Excellence were added.

# Meeting our Mandate

The Property Rights Advocate Office was created in response to requests from the public that were received by the 2011 Alberta Property Rights Task Force. It is the only property rights office of its kind in Canada. This makes the office groundbreaking, though modelled off the few similar offices in North America. With any innovative new structure, it is appropriate to evaluate effectiveness and review goals.

Accordingly, the Property Rights Advocate Office's 2016 annual report contained a recommendation to review the *Property Rights Advocate Act* and the Property Rights Advocate Office. The office's 2014 recommendation that removal of Section 4 of the Act (Complaints) be removed due to issues with its applicability was also to be included as part of that review. The Standing Committee on Resource Stewardship endorsed that recommendation and this office looks forward to learning the results of that review when complete.

The mandate of the office as it stands today is to advocate for fairness and equity regarding property rights for all Albertans.

The office listens to Albertans' concerns about property rights, and initiates discussions about concerns with other government ministries and organizations. The office also provides information and referrals but does not mediate disputes.

The office continues to support and encourage ministries to help them more quickly identify policies or laws that may have potential impacts on property rights. When questions arise regarding possible impacts of a potential new or existing policy regarding property rights, business units engage the office for input and advice.

## Looking towards the Property Rights Advocate Office of the future

The Property Rights Advocate Office aspires to:

- enhance its ability to analyze and research information reported by stakeholders consistently, efficiently and accurately
- increase stakeholder awareness of sources for property rights information and assistance
- expand the office's reach through awareness and through electronic tools, allowing Albertans opportunities to share information with the office at a time and place that is convenient (for example: providing access 24/7 through the office's website)
- implement any changes that result from the findings of the review of the office, including recommendations regarding the "Complaints" mechanism provided under section 4 of the *Property Rights Advocate Act*

Toward this future, the office is working to develop capacity for electronic mining and analysis of information collected in the files; seeking out patterns, trends and other factors such as:

- location where particular issues are reported; such as in rural, urban (or both) communities, a specific region or province-wide
- severity or strength of impact reported; such as families who may face loss of some or all of their property or property rights, financial losses or loss of use and enjoyment etc.
- urgency; such as issues that appear to be growing, or that are compounded by cumulative effects
- likely causes; such as issues related to changes, gaps, overlap or fragmentation in Alberta's property rights system or in a specific law

# Connections

## Events attended

From January to December 2017, the Property Rights Advocate Office staff were in the community participating and engaging with Albertans.

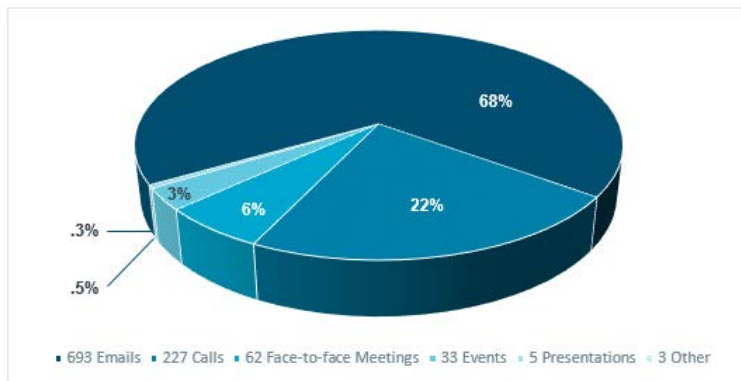
Staff attended:

- 33 events,
- 62 meetings, and
- made 5 presentations

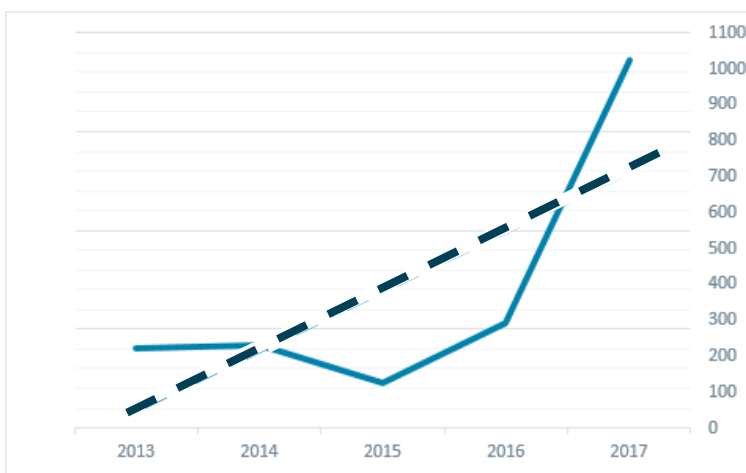
## How Many Contacts?

1,023 connections were made with the office in 2017

## Number of connections made with the office



## Trend and number of interactions, 2013 to 2017



Note: The Property Rights Advocate was appointed on December 18, 2012 and there were only seven working days for the office that year. During that week, the office tabulated nine requests for information.

**LEGEND**

Trend:

Interactions each year:

## Social Media

### Twitter activity

In January 2017, the PRAO Twitter account had 127 followers. By December 2017, the number of followers increased to 166. (An increase of 31% in Twitter followers during 2017.)

Tweets:

- in 2017, the PRAO tweeted 77 times

Retweets:

- in 2017, the PRAO had its tweets re-tweeted or liked 278 times

2018 Update:

Under a new social media policy, as of January 19, 2018, the PRAO Twitter account is not in use by the office. Please follow @AlbertaJSG where the office may post from time to time.

### Did you know?

Stakeholders who contact the Property Rights Advocate Office are contributing to the vision of fairness and equity for all Albertans regarding property rights

### Webpage activity

There were 1,665 unique page views of the Office's webpage from January 1, 2017 – December 31, 2017.

Notes:

- there are two sets of stats because the page was moved to Alberta.ca in April 2017
- the stats have filtered out Government of Alberta traffic – that is, the stats are all public visits
- the important number is “unique page views” because they are calculated on a session basis, meaning if the same user loads a page five times in a given session, it's only calculated as one unique page view
- stats for the new page demonstrate strong growth in traffic after migration to Alberta.ca

# Why Albertans contact the Property Rights Advocate Office?

Some stakeholders want to help make things better for their children, grandchildren, friends and neighbors.

Stakeholders contact the office for different reasons. Some stakeholders want to help make things better for their children, grandchildren, friends and neighbors. Others hope that by bringing awareness to a specific issue, change can happen early enough to benefit them in their current situation. Still others provide updates on their current situation or add their voice to those of other callers expressing the need for change.

