

Alberta

Property Rights Advocate Office



2016 Annual Report

Supporting and recommending equity and fairness among property rights

We invite all observations, feedback, queries or requests to attend events.

Copies of this report are available online at propertyrights.alberta.ca or through our office.

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Mr. Speaker,

I am honored to table this 2016 Annual Report with the Speaker of the Legislative Assembly's Office in accordance with the requirements of section 5 of the *Property Rights Advocate Act*.

Sincerely,

Original Signed

Karen A. Johnson, MBA, RI
Acting Property Rights Advocate

Edmonton, Alberta
May 24, 2017

Message:

From the Acting Property Rights Advocate

The year 2016 was a busy and productive for the Property Rights Advocate's Office and I am pleased to have been appointed as the Acting Property Rights Advocate for another year. I strongly believe in the value our office brings to Albertans and to government by hearing and bringing forward stories about how Alberta's property rights laws and policies are working.

Public awareness of the existence of this office continues to increase. Increased awareness of the role of this office has resulted in notably more input by stakeholders. The accomplishments of this office are outlined in this report and were only possible due to the participation of Albertans and stakeholders with an interest in property rights. Engagement by Alberta citizens with property rights concerns, organizations seeking to address property rights issues, stakeholder groups, government employees, elected officials and industry are the essence of why this office exists. I am very thankful of everyone who has reached out to share their stories and information with the Property Rights Advocate Office. The insights shared have been enlightening and are sincerely appreciated.

The arrangement of this office is quite unusual in the Alberta government structure. Administratively, this office is supported by a government ministry but this office also has autonomy. It is intended that there be no interference that would prevent an open, honest and transparent public discussion.

I have not experienced any interference or any attempt to interfere with the independent role of my work, and the recommendations in this report and the previous report, are my own.

The office's 2015 annual report contained two recommendations and both were unanimously endorsed by the [Standing Committee on Resource Stewardship](#). With implementation of these recommendations, the potential for even greater contributions by this office toward equity and fairness in property rights becomes possible.

Although this report is a retrospective look at property rights in 2016, it is written in 2017; the year of Canada's 150th birthday. In December of this year, the Property Rights Advocate Office will also enjoy its fifth anniversary. As this young office builds momentum, I am confident the foundations in place will make property rights better for Albertans and lead to even more significant contributions in future.

Original Signed

Karen A. Johnson, MBA, RI
Acting Property Rights Advocate

Executive Summary

Public awareness of the existence of this office continued to increase, resulting in increased participation by Albertans and greater clarity and insight into the state of property rights in Alberta. The Property Rights Advocate Office used this information to provide non-partisan, independent and timely advice to government in regards to property rights.

The property rights issues this office continued to hear about through 2016 were diverse and included issues related to surface rights, surface rights board rulings, freehold mineral rights, municipal bylaws, municipal land use decisions, environmental concerns, and expropriation. There were also a few complaints accompanied by a request for a review (*Property Rights Advocate Act*, section 4) but those requests did not meet the terms under which a review could be undertaken.

Important advances include changes to the Municipal Government Act with additional changes being contemplated by government. The Department of Environment and Parks indicated it is preparing for engagement on a potential *Surface Rights Act* review and the supporting regulations. It is anticipated the ongoing consultation and proposed changes to the *Condominium Property Act* will result in legislative amendments.

In addition, both recommendations contained in the 2015 Property Rights Advocate Annual Report were unanimously endorsed by the

Standing Committee on Resource Stewardship. Once these recommendations are fully implemented, the likelihood for government to identify and act upon ways to improve fairness and equity among property rights should be enhanced.

In addition, implementation should increase transparency and accountability to Albertans by their government regarding property rights.

An additional motion was made by the Committee to abolish adverse possession, as was recommended in the 2014 Property Rights Advocate Office Annual Report. These legislative changes, proposed review and implementation of the 2015 recommendations indicate property rights are moving in the right direction. Albertans can take note that their voices are being heard, understood and acted upon.

These changes are recent and it is too soon for the impacts to be fully known. Therefore, outside of highlighting a few of the ongoing issues that should be considered as part of future reviews or changes, this report's recommendations focus on incremental improvements to strengthen the foundation being built for examining and addressing property rights issues and concerns in Alberta.

It is hoped the committee will endorse both recommendations in this report as positive steps to further discuss, identify and explore options with the goal of improving the property rights conversation.

