

2015 Annual Report



Alberta Property Rights
Advocate Office

July 14, 2016

Alberta 

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Preface

The *2015 Property Rights Advocate Office's Annual Report* is based on a review of documented contacts and information received in the 2015 calendar year. This report is tabled in the Legislative Assembly of Alberta and reviewed by a committee of the Legislature in accordance with Section 5 of the *Property Rights Advocate Act*.

Alberta's Property Rights Advocate Office provides the opportunity for Albertans and property rights stakeholders to voice their opinions in the quest to find equity and fairness among the property rights of all.

In 2015, the office heard from Albertans about a broad spectrum of interests, concerns and issues that arose related to property rights. This office is made aware of the property rights concerns of Albertans from all walks of life. The specific circumstances vary in each situation and every concern, while heard, cannot be addressed comprehensively in one report.

The information received helped us to better understand the areas where study and work is required to achieve balance and fairness in property rights.

The office listened to and documented property rights concerns from all stakeholders who contacted our office including landowners, surface rights groups, other grass-roots organizations, tenants, land agents, freehold mineral-rights holders, and grazing-lease holders.

This document aims to educate and foster an understanding of some of the complicated and inter-related property rights concerns our office hears about during a calendar year.

While preparation of this report is legislated under the *Property Rights Advocate Act*, it is also written to represent the collective voices of all stakeholders with property rights concerns.

We've carried forward a diverse range of voices from property rights stakeholders on specific issues to inform our policy developers and law-makers and to ensure property rights concerns were heard and understood. It is trusted these concerns will continue to receive due consideration in the legislative and policy development process going forward. The office continues to make itself available as a resource and is pleased to provide information on property rights issues and concerns.

In the recommendations section of this report, ways to advance toward more modern property rights policies and legislation are identified. Implied throughout this report, is the need for developing a more robust and inclusive conversation about property rights issues in Alberta.

Albertans want to participate in identifying a new vision for Alberta's property rights. This new vision should include:

- key principles for use when making policies or decisions that impact property rights
- what "property rights" and "compensable taking" should mean in the practical sense
- how impacts to property rights should be assessed
- when compensation should be compulsory and to what degree
- how property rights legislation should be administered and coordinated
- ways to ensure adequate appeal mechanisms exist and are maintained
- an action plan to continue the dialogue on property rights into the future - and to implement any changes identified

This document is intended to help move the property rights conversation forward.

Message from the Acting Property Rights Advocate



Karen Johnson
Acting Property Rights Advocate

A critical challenge

According to Statistics Canada, Alberta is comprised of 661,848 km² of land and water. This vast area of land accommodates uses such as food production (agriculture), infrastructure development (homes, businesses and institutions such as hospitals or schools), transportation networks (roads, railways or highways) or energy production (oil, gas or electricity).

The land was here before Alberta became Alberta. Without this land there could be no Alberta; at least not how we know it to be today. Nearly everything can be linked back to the land.

That is why the many and varied uses of the land and how those uses are combined or buffered from one another must be organized thoughtfully. Land uses are subject to change, which means a modern, agile and effective management system capable of predicting future needs is a necessity.

Natural resources such as water, oil, gas and wildlife do not observe administrative property boundaries such as those described in the titles that are filed in Alberta's Land Titles Office.

Moreover there are several layers to real property ownership. The “bundle of sticks” analogy used to explain property rights is far too simplistic but does convey the idea that a stick (right) of ownership can be sold or removed while the other sticks (rights) can remain intact.

Land management includes laws to manage special land relationships, areas or places such as Provincial Crown dispositions for grazing or mineral leases and Federal reserves for First Nations. Private ownership is also subject to land use bylaws and a few other restrictions but otherwise, many owners believe they are purchasing a tangible asset when they purchase property. Many Albertans identify with the idea that as long as the use of property is legal – it should be allowed. Furthermore, ownership implies an element of certainty or security. This element of security is important to note.

Many Albertans believe a person may purchase a property (or a right in property) with a specific allowable purpose in mind. They trust fulfilment of the intended purpose will not be unduly undermined by government. If government must restrict the use and enjoyment of their rights, it is the expectation of most Albertans that the disturbance is fair, sound and reasonably necessary and that the owner will be fairly compensated for all losses.

Whatever purpose a property may serve, from operating a large rural farm to residing in an urban condo, most Albertans express pride in their ownership and stewardship and clearly regard ownership as both an investment and a source of security.

This makes sense. An investment in property or purchase of a right in property occurs with the expectation that the rights and privileges will be realized for as long as there is evidence of ownership.

Landowners often ask me what their property rights are. I've been asked to "name one property right" that an Albertan owns. I sense this request is really about naming an absolute property right. In other words, to name something that can't be taken away from an owner without fair and adequate compensation.

"Landowners should be appropriately compensated when their lands are affected by expropriation or compensable taking..."