Some Albertans connect with the office seeking information on what the office does or asking questions about a property rights concern. The office also heard from people who wished to share pertinent information or some research about property rights. In addition, the office receives requests from groups or individuals for the Advocate to make a presentation or deliver remarks about the role of the office at an event.

With just over 1,000 interactions, the office has learned the property rights audience is diverse. The subject areas may bear similarities, but there are nuanced differences.

When stakeholders contact the office, they are contributing to the vision of fairness and equity regarding property rights for the benefit of all Albertans.

Changes to laws or policies take time to implement. Many changes involve careful consideration and can require research; engagement with the public including Indigenous groups; and consultation with other ministries, governments or organizations. When a specific issue is brought forward, results may not be evident to the public while preparatory work toward a solution is under way.

There are several organizations or sources of information the office refers stakeholders to for assistance or additional information. Most frequently the office referred people to:

- Municipal Affairs
- A community legal centre such as Calgary Legal Guidance, Edmonton Community Legal Centre, Law Central Alberta, Law Society of Alberta, Legal Line
- Farmers Advocate Office
- Surface Rights Board
- Orphan Well Association

## Did you know?

- Alberta has an estimated 180,000 active wells, 83,000 inactive wells and 69,000 abandoned wells.
- As of March 2017, the Orphan Well Association (OWA) had an inventory of 2,084 orphaned wells to go through closure activities (1,394 to be abandoned, 690 to be reclaimed)
- The OWA closed 185 wells last year

*Source: Alberta Government News Release, May 10, 2017*

## Concerns heard by the office in 2017



# Government and Renewable Development

The Property Rights Advocate Office is interested in the underlying property rights upon which energy developments are built. The history of oil and gas operations provides important lessons about challenges in harmonizing the competing interests of the greater public good, energy corporations, and individual Albertans. Some of those lessons apply to renewable energy development.

In 2017, the Farmers' Advocate Office produced a document entitled, "Renewable Energy in Alberta," which highlights some of the concerns a rural owner should think about when considering or entering into a lease agreement with a renewable energy operator. That document helps farmers and rural Albertans proceed with renewable development related contracts and leases in a more informed manner.



However, when a rural landowner leases their property there may be little to no impact on neighboring land uses. In urban and suburban centers, where there is a greater density of homes, the potential for land use conflicts increases with proximity.

Renewable energy seems to be a growing part of Alberta's energy fabric while there is continued demand for oil and gas products. Some traditional energy companies are investing in renewable energy research and development. Government coordinates and supports renewable and non-renewable energy industries to broaden opportunities for Albertans.

This report focuses on underlying property rights and not on the merits of one type of energy production versus another. Albertans, both urban and rural, have voiced concerns over some of the practices of traditional oil and gas operations, notably well abandonment or contractual and operational issues. Many issues raised by stakeholders are difficult to remedy because there are complicating factors outside of the property rights debate. However, many of the property rights issues that exist in oil and gas development also pertain to renewable energy developments.

The following pages suggest potential issues and possible remedies government should consider proactively as it determines the role government will play to harmonize the interests of the greater public good, energy corporations, and Albertan families regarding renewable development.



# Property rights lessons from the past



The difference in power and resources between an individual landowner and a company is heavily lopsided.

A key lesson to draw from past traditional energy operations in Alberta is powerful industry members and individual families must work together, whether by choice or otherwise. Different corporations hold unique understandings of the importance of good landowner relationships. Some companies honor the intent as well as the terms of their contracts. Other companies are less inclined or sometimes less able to do so.

Clear, enforced policies help level the playing field, not only between individual families and large corporations, but also across corporations when everyone must play by the same rules. Addressing property rights issues that result from different corporate behaviors requires related laws and policies to be thoughtful, clear in their intent and readily enforceable.

Property owners are in a significantly weaker position than developers are. Laws should work together to protect landowners more by recognizing the significantly fewer resources available to most landowners for pursuing a legal remedy when disputes later arise. It should be much harder for companies to take advantage of Albertans by exploiting the disparity in bargaining power that arises once the infrastructure has been constructed on the land.

Reflecting on the oil and gas industry, the *Surface Rights Act* encourages landowners and corporations to negotiate occupancy terms and conditions acceptable to both parties. However, when a corporation fails to honor contractual terms related to use of the property, corporate mineral rights can quickly overtake surface property rights. Contractual issues show up when a company does not pay annual lease payments, fails to properly use or maintain the property, improperly reports or fails to report spills (and potential contamination) and many other issues.

The relationship between renewable energy development and Albertans has significant differences from that of traditional energy development. Renewable energy development companies do not benefit from the Right of Entry provisions under the *Surface Rights Act* which effectively compels landowners to give up use of their land for energy development. Landowners are free to negotiate or deny access to their property by sustainable energy developers.

However, the *Surface Rights Act* fulfils an arguably more important role for landowners and traditional oil and gas operators: It attempts to balance property rights through a quasi-judicial Surface Rights Board. The Surface Rights Board, similar to the Expropriation Act's Land Compensation Board, provides a process to determine fair compensation for landowners.

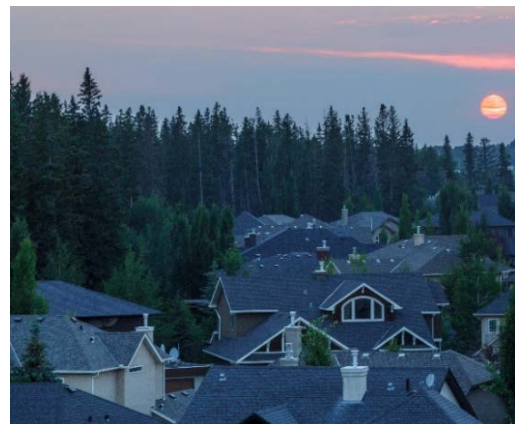
For some issues like unpaid annual lease payments, application of the *Surface Rights Act* would benefit from legislative changes to allow improved access (time and cost) and permitted assistance from experts with costs awarded to reimburse the surface owner's reasonably incurred expenses. I am aware of cases where Albertans were out of pocket for legal, expert, and other recovery costs, in excess of the value sought in their successful hearing. I have heard some Albertans claim the process of making an application to the Surface Rights Board and the uncertainty of whether costs will be awarded deterred them from making application.

Companies might be encouraged to meet their contractual obligations or engage in timely good faith negotiations if they faced paying a landowner's reasonably incurred costs to defend lease terms. Lease agreements would be more binding on both sides if the landowner was not at a financial or technical disadvantage when compelling companies to honor the terms that were agreed upon in exchange for their use of the land.