The two recommendations for 2016 are:

2016.01

It is recommended a cross-ministry committee discuss options to provide Albertans with cost-effective access to fairness and equity in settling property rights disputes. As part of those deliberations, the committee should discuss whether a comprehensive board or resolution service should be formed to determine or facilitate fair and equitable outcomes for property rights disputes.

The first recommendation would consider desirability, viability and practicality of providing a more comprehensive set of services to help Albertans' address their property rights problems outside of court and specifically to look at whether a comprehensive board or resolution service might improve property rights for Albertans.

2016.02

It is recommended government undertake a review of the *Property Rights Advocate Act* and as part of that review, to consider the role of the Property Rights Advocate Office.

The second recommendation revisits an earlier recommendation, made in 2014, which was to remove section 4 of the Property Rights Advocate Act. Concerns have been raised as to whether removing the section from the Act is the preferred solution over modifying that section.

A more thorough review of the *Property Rights Advocate Act* and the Office of the Property Rights Advocate formed under that Act could result in greater efficiencies and improvements.

The Role of the Office

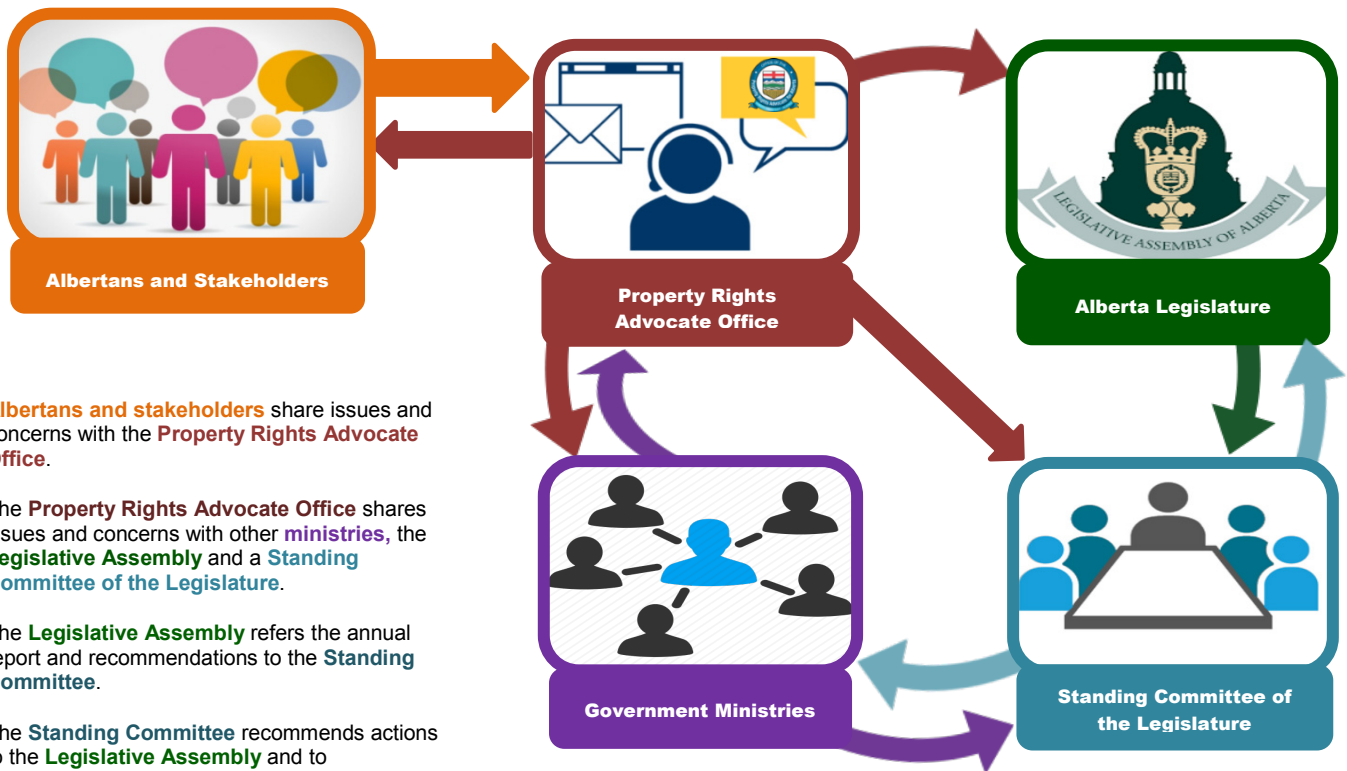
Advocacy

The question has been asked a few times as to how the Property Rights Advocate Office fulfils its advocacy role.