Property Rights Advocate Act

Compensation for those affected may not always be appropriate, likely due to gaps, overlap and fragmentation in the way laws and policies are written or interpreted. Laws may have been written with the intent of fairness but when the components are not integrated into a complete system there are challenges that prevent equity and fairness in the outcomes. Certain activities or legislation are viewed as an invasion of property rights and Albertans want clarification on the rules when it comes to their rights.

The government and stakeholders need to define "compensable taking," not in the legal, sense but in the practical sense.

Owners have made it clear they want to understand the degree to which their property rights are protected. They want to understand what rights of recourse they have when their rights are diminished. Albertans want their voices heard clearly as a part of shaping what a "compensable taking" should mean in Alberta.

Ownership implies that an asset "belongs" to the owner and that it cannot be taken away unless, or until, the owner elects to release it. When government affects property rights in some way, owners are paid for their losses in some circumstances but in other situations are not compensated. Albertans want to know the circumstances in which the erosion of a property right will trigger compensation. Albertans want to know exactly what an Albertan owns when he or she owns a property or a property right. Perhaps it is clearer to say the rights to property convey the right of use at the pleasure of the Crown.

Albertans are also connecting with this office to ask for justice – justice for intrusions on their property rights in the form of appropriate compensation and adequate appeal mechanisms. An appeal mechanism, to be adequate, must provide timely and easily accessible (in terms of process and cost), hearings by an impartial tribunal with broad jurisdiction to consider all relevant influences. Absent any of those factors, an owner can find themselves not only stripped of their property rights but also feel emotionally and financially subjected to an ineffective, time-consuming and overly-complex process.

This annual report is intended to convey how complex and very personal property rights are to the holder. The benefits of property right ownership are not all obvious; some benefits are implied and others manifest as unanticipated side effects from a change in land use.

It shouldn't be surprising that the motivation among several parties with an interest in purchasing the same property may be different for each. For example, one may appreciate the view, the other the investment value and yet another, the ideal growing conditions. One may purchase title to the land to live on the property; another may buy the property to lease it out while the other may acquire a lease to farm it.

Therefore the impact on property rights by a public project will be subjective to the owner. This value to the owner is not to be confused with “market value.” Market value is an objective value based on market transactions (what a knowledgeable buyer would likely pay to a reasonable seller in normal circumstances). The right balance must be explored and may lie somewhere between subjective and bureaucratic assessments of value.

I am pleased to have the opportunity to complete this report and hope it serves a role in raising awareness of the need for equity among property rights.

This annual report of the Property Rights Advocate Office for the year 2015 is respectfully submitted on this 14th day of July 2016

Original Signed

Karen Johnson,
Acting Property Rights Advocate

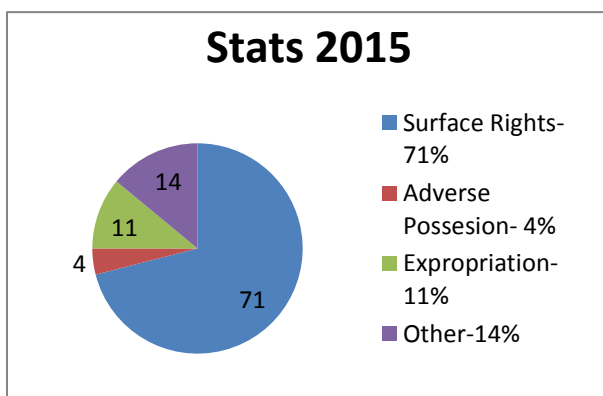
Indicators

General Indicators

The lower price of oil led to a surge in a number of pre-existing property rights issues between landowners and industry. For example, the hardships faced by surface owners when an energy company goes bankrupt have become increasingly common. Some board or court decisions have also resulted in new understandings about the management of property rights relationships. The numbers of grass-roots organizations formed in Alberta due to dissatisfaction with recurring issues, some that have existed for decades, suggest that inequalities in property rights continue to exist as a source of frustration for Albertans.

A goal of the office was to identify new methodologies that facilitate analysis of the contacts received by the office in order to better reflect Albertans' voices about property rights concerns.

Top 5 concerns we heard about in 2015



Source: Property Rights Advocate Office, 2015

During 2015, the office documented the following information to support that goal:

- The Property Rights Advocate Office received 127 inquiries in 2015. The majority of concerns shared by Albertans and stakeholders related to conflicts between surface rights and oil or gas industry activity. Given the current economic situation, this should not be surprising.
- Outside of the concerns about surface rights, other topics the office heard about related to expropriation and adverse possession. In addition, the office was contacted about topics such as mineral rights, grazing leases, neighbor-to-neighbor conflicts, municipal zoning and bylaw administration, or landlord and tenant disputes. Many of these issues were civil in nature and would need to be resolved outside of currently existing processes and programs.