Unlike some corporations, landowners do not normally retain a staff of lawyers or technical experts. Where adjudication is necessary to enforce laws or contractual terms, the adjudicating body should be financially accessible and timely from the vulnerable party's perspective as the party more likely to seek adjudication over the more difficult option of negotiating from a position of weakness. When lease payments are not forthcoming, it should be a simple administrative matter to require the corporation to produce proof of payment within a short but reasonable timeframe; similar to residential lease hearings. If acceptable proof is not provided within that timeframe, the usual steps for non-payment of leases, which exist today for oil and gas, should result for renewable energy developments. The need for a hearing on such matters should be rare, and the onus of proof is more correctly placed on lessees.

Corporations have very persuasive dominance financially, legally and technically that can eclipse a landowners' property rights. In this equation, landowner rights require protection, not over corporate property rights, but to balance the significantly fewer resources available to most landowners to pursue a legal remedy when disputes later arise. Government should ensure landowners are provided with systems that promote greater certainty companies will adhere to negotiated contractual terms.

Suggesting that government provide landowners with protection is not a unique suggestion. Government has been known to step in to protect Albertans in many ways. The Alberta Motor Vehicle Industry Council was put in place to help protect consumers when purchasing a vehicle or having a



vehicle repaired. In October 2017, a new set of regulations were announced to better protect condo buyers and owners. There are other examples but the point is, when disparities in power exist between individuals and corporations, government has inserted itself by drafting laws that prevent potential mistreatment or that try to stop existing exploitation of citizens.

Good corporate players play by the rules regardless of who is watching over their shoulder or who is enforcing the rules. When the rules permit a disparity in power to exist unchecked, despite evidence of unfair practices, it is unjust, both to good corporate players and to Albertans. This is a call for government to recognize the reports this office receives from citizens about issues that result from that imbalance and to delve into those issues so potential solutions can be found.

If Alberta is going to ask individual landowners to support an economy based on renewable energy, Alberta should be certain landowners are not... ..penalized for having agreed to participate.

Alberta, as a province, stands to benefit from renewable energy development and if such development is to be encouraged in Alberta, the playing field between industry and landowners must operate in a balanced manner. If Alberta is going to ask individual landowners to support an economy based on renewable energy, Alberta should be certain landowners are not feeling abandoned once the infrastructure is in place, or penalized for having agreed to participate. Landowners should be treated fairly.

If, for example, a wind tower operator fails to comply with the terms of their lease/contract, and the landowner as a result was to cut off access, who would be responsible in the event of damages that result from a lack maintenance to the wind tower? Another example is abandonment. If a wind tower corporation declared bankruptcy, the wind tower would still exist and take up land, excluding the owner and possibly disrupting farm operations. The landowner has no means to operate or maintain the structure and should not face bankruptcy due to costs of removal to reclaim the land.

A landowner should not have to choose between court proceedings, burdensome risk or giving up their land for no (unpaid) compensation. It is not a fair choice. Alberta benefits economically from contributions to the power grid. In turn, Alberta landowners should not shoulder losses to host related infrastructure on their lands. They too are contributing to Alberta's economic growth.

A partnership normally implies a mutual incentive for partners to treat one another fairly because either partner can revoke their contribution. Landowners cannot take their land back from underneath a structure once it is built; thus, it is not a balanced partnership.

We are in the early days of renewable development, relative to oil and gas, which opens the door to finding relatively inexpensive solutions. There is little to be gained by waiting for issues to arise and then face expensive problems. With foresight, proactive steps can be taken now that start small and lead to a responsible, affordable and comprehensive management plan.

Government should also look into compensation for impacts sustained by adjacent owners. The concerns of owners adjacent to renewable energy development include safe operations and environmental protection, noise, visual impacts (strobing) and, in some cases, risk of infrastructure collapse. Adjacent owners should be entitled to compensation in proportion to the severity of impacts sustained by their property where substantiated as attributable to the installation or its operations. Adjacent owners, particularly in urban settings, can suffer decreased market value and reduced marketability.

Landowners hosting installations are supposed to be compensated for damages but impacted adjacent owners may not receive the same consideration.

It is possible Albertans could begin to oppose renewable development on or near their property if there is no cost effective means for settlement of related property rights issues. One way for Alberta to encourage renewable development is to provide a channel where affected parties can bring their grievances forward, have them heard, and mediated in a timely, cost effective manner. These types of hearings could significantly increase demand for court services but as the *Residential Tenancy Dispute Resolution Service* has demonstrated in relation to residential rentals, a separate system, dedicated to these types of land issues could provide better access to justice and avoid bogging down courts. A panel of property experts could make well-informed decisions and build up a body of precedents which can guide parties of similar cases, possibly avoiding similar hearings.

One way for Alberta to encourage renewable development, is to provide a channel where affected parties can bring their grievances forward, have them heard, and enforceable decisions made in a timely, cost effective manner.

Alberta should also explore the merits of a standardized agreement, or mandatory clauses inserted into the industry standard agreement, to prompt landowners to ask the right questions. An enforceable standard agreement, as part of a regulation, could aid enforcement and mediation activities because new agreements would benefit from previous interpretations.

Government should consider requiring operators to provide a government body with a copy of the contracts between themselves and landowners. This would provide a readily available resource for the landowner, the operator, or government officials while protecting the information from access by unauthorized parties. Subsequent negotiations between landowners and operators could be filed to complete the record and more readily resolve misunderstandings on both sides.

A standard agreement and mandatory disclosure by industry would enable government to access information and to enforce terms negotiated between a corporation and landowner. Access to the information must be protected and available only to the current operator, current landowner, and government (for enforcement activities or for non-identifying statistical analysis). Past voluntary registry systems for these agreements have not succeeded, causing difficulty in filling in the gaps.

Oversight of oil and gas operators has suffered in past, partly due to the lack of information that happens when contracts are lost, destroyed or misplaced. In addition, interpretation issues arise when there is little consistency among landowner and operator negotiated terms, in particular, terms added to industry-standard terms as addendums. Addressing this oversight could benefit landowners, administrators and the renewable energy industry, avoiding some of the issues that resulted from not having this practice in place for oil and gas operations.



When there are adverse events on a surface owner's property, the owner should be entitled to timely reporting on the facts, including any test results, known impacts, remediation requirements, status of reparations and any potential remaining liabilities. Landowners should be indemnified against any actions brought as a result of industry-caused events on their properties. For example, changes to the movement of underground water can be caused by pipeline placement, resulting in flooding/parching problems on the landowner's property or neighbouring lands.