The answer to that question goes to the heart of what the Property Rights Advocate Office does.

An advocate is defined by the Oxford Dictionary as supporting a particular cause or policy. An advocate is secondarily defined as a lawyer or as lawyer-like petitioning of a case on behalf of another person. Thus an advocate is not necessarily someone who argues or petitions for a specific action. An advocate, like the Property Rights Advocate can promote a cause such as equity and fairness among property rights.

How it all works



- **Albertans and stakeholders** share issues and concerns with the **Property Rights Advocate Office**.
- The **Property Rights Advocate Office** shares issues and concerns with other **ministries**, the **Legislative Assembly** and a **Standing Committee of the Legislature**.
- The **Legislative Assembly** refers the annual report and recommendations to the **Standing Committee**.
- The **Standing Committee** recommends actions to the **Legislative Assembly** and to **Government Ministries** based on the annual report recommendations.
- The **Government Ministries** report progress on the actions to the **Standing Committee** and to the **Property Rights Advocate Office**.
- The **Property Rights Advocate Office** shares information on initiatives and status to **Albertans and Stakeholders**.

“Albertans can take note that their voices are being heard, understood and acted upon.”

Acting Property Rights Advocate

The Office: Who We Are

The Property Rights Advocate Office is a non-partisan, independent and impartial body. To be effective at meeting its mandate, this office uses a cooperative approach based on principles of respect and teamwork in order to effect positive changes. A strong network of strategic relationships has been built and continues to develop among the public and a broad range of stakeholders.

At the end of 2016, the office was in place for four years and continued to operate within a unique structure. Administrative operations were supported through a government department while specific, legislated functions were carried out independently from government.

The office had three full-time employees, consisting of the Acting Advocate, a Public Engagement Officer and an Administrative Intake Officer. The office members kept an open mind, communicated the truth with clarity, and observed the Alberta Public Service values.

The office budget for salaries and operations was \$498,000 for the fiscal year 2016/17.

Functions

The role of the office is more than a property rights intelligence gathering and sharing exercise. The office also facilitates a conversation between Albertans and their government that includes input and feedback through the process outlined in section 5 of the [*Property Rights Advocate Act*](#).

Two key advantages are:

1. The Property Rights Advocate Office acts as a conduit for Albertans to connect with their government
2. The Property Rights Advocate Office assists government to assess policies and laws and to make changes where appropriate based on unbiased, non-partisan and fact based information

Insight and understanding of how Alberta's property rights laws and policies are functioning is gained through open dialogue with Albertans and stakeholders. Ongoing, open-ended engagement by Albertans and stakeholders facilitates continual assessment of how Alberta's policies and laws are affecting citizens. These firsthand accounts can help determine whether laws continue to function as initially intended or have created any unforeseen consequences or benefits. Gaps, inequities, patterns and trends can be picked up on and then raised before those issues escalate.

Though policies and laws may have been developed with due regard for the principles of equity and fairness, they can sometimes function differently than they were intended to. A policy or law that worked well in one era may become problematic when times change. The voice of Albertans and stakeholders acts as a barometer and gauges how property rights are functioning in Alberta. The Property Rights Advocate Office is empowered to share that voice with government.

Property rights issues are complicated and highly personal. The factors, principles and processes that shape government policies are also complex. In addition, policy developers rely on others to implement and interpret policies in the expected manner. These complexities make successful realization of policy outcomes challenging. Even the most thoroughly researched policy may have unintended consequences, or be implemented or interpreted differently than intended. An initially effective policy may become problematic over time. Timely and accurate feedback on the effects of implemented policies allows government to determine if policies are functioning as planned. Decisions can then be made on how to address any accidental gaps or unintended consequences.

The Property Rights Advocate Office can share property rights issues with government ministries objectively and this facilitates a clearer understanding and leads to an informed policy position. Government can then clearly communicate that position and, where required, make any necessary changes in order to achieve the desired objectives. After changes are implemented, ongoing feedback can help to identify what is working and if any gaps or unintended consequences arise.

Property rights exist in an evolving realm that fluctuates over time. Property rights shift in accordance with changing technologies, land use and social values. For example, drones may impact the right to privacy and quiet enjoyment of property. The Property Rights Advocate Office explores property rights more meaningfully than a poll or a specifically-targeted engagement, because property rights are more dynamic than a snapshot at a specific moment in time.