The office's second goal was to continue broadening the base of stakeholders we engage with, in order to provide a more robust cumulative picture of property rights in Alberta. To support that goal, the office accepted 22 speaking engagements and attended meetings with various stakeholder groups, municipal representatives, as well as with other government staff who worked in a ministry or organization which had a relationship to property rights.

The media coverage of the office and Albertans' property rights concerns was monitored, playing a small role in depicting the state of property rights in Alberta but helping to support the above-mentioned goal. In 2015, news stories about Albertans' and stakeholders' concerns directly related to property rights appeared in the Alberta media on 16 occasions. The stories were focused on subjects such as the office's annual report recommendations, the response to the recommendations, and surface rights compensation issues. In addition to those news items, the Property Rights Advocate Office was specifically mentioned in 14 news stories. The former Property Rights Advocate, Lee Cutforth, participated in several interviews with the media.

During 2015, the number of followers on the office's Twitter account began to slowly grow. The office tweeted or re-tweeted 19 times and two followers sent out tweets about the office during that year.

Observations

The Property Rights Advocate Office aims to serve a long term and strategic role. We are essentially the bellwether for government when it comes to the property rights concerns of Albertans. We fill this role by raising the concerns heard by the office with this government's decision-makers and we recommend ways to re-shape existing processes and policies.

The office contributed to the achievement of many of the government's strategic directions for building strong families, strong communities, and a healthy environment. The office is also able to support the government's plans for adopting the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples by listening to concerns related to Aboriginal land titles and sharing that information with relevant members who sit at the Federal Provincial Territorial table.

Owners bear certain restrictions to property rights in order to maintain fairness for the benefit of everyone – for themselves, their neighbours and the community as a whole. This office endeavours to ensure property rights and civil responsibilities are more clearly understood and managed equitably.

Property rights disputes exist everywhere; in urban centres and in rural settings across all of Alberta. For example, property rights conflicts can involve a large or small corporation, a municipal or provincial body, a landlord or tenant, a mineral-rights holder, a leaseholder, a landowner or a next-door-neighbour.

The office listens and learns from first-hand accounts how a particular issue is evolving or how property rights may be shifting out of balance. The collective voice of Albertans and stakeholders helps us to work toward ensuring programs, policies and laws are attuned to the unique domain of property rights concerns and issues in Alberta.

The focus of our office does not include settling or refereeing intermittent property rights conflicts. This office cannot provide legal advice or represent someone in court.

Instead, we work to understand the context behind the issues based on the collective input of Albertans and stakeholders. We do so in order to identify policy or regulatory issues and then work toward achieving responsible changes.

This approach does not diminish the importance of any specific property rights concern nor does it fail to comprehend the sense of frustration and urgency expressed by many stakeholders about their issues. We employ a strategic approach, so efforts can be targeted towards key factors that contribute to inequity and property-rights conflicts.

Several property rights interest groups in Alberta seek to resolve frustrations and inequities associated with their property rights issues. Many of these special interest groups have existed for decades and continue to voice concerns and represent a significant number of upset citizens.

These groups depict the general temperament of stakeholders regarding specific property rights issues. Some organizations regularly attempt to initiate a dialogue with government by sending letters, requesting meetings or seeking responses to specific proposals. Government responds to the correspondence received from these organizations but may not always address the specific concerns outlined in the correspondence.

Grassroots organizations have developed around specific sets of issues or concerns and some have existed for 35 years. These organizations have expressed concerns that their issues are not clearly understood or have been ignored.

Many property rights groups are highly organized, hosting regular meetings, managing websites and electing board members. These activities require the time and effort of several volunteers. These organizations appear focused and coherent about what needs to be done to resolve their concerns. In our interactions with property rights stakeholder groups, it is clear that many feel frustrated and for different reasons. Frameworks that have existed historically to manage property rights in Alberta, while well intentioned, need to be modernized and integrated into a system to address these concerns.

Individuals have also contacted our office to relay their property rights experiences and related circumstances. While this office cannot offer given solutions to specific situations, we strive to listen carefully to the details relayed to us and to accurately document the information provided. We value the time and effort each stakeholder takes when contacting our office to share their concerns, ideas and circumstances with us.

We remain attentive and attuned to all concerns raised because receiving and accurately sharing information with government is essential to the contributions our office makes to improve the recognition of the importance of property rights.

The recommendations contained in this report are intended to focus on the desired outcomes rather than stipulate specific instructions. Instead, factors that need to be addressed will be identified along with an outline of the risks of not addressing them.

Our office is small. We do not have policy advisors or research analysts to explore precise solutions. We respect, and wish to leverage existing expertise in government by connecting with those who administer related acts, processes and policies. By partnering with experts, intended and unintended consequences can be explored collaboratively to develop best possible options and so solutions can be implemented rationally and thoughtfully.

Enhanced understanding of property rights concerns should become evident over time as policies or legislative changes reflect greater understanding of Albertans and stakeholders' issues and concerns.