Standards for safety and environmentally responsible development need to be established and enforced. If enforcement is carried out by a government-funded entity, using taxpayer dollars, enforcement should clearly be for the protection of Albertan citizens, collectively and individually. Enforcement activities should be prompt and effective with relevant information made readily available to the public; including the nature of the threat, the action taken, current situation and planned future activities.

Environmentally responsible development is more than addressing environmental incidents when they occur. For example, decommissioning of infrastructure should be done in a timely manner at the expense of the operator (or industry). Alberta should implement a range of swiftly applied and, for repeat offenses, increasing corrective measures.

Corporations hold important property rights when they acquire the right to develop energy on or near landowners' property but they have a duty to do so in a responsible and ethical manner.



External costs caused by industry should be borne by industry, not passed onto taxpayers. The so called ‘polluter pays’ principle must apply.

Knowledgeable technical and financial experts or auditors should independently scrutinize technical and financial information provided by industry, including but not limited to costing, productivity levels, profit and loss statements and forecasts. This would avoid reliance on imprecise numbers that can happen when information is not verified. Verified information is better information on which to base important decisions. Assessment and monitoring industry activities simply recognizes the natural corporate interest in maximizing its profit while maximizing the likelihood corporations will continue to operate responsibly.

## Should corporations offload their liabilities?

Government should consider a model where any corporation, person or entity that erects a wind turbine, solar field or other energy infrastructure retains all liability for reclamation and remediation costs at least until a reclamation certificate is issued. A simple way to do this is to model a fund similar to the oil and gas industry’s Orphan Well Association. Corporations could pay into a fund (reserve fund) that is only accessible by the regulator or an approved reclamation body for addressing decommissioning costs or environmental, safety, health, operational or contractual issues. Building a reserve fund today is more palatable and less financially burdensome to industry than waiting until problems arise later when catch-up funding could become onerous to industry corporations.

The reserve fund, could be funded on a ‘per asset’ basis to cover estimated costs of reclamation over time. Amortized annual fees that consider an asset’s anticipated cost of reclamation as a ‘debt’ to be paid over time could consider factors such as the asset’s age, life-expectancy and revenue-generating potential. This would allow more modest contributions to be made today, and interest to accrue, so the reserve fund grows over time. If a company declares bankruptcy, there should be at least partial funds to deal with any residual costs. If the bankrupt company was a successor to the original developer, the original company should make deposits into the reserve fund in lieu of the bankrupt company. A fulsome discussion on the topic of how corporations would retain liability while having some flexibility should take place among industry players, Albertans, government and regulators.

Today is the right time to explore these and other options. Potential issues are easier to address today than if government was to wait until bigger, more costly, issues emerged. Landowners care about more than the health of their own land. As Albertans, many also care about biodiversity, health, safe operations and the overall condition of their province’s air, land and water.

By paying attention to lessons from the past, Alberta can formulate a competent framework to guide renewable energy development, encourage economic benefits and environmental stewardship, protect individual property rights, and support all Albertans for generations to come.

The previous section provides context for Recommendations **2017.01** and **2017.02**:

**2017.01** The Property Rights Advocate Office recommends Alberta Energy and Alberta Environment and Parks develop policy and legislative options to promote greater fairness in the treatment of landowners by operators who lease private property for renewable energy development.

**2017.02** The Property Rights Advocate Office recommends Alberta Energy and Alberta Environment and Parks develop policy and legislative options to increase access to justice through processes external to the courts that are designed to promote resolution of disputes between property owners and developers.

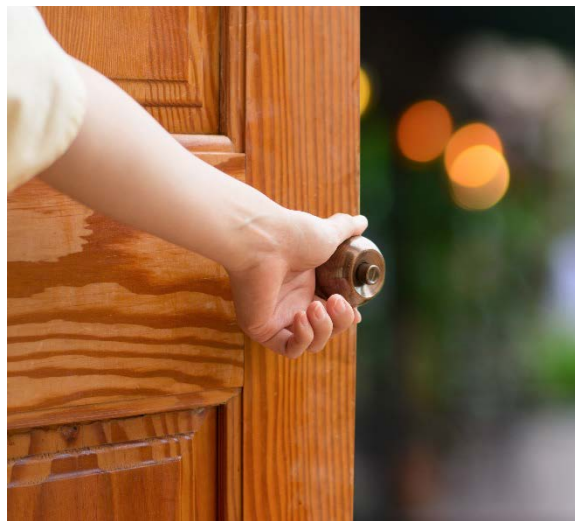
# Compensable takings

Many people do not have a clear understanding of what a compensable taking is or how the concept is applied in Alberta. This office continues to hear from Albertans who believe they have experienced a compensable taking and who want to know where to go for compensation. Albertans express frustration when they suffer a loss and feel entitled to compensation, yet no compensation is forthcoming. The term “compensable taking” implies that something taken should be paid for; that if a landowner can demonstrate a loss of use or loss of value in their property, they ought to be entitled to compensation for that loss.

When does a property right taken become a “compensable taking”?

The *Property Rights Advocate Act* defines a compensable taking as “...in respect of land, the diminution or abrogation pursuant to an enactment of a property right, title or interest giving rise to compensation in law or equity.” Similarly, the *Alberta Land Stewardship Act* defines a compensable taking as “the diminution or abrogation of a property right, title or interest giving rise to compensation in law or equity.”

Note: The *Alberta Land Stewardship Act*, references a compensable taking to takings, “suffered as a direct result of a regional plan or an amendment to a regional plan.”



For clarification, “lessening or denial” can substitute for “diminution or abrogation” in the above definitions. Thus, a compensable taking is a lessening or denial “of a property right, title or interest giving rise to compensation in law or equity.”

If a lessening or denial “of a property right, title or interest” does not give “rise to compensation in law,” then these definitions suggest it may be possible to turn to equity for assistance/relief.

A blog at [LawNow.org](http://LawNow.org), a website of the Centre for Public Legal Education Alberta, states:

*“Canadian law is mainly comprised of statutes (legislation enacted by Parliament and the provincial legislatures) and common law (the body of law developed through court judgments). In addition, there is the law of equity that permits a court to grant equitable relief where there is no relief at common law, and which includes its own doctrines and maxims.”*



Alberta Land Institute's Guide to Property Rights states:

*"[In Canada] the principle that the right to compensation must be based in statute means that an owner is not entitled to compensation unless the restrictions of the owner's rights are so drastic that they should properly be regarded as an effective taking of the land within the meaning of the Expropriation Act. This is known as "de facto" or "constructive" taking of land."*

The reference from LawNow suggests that if the law (statutes or common law) does not grant relief, a court may elect to grant equitable relief. The reference from the Alberta Land Institute further suggests that an owner is not entitled to compensation unless the restrictions are drastic enough to qualify as a taking under the *Expropriation Act*.