When the Property Rights Advocate Office hears about a difficult process or problem, focus is placed not on whether the problem can be resolved by hiring a lawyer to argue for rights to be recognized, but rather concentrates on concern that the problem exists.

This is important because there remains a monetary gap between those who can afford experts and legal representation and those who cannot. For the portion of the population who cannot afford legal representation, it is difficult to obtain fairness and equity.

This office provides strategic examination of property rights which may identify systemic problems or future risks so they can be addressed proactively; possibly before they manifest. It benefits all Albertans when a systemic issue is resolved and makes the system fairer for everyone, not just those with above average awareness and the financial means to arbitrate the issue on a case by case basis.

Activities

The office achieved the following operational goals in 2016:

1. Additional materials were created to help increase awareness and to better communicate the role of the office.
2. Further refinements were made to the way interactions were documented and managed.
3. The stakeholder base was broadened.
4. The number of interactions between Albertans and the office increased dramatically.

In addition the following actions toward increased equity and fairness among property rights were realized:

1. Both recommendations contained in the 2015 Annual Report were endorsed by the Standing Committee on Resource Stewardship. These recommendations are intended to expand the property rights conversation and to improve the ability to report on progress towards implementing recommendations. When these two recommendations are put into operation, the complete conversation becomes discernable which should facilitate realization of fair and equitable property rights.

2. An additional motion was passed by the Standing Committee on Resource Stewardship to recommend adverse possession be abolished. Abolishment of adverse possession was recommended by the Property Rights Advocate Office in its 2014 annual report (2014.03).

Albertans are becoming better informed about the Property Rights Advocate Office's primary role of acting as a conduit to facilitate the conversation between stakeholders and government. Increased understanding of the role of the Property Rights Advocate Office enables more detailed conversations about specific concerns or issues an Albertan has called about.

We still hear from Albertans who tell us they did not previously know the Office of the Property Rights Advocate existed. The number of interactions between Albertans and the Property Rights Advocate Office continues to increase dramatically, but more work needs to be done to raise awareness about the office. As participation increases, the office gains greater insight and clarity about the state of property rights in Alberta.

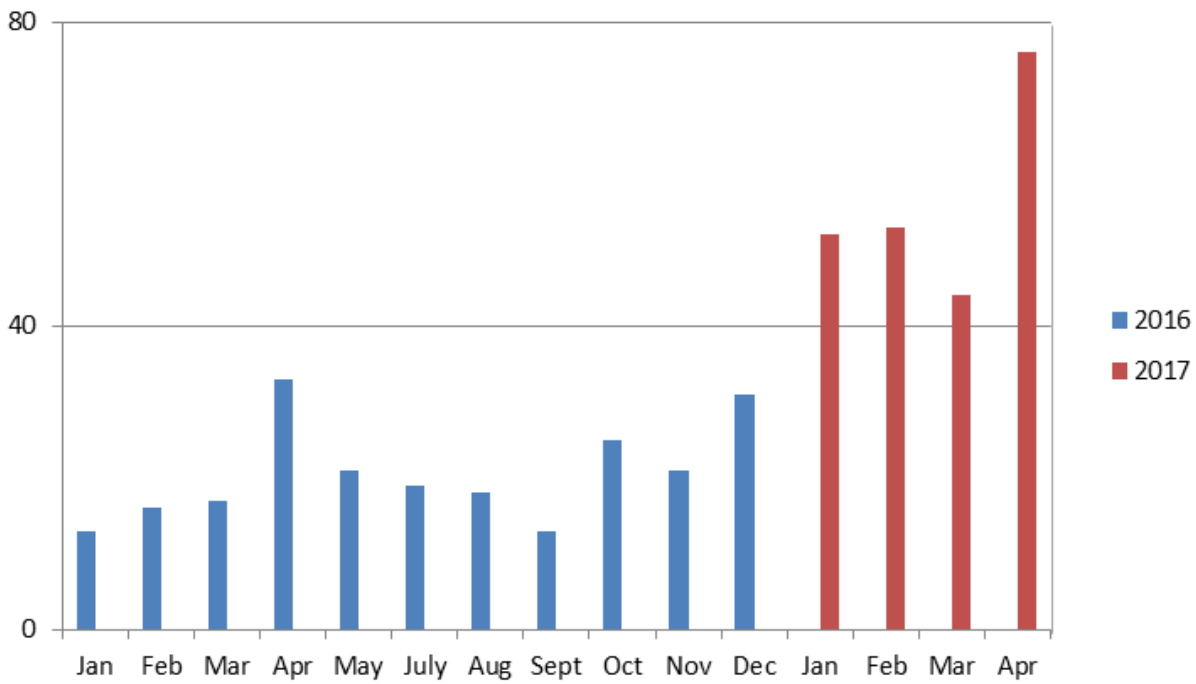
For 2017, the Property Rights Advocate Office will continue to build awareness of its role by:

- Improving and updating the Property Rights Advocate Office's website
- identifying additional opportunities to engage with Albertans
- updating or creating online materials, such as videos

Due to the way contacts with the office were previously recorded and categorized, direct comparison between 2015 and 2016 is imprecise. Comparisons between 2016 and 2017 are more straightforward.