Surface Rights Owners

Historically, in order to facilitate oil and gas development, landowners were (and continue to be) blocked from exercising their right to determine who can or cannot access and make use of their property. Landowners (who in this section include surface rights holders) have no choice but to accommodate energy development on their land and cannot refuse access to troublesome tenants when the tenants breach contractually agreed upon terms.

The Surface Rights Act was created, in part, to ensure landowners could receive fair compensation for their sacrifices. However, landowners feel not all impacts and costs incurred by them are recognized and the cumulative effects of those impacts are also not fully understood.

Compensation is one remedy, but sometimes compensation is not enough. Stronger penalties and a clear mechanism of enforcement would provide a remedy in some situations. The lack of a clear, reliable and effective penalty ‘system’ is one of the gaps that must be explored in surface rights management. Laws intended to act collectively to protect landowners sometimes fall short; leaving the authorities with too limited a scope or too small a hammer to fully resolve the issues – resulting in the continued frustration of landowners.

Although the *Surface Rights Act* establishes a Surface Rights Board to determine fair compensation, there are limits to what can be considered in a review of breached contractual terms between a landowner and an energy operator. There are questions as to whether addendums to surface leases are enforceable by the Surface Rights Board. The addendums are agreed upon terms between the energy company and the landowner. Landowners have expressed concerns that an addendum, or some clauses in an addendum, may not be enforced by the Surface Rights Board.

Normally, as party to the contract, the landowner is entitled to treat the contract as breached and possibly void in certain circumstances. However, as stated previously, landowners are blocked from exercising their right to determine which operators can or cannot access and make use of their property - so a landowner is unable to impose meaningful penalties (such as eviction) on non-compliant operators. Most landlords would not allow tenants to inhabit a rental property if the tenant failed to pay rent – yet often, a landowner has no choice but to tolerate the activities of an operator even when rent has not been paid in years.

A landowner can appeal to the Board for compensation for damages that are within the Board’s authority to consider, including unpaid rents. Taking a matter to the board requires time and expenses such as legal fees. Not all landowners are in a position to easily incur these costs, especially when the outcome may be uncertain.

Operators are permitted in some instances to continue profiting from use of landowners’ properties even while failing to meet their annual rental “obligations”. In cases where an operator is eventually shut down by the Board for ongoing refusal to pay rent, the Board may also direct the delinquent lease payments to be paid by “the Minister” to the landowner. This means taxpayers (including landowners) end up settling the operator’s rental debts.

There is no industry funded reserve to act as insurance and from which delinquent rentals can be drawn. If a company enters into bankruptcy protection, the landowner may face additional delays before the landowner can receive rents due.

If a bankrupt company abandons a well site, the landowner may find themselves continuing to “host” that well site, along with any environmental problems, for years, possibly even decades before it is reclaimed.

Sites requiring reclamation can suffer impacts to market value or landowner’s ability to sell the property for the duration of time it takes for that site to be reclaimed.

For example, an Albertan had a circa 1940s pipeline running across his land. The pipe burst in February, 2014, and contaminated land well beyond the pipeline right of way. Reclamation was carried out by a third party for over a year. The Alberta Energy Regulator (AER) agreed reclamation efforts were unsatisfactory. AER entered an agreement with the third party for further mitigating action to be taken by sometime in 2019. The landowner is concerned these new activities will be ineffective. There are many more details to this case –but the point is this: At first it may seem the system did what it was designed to do having addressed the environmental issue - except by 2019, the landowner will have been unable to sell his land, without taking a loss, for 5 years. If not for the system which bears partial responsibility for that pipe being in the ground, the landowner would not be faced with these issues and his financial plans would not be on hold while the system addresses the environmental contamination portion of the issue. There is currently no one entity with the mandate to address all these issues in their entirety.

There appears to be a disconnection between the intentions of the current legislation and policies and the actual impacts to landowners. Government needs to understand the present impact its current legislation and policies are having on surface owners. This may represent an opportunity to re-evaluate the relationships between landowners, energy development and protection of the environment.

Legislation impacting industry and landowners should be reviewed to identify gaps, overlap and fragmentation with a goal of ensuring full and fair compensation for all risks, damages and costs incurred by landowners.

Key pieces of relevant legislation such as the *Surface Rights Act*, *Responsible Energy Development Act*, and *Alberta Utilities Commission Act* should be examined together from the perspective of landowners’ rights. Surface rights must be understood, recognized and protected.

The opportunity to examine ways to better connect and align different policies and laws related to property rights will be addressed later in the recommendations section of this report.

The economic desire to facilitate energy development in an environmentally sustainable way must also be recognized.