This appears to set a very high standard for a successful claim to compensation if there is no statute specifically providing for compensation. Albertans have expressed frustration when they lose an interest or property right without reparation. Some believe a right not freely given up should obligate the taker to pay for the rights and benefits lost.

What may be lacking is a framework on which Albertans can build an understanding of when property rights can be denied or diminished and the right to compensation can also be denied. This lack of clarity may be what some Albertans are interpreting as a lack of property rights or lack of confidence their property rights are secure.

What may be lacking is a framework on which Albertans can build an understanding of when property rights can be denied or diminished and the right to compensation can also be denied. This lack of clarity may be what some Albertans are interpreting as a lack of property rights or lack of confidence their property rights are secure.

N. Lee Cutforth, Q.C., Alberta's first Property Rights Advocate, wrote in his *Canadian Lawyer* article, "A New Development in Property Rights Law in Alberta" (January 21, 2013):

*"In a 2002 decision, **Love v. Flagstaff** (County of) Subdivision and Development Appeal Board, Alberta Court of Appeal Chief Justice Catherine Fraser outlined a number of foundational principles relating to property rights in Alberta...*

*...As Fraser so clearly articulated: '... private ownership of land remains one of the fundamental elements of our Parliamentary democracy. Without certainty, the economical development of land would be an unachievable objective' (emphasis by N. Lee Cutforth, Q.C.).*

*The court later noted that respect for individual property rights was ‘a principle firmly entrenched in the legislative planning scheme in effect in Alberta,’ and that it ‘follows that encroachments on individual rights, especially by private parties, should be strictly construed.’*

*The court also noted two of the essential mechanisms for honouring and protecting those rights were predictability and consistency. ‘The public must have confidence that the rules governing land use will be applied fairly and equally. . . . Without this, few would wish to invest capital in an asset the value of which might tomorrow prove relatively worthless. This is not in the community’s collective interest’ (emphasis by N. Lee Cutforth, Q.C).*

*Thus, protecting private property rights is not a matter of setting off one interest group (land owners, for example) against other groups or society as a whole. Rather, it is a matter of making society as a whole stronger through the establishment and protection of property rights.”*

Many Albertans grew up believing, unless a taking is negotiated and compensated, it is unjust. In the moral sense, and outside of the legal sense, a compensable taking is any taking of any property right, title or interest where losses can reasonably be quantified.

As quoted earlier regarding property rights, N. Lee Cutforth, Q.C., Alberta’s first Property Rights Advocate, wrote: *“The court also noted two of the essential mechanisms for honouring and protecting those rights were predictability and consistency.”*

This section will explore the concept of predictability and consistency and discuss a few ideas for government to consider that may help Albertans predict when an impact to property rights is compensable, and when compensation will not apply.

A clear definition of what a “compensable taking” means would be helpful. Along with a clear definition, a framework of real property compensation principles should outline factors to determine appropriate compensation. The definition and framework should clarify when the framework applies and under what circumstances. In addition to predictability offered by a clear definition, principles on how to quantify the value of a taking should provide consistency in how compensation is determined.

When a taking is under dispute, options for an accessible, timely and cost effective means to determine whether a taking occurred should also be available. Ideally, an administrative process or quasi-judicial tribunal could be set up to hear evidence and make determinations and rulings.

The [Land Compensation Board](#) could determine if a taking occurred and apply the provisions of the [Expropriation Act](#) to determine value. However, this could result in further confusion and may be a lesser option. Not all takings are expropriations or ‘*de facto*’ expropriations.

A real property framework or bill of rights could encompass all “compensable takings”, though it may point to the [Expropriation Act](#) and [Land Compensation Board](#) when warranted.

The *Expropriation Act* should help to inform a newly developed framework on principles of compensation for loss of property rights.

Developing and implementing a property rights framework could require public engagement and cross-ministry discussion and therefore is not likely to occur quickly. If implemented, a public body of knowledge may develop over time as to when property rights are secure in the sense they cannot be taken without compensation. Clarity on how and when the framework applies would make the rules more palatable even when some rules may not be unanimously liked.

Alberta's *Alberta Personal Property Bill of Rights* is an act that outlines, among other details:

- what personal property is and is not
- entitlement for owners of personal property to a process to determine value
- when the provisions apply
- that the Crown is bound by the act

A similar framework for property rights could potentially achieve the predictability and consistency for which Albertans have expressed a desire.

Another option to consider is a public education program, available on-line or through outreach agencies, to clarify in a concrete and practical form, the rights a property owner possesses when they purchase real property in Alberta. Along with education about property rights, it is important for Albertans to know property rights are more than a concept. Albertans will want to know how the rights they hold will be enforced against those who would contravene those rights.

An administrative or quasi-judicial process that can determine when a taking is compensable and how compensation is to be determined could help build a collective public understanding about takings and when or how they are compensable. Access to a tribunal with specialized knowledge geared toward clarifying when taking of a property right is compensable could increase access to justice for Albertans who have experienced a taking. Government should consider options for making determinations on what activities result in a compensable taking and for settling compensation issues in an efficient, effective and affordable way outside of the courts system.

The previous section provides things to consider and is the basis for **Recommendation 2017.03:**

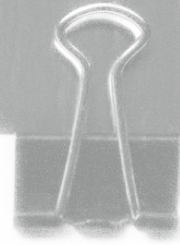
**2017.03 The Property Rights Advocate Office recommends Alberta Justice and Solicitor General develop policy and legislative options to promote a greater sense of understanding by Albertans on what compensable takings are and how appropriate compensation is determined. Options to be considered include whether to create a real property bill of rights or public education initiatives.**

# Past Property Rights Advocate Office's annual report recommendations

In the 2015 annual report, the Property Rights Advocate Office recommended creation of a process for following up on progress by government ministries toward implementing the recommendations of the office. Alberta Justice and Solicitor General determined the best method for providing updates is in the office's annual reports. Accordingly, and for the first, time, this office invited the Ministries of Municipal Affairs, Energy, Environment and Parks, Service Alberta and Justice and Solicitor General to provide submissions about the progress their ministries are making toward a more fair and equitable property rights system.

The ministries' responses to this office are attached in alphabetical order in appendices C - G.