As indicated in the graph below, calls continue to trend significantly upward.

Number of contacts between 2016 and 2017



Moving Towards Greater Fairness and Equity

In March of 2016, the Standing Committee on Resource Stewardship released its report to the Legislature based on its review of the Property Rights Advocate Office 2015 Annual Report. The Committee endorsed both recommendations in the 2015 annual report. The transcripts of the meetings can be or downloaded from the Standing Committee on Resource Stewardship's [website](#).

When implemented, these recommendations should improve likelihood that ways of increasing fairness and equity among property rights can be identified and acted upon by government.

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.

The first recommendation was intended to leverage existing expertise within government ministries to move the property rights conversation forward.

The second recommendation identified the lack of a formal process to allow PRAO to report on progress, and thereby demonstrate that property rights stories Albertans share with the office can lead to positive change.

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.

A process for reporting back to the Committee and to the Property Rights Advocate Office, once in place, should increase transparency and accountability for Albertans on what is being done by their government regarding property rights.

During deliberations, the Standing Committee on Resource Stewardship recognized a lapse in the process as they had not received feedback regarding their previous year's deliberations. As a result the Committee requested ministries to appear before them and report back on the status of those actions. The updates provided by the government ministries added much needed clarity and transparency and made it clear that work toward equity and fairness is progressing.

The appearances by ministry representatives brought to light the appreciation government ministries have for the work of the Property Rights Advocate Office and provided insight on the ongoing work of the departments with regards to the recommendations of the Property Rights Advocate Office.

For example, Assistant Deputy Minister Rick Blackwood advised that Environment and Parks recognizes the critical role played by the Property Rights Advocate in connecting with Albertans concerned about their property rights.

He also noted the intelligence garnered from the advocate supports government in making informed decisions on Alberta's property rights legislation and policies. Mr. Blackwood further advised the "Department of Environment and Parks is currently preparing for engagement on the Surface Rights Act review and supporting regulations."

The Property Rights Advocate Office welcomes this proposed review which is in alignment with the recommendations of the office. Mr. Blackwood reiterated the commitment of government to strengthen landowner rights and due process in surface rights related matters.

Additional information gained as a result of these ministries appearing before the Standing Committee on Resource Stewardship was provided by, Assistant Deputy Minister Frank Bosscha. Mr. Bosscha indicated Justice and Solicitor General is currently assessing how property-related issues are dealt with in Alberta.

In regards to the recommendation to abolish adverse possession, Mr. Bosscha noted several amendments to different statutes would likely be required and that the statutes are under the responsibility of a variety of ministries.

When implemented, the first recommendation of the Property Rights Advocate Office's 2015 Annual Report should facilitate a review of those laws with other departments and the development of options for government's decision.

Municipal Affairs representative, Assistant Deputy Minister Gary Sandberg recognized the contributions of the Property Rights Advocate Office toward some of the changes in the *Municipal Government Act* (MGA). Mr. Sandberg noted Municipal Affairs had made a number of amendments to the MGA in 2015 and in 2016 through Bill 21 that address the concerns raised with them by the Property Rights Advocate Office. The Property Rights Advocate's work will continue by listening to Albertans and sharing information with the Ministry of Municipal Affairs on the effect of the changes to the Municipal Government Act.

Many ongoing initiatives are taking into consideration the recommendations and ongoing input by the Property Rights Advocate Office. The office looks forward to continued collaboration with policy developers and legislative planners.

Advancements regarding recognition of the work of the office, changes made to existing legislation and proposed engagement on a review of the Surface Rights Act are indicators that property rights are under active consideration and are progressing. Albertans can take note that their voices are being heard, understood and acted upon. Feedback provided by the Property Rights Advocate Office is based on the voice of Albertans and stakeholders, underscored by the promotion of fairness and equity for all.