Municipal Government Bylaw Application

Several landowners have expressed concerns their municipal representatives have applied bylaws inequitably. The *Municipal Government Act* is currently being modernized by government and the review committee may receive additional feedback from the public on this issue. Perceptions that favoritism is occurring, or has occurred, is not of itself positive proof that the problem exists but it does indicate that there is sensitivity to the potential for abuse and concern that the current system of controls may not be sufficient to deal with exploitation. While it may be unwise to fetter the hands of elected local officials, it may be prudent to ensure there is a mechanism to challenge allegations of abuse or misappropriation of planning tools..

Some landowners felt coerced by municipal authorities into spending thousands of dollars on studies, improvements and application fees in the mistaken belief that compliance with these requests would bring them closer to getting the necessary approval.

In cases where getting approval is unlikely, Albertans should be protected from incurring unnecessary costs at the request of administrators or councillors. When there is no reasonable chance of approval and no protection is in place, those costs should be reimbursed.

If a landowner elects to proceed in spite of advice the application cannot succeed, a list of all known impediments and limitations should be provided in writing by the municipality. Acknowledgement of receipt of that information should be obtained from the landowner as a condition before accepting any future application for related approvals.

Clearly outlining issues and concerns would allow landowners to make an informed decision on whether or not the chances for approval are worth testing.

The criteria that the municipality will use for making a decision should also be outlined. Decisions should be in writing and accompanied by reasons. Decision results should be reasonably consistent, predictable and subject to an impartial appeal process when unfairness is alleged. Two landowners in similar circumstances making similar applications should reasonably expect to receive a similar decision.

The Property Rights Advocate Office appreciates the considerable work being undertaken by Municipal Affairs in its review of the *Municipal Government Act*. Our office has participated by providing written comments, discussing specific sections of the Act at review meetings and attending stakeholder sessions. We look forward to providing further assistance to Municipal Affairs, where required, to facilitate its pursuit of modernizing the *Municipal Government Act*.

Considerations

The situations outlined are a sampling of the issues the Property Rights Advocate Office hears. There are too many issues to include in one report and some may be explored in future reports.

Though property rights issues occur in both urban settings and rural locations, as municipal boundaries expand to accommodate population growth, these issues are becoming increasingly urban in nature.

Did you know?



- There are 271 urban areas in Alberta.
- 52 communities (19 per cent) have producing wells within their boundaries.

Source: [Alberta Energy Development in and Near Urban Areas fact sheet, June 2014](#)

Achieving fairness in managing property rights requires recognition of the principle that no owner should be disproportionately disadvantaged in order to accommodate the benefit of others.

The greater public good is only justified when the benefitting population is willing to pay for those benefits by reasonably compensating those burdened by it.

Where a person's property rights are imposed upon, those benefitting from the project underlying the infringement should fully and fairly compensate the person being imposed upon. The application to property rights of the principles of equitable treatment also demonstrates an important element of responsible energy development.

Harmonious relationships between energy developers and surface owners in Alberta could foster trust with landowners across the country by demonstrating responsiveness to the property rights of surface owners. When surface owners in other provinces face proposals for an Alberta pipeline crossing through their properties, cooperative developments in Alberta could alleviate concerns that their property rights may be trampled. To help foster more consistently harmonious relationships between surface owners and energy developers, thoughtful review of legislation and policies through the lens of various property rights holders is necessary.

Regular policy evaluation is critical to ensuring policies remain relevant and optimally functional. Similarly, policies related to property rights must be monitored and assessed regularly to establish how well the policies are functioning at a given point in time. Some property rights related laws have not faced significant review and revision for a very long time.

Complex policy issues such as property rights benefit from stakeholder feedback. Stakeholder feedback ensures issues are identified and addressed appropriately. Meaningful conversations about property rights assist government administrators to pursue potential solutions to emerging property rights concerns in a timely manner. Property rights conversations can foster stakeholder trust because, by understanding the issues, government will be able to directly speak to the underlying considerations when articulating why relevant changes are believed to be warranted or unnecessary.

As the population of Alberta grows and new innovative technologies advance, competing land uses will also evolve, meaning property rights conflicts are becoming almost inevitable. Government should regularly examine its property rights laws and governmental policies, and most importantly, listen to property rights stakeholder's feedback to ensure an optimally just and equitable property rights system can be established and maintained.

While all government policies and legislation should be examined from the lens of property rights, some policies are in more obvious need of such analysis. For example, policies, legislation or programs related to alternate energy development.

It is anticipated the Energy Efficiency Advisory Panel will provide recommendations to government in 2016 about energy efficiency and small-scale power generation options. Developments such as solar power farms or wind power farms could have as much impact on property rights as conventional energy development has historically had.

These developments have the potential to directly affect not only the host property and adjoining properties, but the property rights of those in wide proximity to such developments. Alberta's economic development is beneficial for every Albertan and should proceed in partnership with property rights stakeholders. Such development cannot be a burden imposed on a particular citizen or group of citizens. Where impacts to property rights are unavoidable, there need to be strong tools for recognizing, managing and adequately compensating owners for the impacts they endure. Engaging stakeholders will be critical to the sustained successful development of new alternative energy policies, programs and legislation.