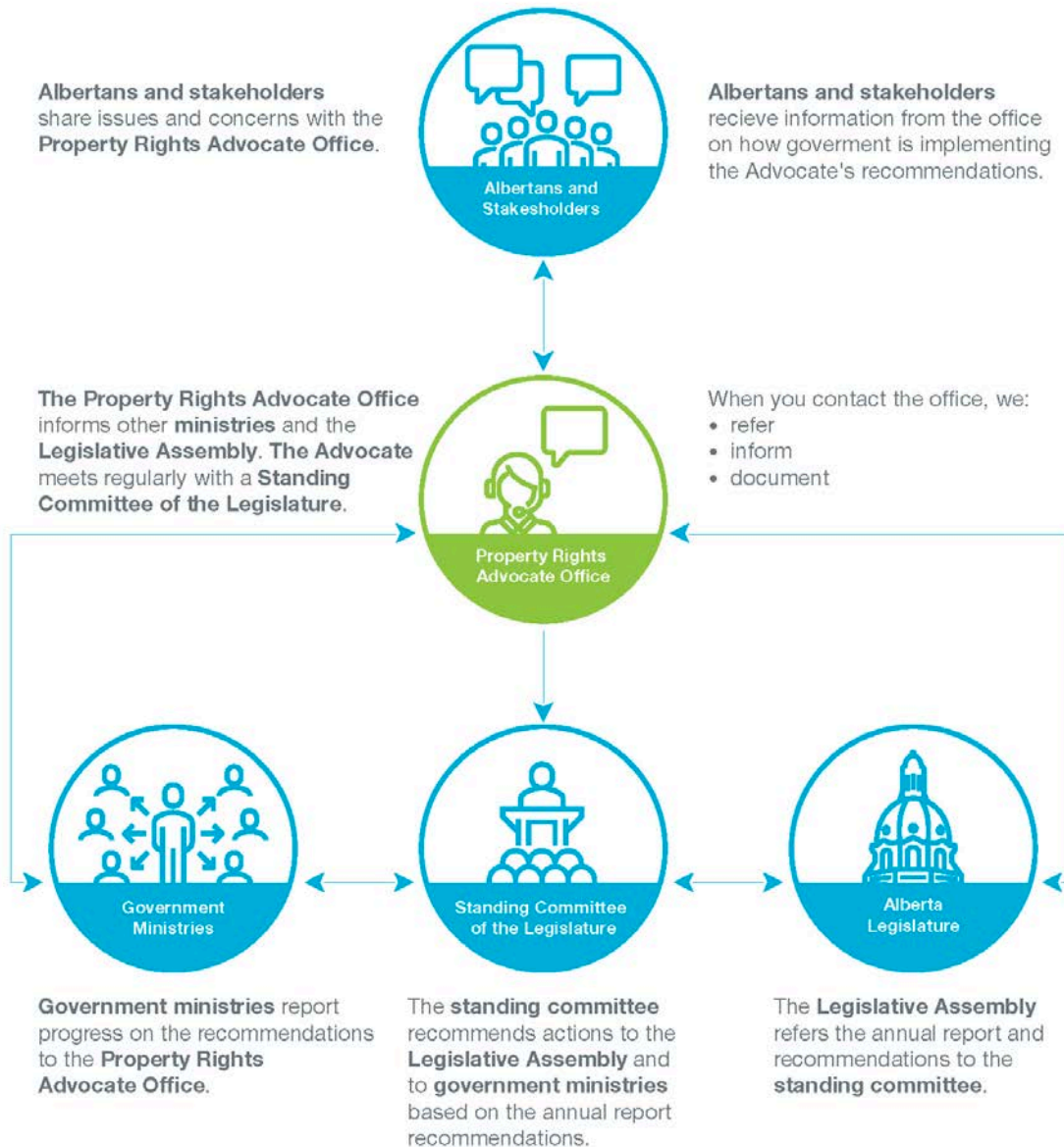
# Appendices





# Appendix A: The Property Rights Advocate Office is empowered to speak truth to power

This office brings the collective voice of Albertans to Alberta's government, legislators and other organizations to ensure policymakers and lawmakers are more fully informed.



## Appendix B: Definitions used in this document

### Advocate, the

Reference in this document to the “**Property Rights Advocate**” refers to the Cabinet Appointed Property Rights Advocate role as created under the *Property Rights Advocate Act*, whether the Order in Council Advocate appointment was as Advocate or as Acting Advocate.

### Collective voice of Albertans

The amalgamation of voices or collection of stories the Property Rights Advocate Office hears from the stakeholders who contact the office. The stakeholders this office hears from are not necessarily a representative sample of all potential groupings in Alberta. In this document, the voice of Albertans means those voices who want their story heard by their government and legislators in their capacity as the official bodies with the authority to make changes to law and policy.

### Office, the

This document refers to the “**Property Rights Advocate Office**” “**office**” or “**PRAO**” interchangeably. All terms refer to the Property Rights Advocate Office as created under the *Property Rights Advocate Act*.

### Property rights

The Property Rights Advocate Office hears about real or “**fixed**” property rights including land and permanent structures on the land such as homes, land leases, tenancies or leases of land, apartments, condos or houses, condominium ownership, easements, right of ways, mineral rights (freehold or mineral lease tenure) etc.

- Real property **does not include** personal assets such as a car, tools, movable equipment or furnishings.
- Real property **does not include** intellectual property such as a patent or new invention.



## Reclamation/remediation

The Property Rights Advocate Office uses reclamation and remediation a little differently than the regulator or Orphan Well Association. Technically, remediation means some sort of remedy was applied to the land – usually to restore the land or mitigate the damages after environmental contamination.

Reclamation refers to the process and requirements of returning the land to the owner in roughly equivalent prior condition followed by the issue of a reclamation certificate.

- If no remediation is required, the reclamation process is somewhat simplified.
- If remediation is required, the remediation must be complete in addition to (before, during, after) reclamation requirements.

Therefore, in some ways, remediation is part of the reclamation process though remediation is only undertaken on an “as required” basis. Where reclamation is referred to in this document, remediation requirements are often also implied.

## Stakeholders

This document’s references “**stakeholders**” “**Albertans**” or “**the public**” interchangeably. In the context of the Property Rights Advocate Office, these terms refer to Albertan men, women and families; grass roots organizations; industry; regulators; quasi-judicial boards; academic, legal, and indigenous members, etc.

The Property Rights Advocate Office welcomes feedback and perspective from all persons who consider themselves a stakeholder and who have an issue, or are interested in property or in property rights.

## Renewable Development

To use consistent terminology, the term “renewable development” is used in this document although terms such as “green energy” or “sustainable energy” would be fair choices as well. In this document, the term “renewable development” refers to larger infrastructure or projects (generally developments for power distribution) such as wind turbines and solar farms. Smaller household installations such as solar panels or residential geothermal installations are considered to be consumer products and are outside of the scope of this report.

## Appendix C: Alberta Energy's response document



Energy  
Resources and Development Branch  
4<sup>th</sup> floor Petroleum Plaza NT  
Edmonton, AB T5K 2G6  
Canada  
[www.alberta.ca](http://www.alberta.ca)

September 7, 2018

Karen Johnson  
Acting Property Rights Advocate  
Property Rights Advocate Office  
1<sup>st</sup> Floor, Room 106 Bowker Building  
9833 109 Street NW  
Edmonton, AB T5K 2E8

Dear Karen Johnson:

Thank you for your letter of July 13, 2018 and for the opportunity for Alberta Energy to provide information regarding relevant initiatives for the Property Rights Advocate Office annual report. I would like to highlight the review of Alberta's liability management system as well as the Alberta Energy Regulator's (AER) new Area-Based Closure program.

To support the effective stewardship and regulation of energy and mineral resources, Alberta Energy continued the review of Alberta's liability management system for upstream oil and gas along with the Ministry of Environment and Parks and the AER. As part of this review, engagement sessions were held with stakeholders and Indigenous communities in the summer of 2017 to identify and discuss which parts of the liability management system are working well and which parts or programs could be improved. Alberta Energy was pleased that Property Rights Advocate Office participated in these sessions, providing valuable input and perspectives on impacts on property rights. The input received through these engagement sessions has informed the ongoing review and policy analysis.

The AER launched the Area-Based Closure program in the summer of 2018. This program was jointly developed by the Canadian Association of Petroleum Producers, the Explorers and Producers Association of Canada, the Petroleum Services Association of Canada, and the AER. The program enables a more efficient, effective closure process (abandonment and decommissioning through to reclamation) for oil and gas infrastructure, such as wells, facilities, and pipelines. Beginning August 30, 2018, licensees will be able to opt into the Area-Based Closure program using OneStop, an online mapping tool enabling companies to collaborate with one another to coordinate their closure programs.


Sincerely,

A handwritten signature in blue ink, appearing to read "Wade Clark".

Wade Clark  
Executive Director

cc: Karen Wronko, Executive Director, Land Policy Branch, Environment and Parks

## Appendix D: Alberta Environment and Parks' response document

	<p><b>Strategy Division</b> 10<sup>th</sup> floor, South Petroleum Plaza 9915 – 108 Street NW Edmonton AB T5K 2G8 Canada Telephone 780-638-1252 <a href="http://www.alberta.ca">www.alberta.ca</a></p>
94931	
August 29, 2018	
<p>Karen Johnson Acting Property Rights Advocate Justice and Solicitor General 1<sup>st</sup> Floor, Room 106 Bowker Building 9833 – 109 Street NW Edmonton, AB T5K 2E8</p>	
Dear Karen Johnson:	
<p>Thank you for the opportunity for Alberta Environment and Parks to provide comments on progress relative to your office's endorsed recommendations and information on other initiatives relating to property rights. We are happy to provide you with the following updates:</p>	
<ul style="list-style-type: none"><li>o Recommendation 2013.03 –Environment and Parks is examining a broad range of opportunities to improve the <i>Surface Rights Act</i>.</li><li>o Recommendation 2014.04 – Environment and Parks sought and received a legal opinion from the Environmental Law Section in the Ministry of Justice and Solicitor General with respect to the interactions of the <i>Surface Rights Act</i> and the federal <i>Bankruptcy and Insolvency Act</i>.</li><li>o Recommendation 2015.01 –Environment and Parks continues to play a key role in a cross-ministry team working to examine and improve the overall system supporting surface rights (e.g., opportunities to create efficiencies and modernize the system).</li></ul>	
Other initiatives currently underway that relate to property rights include:	
<ul style="list-style-type: none"><li>o Environment and Parks amended the Conservation and Reclamation Regulation to include renewable energy projects in the definition of specified land. Development of specific provincial standards and criteria for conservation and reclamation of renewable energy operations is underway with the requirements to be finalized and published in September.</li><li>o Alberta Energy, Environment and Parks and the Alberta Energy Regulator reviewed the liability management system and held engagement sessions in 2017 to gather input from stakeholders. The input has been used to inform policy options to improve the overall liability management system.</li><li>o The Alberta Energy Regulator amended Directive 67 to provide increased scrutiny and more stringent requirements for companies wishing to acquire and hold energy licenses and approvals in Alberta.</li><li>o The Government of Alberta's loan to the Orphan Well Association is helping to reduce an estimated one third of the association's inventory.</li></ul>	
.../2	

**Alberta Environment and Parks' response document, continued...**

Page 2

Thank you again for the recommendations and for following up. Alberta Environment and Parks values its working relationship with the Property Rights Advocates Office.

Sincerely,



Rick Blackwood  
Assistant Deputy Minister

## Appendix E: Alberta Municipal Affairs' response document



Office of the Assistant Deputy Minister  
Municipal Services and Legislation  
17th Floor, Commerce Place  
10155 - 102 Street  
Edmonton, Alberta T5J 4L4  
Canada  
Telephone 780-427-2225  
Fax 780-420-1016

AR94619

July 19, 2018

Ms. Karen Johnson, Acting Property Rights Advocate  
Justice and Solicitor General  
1st Floor, Room 106 Bowker Building  
9833 - 109 Street NW  
Edmonton, AB T5K 2E8

Dear Ms. Johnson:

Thank you for your letter of July 13, 2018, seeking an update on any activities of Alberta Municipal Affairs relating to the work of your office.

With respect to the prior recommendations of the Property Rights Advocate noted in your letter, Municipal Affairs has taken no action on recommendation 2013.04, as we understand that recommendation was referred to the Alberta Urban Municipalities Association and the Rural Municipalities of Alberta (formerly Alberta Association of Municipal Districts and Counties). Similarly, the ministry has taken no action on recommendation 2013.05, as that recommendation was not accepted by the Standing Committee on Resource Stewardship.

As reported previously, Municipal Affairs has acted to address recommendation 2014.02 through the course of the *Municipal Government Act (MGA)* Review. This recommendation calls for the implementation of an administrative or quasi-judicial dispute resolution process to address landowner concerns with municipal decisions relating to land or land use.

Under the *MGA*, landowners have access to Subdivision and Development Appeal Boards (SDAB), which are local, quasi-judicial bodies that hear disputes related to the subdivision and development process. However, council decisions related to development rights (such as statutory plans and re-zoning) are beyond the scope of an SDAB.