“The interests of society must always be balanced against the interests of individuals to see if limits on individual rights can be justified.”

Source: [The Department of Justice, Canada website](#) talking about the Charter of Rights and Freedoms

A variety of environmental factors make this an appropriate time to examine the broader system of property rights in Alberta and to find ways to make it function more equitably and efficiently.

The Property Rights Advocate Office is pleased to do its part by providing Albertans and property rights stakeholders with the opportunity to have their issues and concerns listened to and understood.

We are fortunate for the opportunity to participate as impartial advisors in the property rights conversation with policy drafters and decision-makers. We respectfully present recommendations to our legislators with the aim of raising awareness and to promote the principles of equity and fairness in the management of property rights.

We dutifully provide this report outlining excerpts of information provided by stakeholders to instill a greater understanding of intensely personal and passionate responses that intrusions on property rights can incur.

In the cases previously outlined, a more comprehensive response may have reduced the burden on Albertans. Albertans can face multiple procedures for the same or similar issues or face civil action to resolve their conflicts. These types of cases can only add to the caseloads of the civil system. The systems that are in place are often limited by their legislation. Legislated organizations themselves are not responsible for these gaps. These gaps rest with dated legislation in need of modernization.

Discussion and Analysis

In general, it appears government entities with primary responsibility for managing the complex relationship between stakeholders such as operators and landowners administer their specific legislated requirements diligently and expertly. Some entities are still relatively young and in the process of ramping up their operations. Time will tell whether the mandate they strive to achieve can be implemented.

What is clear is that a point has not yet been reached where there is relative peace and understanding within the complex arena of ensuring development of Alberta's resources while fully and fairly offsetting impacts to surface rights owners. Inequities continue to exist, often with little or no practical recourse.

Synergy groups comprised of industry and stakeholder members also exist and are trying to foster greater understanding and better relationships between corporate energy, landowners and stakeholders.

There appears to be a willingness to move toward better cooperation between operators and landowners, however the regulatory system is not nimble enough or comprehensive enough to manage these relationships effectively. This is exacerbated if weaknesses in the system give undue advantage to one party over another.

It was a goal of this office to find better ways to inform our legislators, not by just talking about what needs to be changed, but by sharing what processes or programs are underway that may advance equity among property rights.

Previously in this report, mention was made of the modernization of the *Municipal Government Act*. The modernization of the Act serves as an example of work being undertaken in recognition of the importance of equity among property rights. The current proposal, though subject to change, includes a proposal for the Alberta Ombudsman to take on the role of reviewing situations where unfairness is alleged in a municipal decision-making process. This initiative reasonably mirrors the previous Property Rights Advocate's recommendation of 2014, to provide landowners with the option to resolve disputes with municipalities without having to go to court. This office supports those efforts.

There may be other initiatives underway within government or outside of it. Going forward, the office will endeavour to improve its ability to monitor and track progress on legislative changes, new processes or innovative programs that have the potential to improve equity among property rights.

This report touched on a broad range of issues and principles, with the intention of informing the reader as to the complex nature of Property Rights. Property Rights inequities cannot be fixed easily but they should be managed diligently and thoughtfully.

Recommendations for 2015

Recommendation 2015.01

It is recommended Alberta Environment and Parks be asked to establish a cross-departmental committee for the purpose of developing a framework to identify how government can systematically modernize property rights legislation and policies resulting in an accessible system that is responsive to the concerns of Albertans and stakeholders.

Recommendation 2015.01 is intended, with support from various areas inside and outside of government, to find better ways of addressing past, current and, even future, property rights conflicts. Many property rights conflicts may be inevitable and may be exacerbated by a fractionalized system of laws, operational policies and procedures that exist in spite of shared goals.

There are risks if government does not develop a plan for modernizing property rights policies and laws. A concrete plan, or a framework, for moving forward demonstrates interest in property rights.

Without a plan, interest groups are likely to continue organizing and evolving with growing frustration. Civil property cases may increase where other options lack. Property rights are highly personal fundamental rights represented in concrete ways such as homes, land and livelihoods.

Albertans want to be heard and while the office provides one mechanism for that to happen, it should not be a replacement for direct engagement. Without a means to address the ongoing concerns, and a way to identify future issues, government may meet challenges where stakeholders trust is desired; particularly when new policies or legislation related to property rights are introduced.

Albertans and stakeholders have reported a wide-range of property rights concerns and issues to this office. Some of these issues were previously outlined in this report including the friction that lies in the overlap between extraction rights held by energy companies and the property rights possessed by surface owners.

These issues are not simply rural issues. Well-sites and pipeline right-of-ways exist and present challenges for both urban properties and rural farms. Long after the well, pipeline or power line is gone – the right of way restrictions live on. The challenges are numerous and complicated, not the least of which are reclamation issues that date back some time.

The Property Rights Advocate Office recognizes the challenges in finding equitable balance between competing property rights.

Property rights are not about who is right, but about finding a fair balance between the competing interests in a given circumstance.

To make matters more complicated, there are numerous pieces of legislation and a range of processes managing property rights. With property rights a common factor, no one ministry is responsible for coordinating changes or evaluating impacts from changes in property rights laws or processes in Alberta. Yet, property rights are an underlying factor in much of government's work. Projects that support energy, roads, environmental stewardship, water management, recreation, tourism, infrastructure, housing, and municipal land uses – all impact property rights.

The division of property rights related legislation and policies across different ministries and organizations contributes to gaps, overlap, duplication and confusion at the property rights stakeholder level.

A comprehensive, cross-departmental team of representatives and stakeholders from ministries, whose mandates touch upon property rights, should provide government with insight and opportunity to streamline and better manage property rights.

Suggested partner ministries on this team should include Agriculture, Energy, Environment & Parks, Indigenous Relations, Infrastructure, Justice & Solicitor General, Labour, Municipal Affairs, Service Alberta, and Transportation.

Ultimately, the deliberations of this team should establish a framework to identify how modernization of property rights legislation and policies should progress. The framework should identify methods to ascertain and prioritize current provincial property rights issues and also clarify how future property rights issues should be assessed.

Methodologies for proactive discussion on property rights at the earliest stages of policy development, including the establishment of key principles and how those principles will be observed may offer better connectedness between policies and sustainable solutions that better stand the test of time.

The team should review existing programs and processes intended to address property rights issues.

A potential benefit of establishing the team as proposed and of hosting a broader discussion on property rights is improved awareness of the impact a change to one ministry's policies pertaining to property rights could have on the policies of another.

Increased awareness of how policies need to be integrated in order to prevent gaps, overlap and fragmentation should result in better informed, more coordinated and more effective property rights policies and legislation. Stakeholder engagement should add information, helping the resulting policies to have a more sustainable positive impact.

These positive changes should be perceived by Albertans as demonstration of a high degree of interest in, and recognition of, the importance of property rights.

In recognition of the fiscal environment, this work should focus on using existing resources to examine better integration of property rights policies.

A reasonable timeline such as 18 months should be considered to develop an initial framework and ensure this work progresses.

The Standing Committee is encouraged to endorse this recommendation as a first step toward recognizing the importance of improving equity among property rights.

Recommendation 2015.02

It is recommended Alberta Justice and Solicitor General be asked, as the ministry administering the *Property Rights Advocate Act*, to develop a process to ensure recommendations made by the Property Rights Advocate Office are followed up on after they are endorsed by a Standing Committee of the Legislature, or where the Committee requests additional action.

The follow up process should identify what department is responsible for obtaining additional information requested by the Committee and the appropriate means to provide that information back to the Committee. The process should also clarify how the Committee will know its recommendations were given consideration by the relevant ministry and the results of that ministry's deliberations.

Currently, two recommendations made by the Property Rights Advocate Office have been endorsed by the Standing Committee on Resource Stewardship. An additional seven recommendations require further information or follow up. Progress on these requests or recommendations is not reported back to the Property Rights Advocate Office.

When the Committee endorses, or rejects a recommendation, it may be desirable to have a mechanism that demonstrates what follow up was taken.

Without a clearly-defined process for follow up, the work of the Property Rights Advocate Office, the Committee and others may not bear fruit.

Though the Property Rights Advocate Office is pleased to assist or participate in implementation of its recommendations, the office ultimately relies on the relevant ministry to determine the appropriate course of action.

The decision for how a specific recommendation will be managed should remain as it does now, with the appropriate ministry. The Committee's findings should act to encourage action by a ministry but it is recognized the Committee cannot compel such action.