To address recommendation 2014.02, as well as various other concerns raised by the general public, a compromise solution was approved by the Legislative Assembly, to expand the mandate of the provincial Ombudsman to hear complaints about municipal decisions.

.../2

Alberta Municipal Affairs' response document, continued...

Ms. Karen Johnson

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The focus of the Ombudsman is on administrative fairness, not on the political policy aspects of council decisions. This will give Albertans, including local property owners, access to another venue to address any concerns they may have with municipal decisions, without the need to engage the courts.

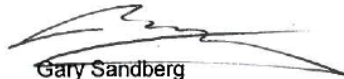
In addition, the *MGA* now prohibits municipal councilors from forming a majority on any municipal appeal board (either an SDAB or an Assessment Review Board). This mitigates the concern that the same people who make land-use decisions hear appeals on those decisions.

The legislative amendments to expand the Alberta Ombudsman's role and to align review board membership requirements received unanimous approval in the Legislative Assembly, and came into force in October 2017.

At this time, Municipal Affairs believes that we have addressed recommendation 2014.02, and we have no plans for any further action on this matter.

I trust that this information is helpful. Please don't hesitate to contact me if you require any additional information or clarification.

Yours truly,



Gary Sandberg  
Assistant Deputy Minister  
Municipal Services and Legislation

## Appendix F: Alberta Justice and Solicitor General's response document

### Response to the Property Rights Advocate's Request for Updates

**2012.01 Study and implement the availability of beneficiary deeds as an estate planning tool in Alberta, based upon the Montana model.** *(Deferred by Standing Committee pending receipt of full and sufficient information via the Alberta Law Reform Institute).*

Government conducted a review and ultimately did not pursue this recommendation. The areas of wills and estates (*Wills and Succession Act* in 2012 and *Estate Administration Act* in 2015) were reformed after extensive public consultation and close collaboration with the Alberta Law Reform Institute (ALRI). The Montana model is inconsistent with these reforms. In addition, the Montana model is incompatible with Alberta's land titles system.

**2014.01 Property Rights Advocate Act be amended to repeal the complaint mechanism established under section 4 of the Act.** *(Endorsed by the Standing Committee)*

Government is launching a review of the Property Rights Advocate Office and the *Property Rights Advocate Act*, with consideration to the broader property and land rights advocacy regime in Alberta. This review will examine whether the office and Act are achieving outcomes they were put in place to address, and will assess the ongoing functions of the office, including the complaints mechanism under Section 4 of the Act and whether it should be repealed. The review will include stakeholder consultation.

**2014.03 The law of adverse possession be abolished in Alberta.** *(Endorsed by the Standing Committee)*

Government requested expert analysis from the Alberta Law Reform Institute (ALRI) in fall 2017. ALRI has been reviewing whether adverse possession continues to serve a valid purpose in Alberta. The review includes a consideration of whether claims to recover land warrant an exemption from the *Limitations Act*, which governs most civil claims in Alberta. ALRI will start with the narrow policy question of whether there is a clear basis to exempt a claim for the recovery of land from the ultimate limitation period. Stakeholder consultations are expected to take place in the fall of 2018.

**2015.02 Develop a process to ensure recommendations made by the Property Rights Office and endorsed by the Standing Committee are followed up on.** *(Endorsed by the Standing Committee)*

Government worked with the Property Rights Advocate Office in establishing a tracking and reporting system via the advocate's annual report. Under this new system, the advocate's office will request updates from relevant ministries on recommendations endorsed by the standing committee, and will publish those updates in the office's annual report, which will be publicly available.

**2016.01 Cross-ministry committee to review dispute resolution.** *(Endorsed by the Standing Committee)*

The Government of Alberta is currently undertaking work across several ministries in relation to property-related issues. The Ministry of Justice and Solicitor General supports this ongoing work, and does not foresee the need for a cross-ministry committee to explore a comprehensive board or resolution service at this time.

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Government is launching a review of the Property Rights Advocate Office and the *Property Rights Advocate Act*, with consideration to the broader property and land rights advocacy regime in Alberta. This review will examine whether the office and Act are achieving outcomes they were put in place to address, and will assess the ongoing functions of the office, including the complaints mechanism under Section 4 of the Act and whether it should be repealed. The review will include stakeholder consultation.

**2016.02 Review of the *Property Rights Advocate Act*. (Endorsed by the Standing Committee)**

Government is launching a review of the Property Rights Advocate Office and the *Property Rights Advocate Act*, with consideration to the broader property and land rights advocacy regime in Alberta. This review will examine whether the office and Act are achieving outcomes they were put in place to address, and will assess the ongoing functions of the office, including the complaints mechanism under Section 4 of the Act and whether it should be repealed. The review will include stakeholder consultation.



## Appendix G: Service Alberta's response document

<p> <b>Service Alberta</b></p> <p>August 17, 2018</p> <p>Karen Johnson Property Rights Advocate Office Justice and Solicitor General 1<sup>st</sup> Floor, Room 106 Bowker Building 9833 - 109 Street NW Edmonton, AB T5K 2E8</p> <p>Dear Karen Johnson,</p> <p>Thank you for your query regarding the Standing Committee on Resource Stewardship recommendation in 2013 to keep the direct and full ownership of the land registry under its existing format. As Executive Director of Land Titles, I can report that there are no plans to change the current ownership structure of the Land Titles &amp; Surveys Branch.</p> <p>Regards,</p>  <p>Richard Schlachter Executive Director Land Titles and Surveys</p> <p>cc: Colin Lloyd, Assistant Deputy Minister, Service Alberta David Morhart, Deputy Minister, Service Alberta</p>		<p><b>Land Titles and Surveys Strategic and Consumer Services</b> Mezzanine Floor John E. Brownlee Building 10365 - 97 Street NW Edmonton, Alberta T5J 3W7 Telephone: 780-427 2742 <a href="http://www.servicealberta.ca">www.servicealberta.ca</a></p>	
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## Appendix H: PRAO recommendations for 2017

- 2017.01** The Property Rights Advocate Office recommends Alberta Energy and Alberta Environment and Parks develop policy and legislative options to promote greater fairness in the treatment of landowners by operators who lease private property for renewable energy development.
- 2017.02** The Property Rights Advocate Office recommends Alberta Energy and Alberta Environment and Parks develop policy and legislative options to increase access to justice through processes external to the courts that are designed to promote resolution of disputes between property owners and developers.
- 2017.03** The Property Rights Advocate Office recommends Alberta Justice and Solicitor General develop policy and legislative options to promote a greater sense of understanding by Albertans on what compensable takings are and how appropriate compensation is determined. Options to be considered include whether to create a real property bill of rights or public education initiatives