Past annual report recommendations

Response of Standing Committee on Resource Stewardship				Status of recommendation	
Year	Recommendation	Year reviewed	Response/Findings	Ministry Responsible	Action/Status
2012	For the Legislative Assembly to study and implement availability of beneficiary deeds as an estate planning tool in Alberta.	2014	DEFERRED – The Committee wanted input and information from the Alberta Law Reform Institute	Service Alberta	UNKNOWN – requires referral for review and input from the Alberta Law Reform Institute
2013	Government retain the direct and full ownership and operation of the land registry system under its existing format in the Land Titles Office.	2014	ENDORSED – The Committee endorsed this recommendation	Service Alberta	COMPLETE – no further action required
	Government direct the prompt commencement of a full public review of the <i>Surface Rights Act</i> and the <i>Expropriation Act</i> .	2014	NOT RECOMMENDED – The Committee did not endorse this recommendation	Environment and Parks	COMPLETE – no further action required
	The Legislature [to] amend section 19(2) of the <i>Surface Rights Act</i> to allow the amount of entry fees to be set by regulation, and further, that the initial rate for calculation of entry fees be set at no less than \$1,200.00 per acre	2014	PARTIALLY ENDORSED –The Committee endorsed a review of the right of entry fee in principle	Environment and Parks	PENDING - under review by Environment and Parks. Entry fee to be determined
	The Legislature amend the <i>Municipal Government Act</i> to remove municipal powers of expropriation for the purpose of selling land as building sites	2014	DEFERRED – The Committee wanted input and information from Alberta Urban Municipalities Association and the Alberta Association of Municipal Districts & Counties	Municipal Affairs	UNKNOWN – requires referrals to Alberta Urban Municipalities Association and Alberta Association of Municipal Districts & Counties
	Amend the <i>Emergency Management Act</i> to clarify and affirm the consistent respect for and deference to private property rights, even in the face of an emergency situation.	2014	REJECTED – The Committee rejected this recommendation	Municipal Affairs	COMPLETE – no further action required
2014	The <i>Property Rights Advocate Act</i> is amended to repeal the complaint mechanism established under section 4 of the Act.	2016	ENDORSED	Justice and Solicitor General	Under review by Justice and Solicitor General
	That the <i>Municipal Government Act</i> incorporate an administrative/quasi-judicial dispute resolution process giving landowners the option to resolve disputes on land use with municipalities and avoid court	2016	REFERRED - Subsequently, this recommendation was referred to Municipal Affairs	Municipal Affairs	Under review by Municipal Affairs as part of the current <i>Municipal Government Act</i> review. Property Rights Advocate Office is providing input.
	Abolish the law of adverse possession in Alberta.	2016	REFERRED –Subsequently, this recommendation was referred to Justice and Solicitor General for review	Justice and Solicitor General	Under review by Justice and Solicitor General
	Amend Section 36 of the <i>Surface Rights Act</i> to clarify and establish that payments ordered under the section do not conflict with the federal <i>Bankruptcy and Insolvency Act</i> .	2016	REFERRED – Subsequently, this recommendation was referred to Environment and Parks and an opinion was sought after from Justice and Solicitor General	Environment and Parks	Under review by Environment and Parks as part of a potential review of the <i>Surface Rights Act</i>

Overview of the Office

The Property Rights Advocate Office was established in 2012 to develop more meaningful property rights dialogue between Albertans and the government.

After nearly four years of operation, the office has become informed about various property rights concerns in the province. This report is but one of the tools we use to discuss the property rights concerns of Albertans.

The office has a unique structure. It has specific, legislated functions to carry out independently from the department, while it also manages its administrative operations through the department.

The Property Rights Advocate Office plays several roles.

- We **listen** to your concerns about property rights and document those concerns;
- We **connect** with other government departments and organizations to discuss changes to property rights laws and processes; and
- We **include** property rights concerns in the office’s annual report which is reviewed by our province’s legislators.

The office currently has three full-time employees, consisting of the Acting Advocate, and a Public Engagement Officer and an Administrative Assistant.

Day-to-day, the staff in the office work with the following principles:

- **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;*
- **Diligence** – *work will be completed in an objective, even-handed, non-partisan manner; and,*
- **Respect, Accountability, Integrity, and Excellence** – *are a part of the way we work on a daily basis. These Alberta Public Service vision and values help ensure we do our best work.*

The office had four operational goals for 2015:

- Identify methodologies for analysis of contacts received by the office to make it easier to accurately reflect Albertans' voices about property rights;
- Continue to broaden the base of stakeholders the office engages with, to provide a cumulative picture of property rights in Alberta;
- Make available additional information, such as graphics or charts, to better articulate and explain property rights; and
- Find better ways to inform our legislators, not just about what needs to be changed, but about what processes or programs are underway to improve property rights.

Financial Information

The Property Rights Advocate Office’s budget* includes salaries for staff members and operating expenses.

2013	2014	2015
\$500,000	\$505,000	\$508,000

***Note:** Budget amounts are for each year commencing on April 1 and ending on March 31.

How to Contact Us:

To keep the conversation going, we invite all requests to attend events, observations, feedback or queries:

Call the office toll-free by dialing 310-0000, and at the prompt dial 403-388-1781

You can also connect to the office by:

Email: propertyrights@gov.ab.ca
Website: propertyrights.alberta.ca
Tweeting: [@AB_PropRights](https://twitter.com/AB_PropRights)
Fax: 403-381-5337

Two locations:

EDMONTON

Property Rights Advocate Office
9th Floor, John E. Brownlee Building
10365 97 Street NW
Edmonton, Alberta T5J 3W7

LETHBRIDGE

Property Rights Advocate Office
2nd floor, Provincial Building
200 – 5 Avenue S
Lethbridge, Alberta T1J 4L1

Copies of this report are available online at propertyrights.alberta.ca or, by contacting our office.

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