The Property Rights Advocate Office, remains hopeful further advancements will be realized in future and looks forward to further contributing to those initiatives.

Observations:

Listening to Albertans

On the Surface

Certainly many of the property rights issues this office continued to hear about through 2016 were problems related to the various impacts to surface rights. A major source of concern continues to be with oil and gas operations. Gaps, overlap, and fragmentation in how surface rights are managed continue to result in unnecessary and unfair experiences for many Albertan families. Perhaps nowhere is this clearer than in the laws and policies that control the relationship between surface owners, freehold mineral owners and energy operations.

In the case of crown mineral rights and surface rights, the normal business relationship is turned upside down. There can be no assumption that two willing and mutually agreeable parties entered into an arms-length business relationship for mutual benefit. Often this was a forced relationship where larger more powerful entities hold an upper hand. Things may go well if the corporation chooses to hold to the terms of their agreement. However, when a company ignores those terms and conditions a surface owner has no recourse but to suffer the loss or incur the costs of defending their property rights; the same rights they were forced to relinquish through legislation.

If surface owners had free choice as to whether, and with whom, they entered into a business arrangement; it is unlikely the current uneven set of circumstances would have existed for very long. Corporate survival instincts would have prompted recognition of the need for good public relations.

The current situation hurts more than individual Albertan families. It also presents a problem for ethical operators; because it simply costs more to play by the rules and meet legal and ethical obligations. Higher costs reduce profitability for shareholders. Keeping a competitive attractive bottom line may persuade companies with good intentions to adopt some unattractive practices.

Tarnished reputations among an industry's players can also impact all players in the industry. Improvements to the system such as developing and enforcing stronger disincentives for exploiting weaknesses in the system could be of benefit to all parties while also weeding out undesirables.

Surface owners also have the right to know exactly what is taking place on their land by the lessee. Leasing out a property, including compelled lease arrangements, does not mean giving up ownership for either the short term or long term. Lessors are simply allowing the lease area to be used and it is implied that the use will be legal and safe.

When there is any sort of contamination or leak, the landowner has a right to know, real time, what and how much was spilled or leaked. Timely, accurate and complete information must be provided to the landowner regarding the chemistry, potential effects, mitigation activities and how future similar accidents will be prevented. This is the same information any responsible corporation should want to know (and needs to know) when assessing how to resolve the problem.

It does not matter if eight ounces spill within the lease area or if a thousand gallons escapes outside of the lease area. Timely, written disclosure to the surface owner should be the default action for every event, regardless of size or impact. The surface owner will one day inherit the land back with all its blemishes. He or she and is entitled to first hand accurate knowledge about what took place on their property during their ownership; not just at the end of the lease, but throughout the life of the lease.

Frequently this office is questioned as to who will clean up the mess left behind by industry. Individual owners are concerned about the potential mess they will inherit personally, but they are also raising concerns about the cumulative effects that all Albertans will be faced with. Experience has taught some surface owners not to count on corporate good will. Some companies may stay around to bear the cost of cleaning up after production becomes unprofitable but others will file for bankruptcy or otherwise disappear.

There is cause to doubt that all industry players have, throughout the history of oil and gas development in Alberta, always provided full and complete disclosure. Remediation and reclamation practices considered appropriate in a bygone era are in some cases proving problematic today.

Some Albertan taxpayers want to know more fully the risks and liabilities they may one day be obliged to pay for and deal with. This seems a legitimate concern particularly when there are oil and gas operations on that taxpayer's own property. Perhaps it is time to assess what Alberta may one day inherit. Government could develop policies today that contemplate future potential liabilities, are environmentally sustainable, and will avoid or mitigate most problems, including environmental, financial, health and safety related concerns

The New Energy

As a province, Alberta is moving forward to facilitate more environmentally-friendly forms of energy and though there are significant differences, there will be impacts to property rights. One difference is the likelihood for more natural business relationships between the landowner and sustainable energy producers to exist. In traditional oil and gas development, there is implied right to use the surface to develop mineral rights and this is, at least in part, why surface owners could not refuse development. In the case of wind and solar energy, for example, no implied right to use the surface exists since landowners generally own air rights in addition to the surface. The choice of whether or not to enter into a business relationship rests with the landowner, but there will remain an uneven playing field between a landowner and larger corporation. There is also a gap in industry knowledge, owner versus lessee expectations and perhaps intentions.

While conflicts between a host landowner and company could be viewed as commercial, Albertan taxpayers have an interest in ensuring the relationships between landowners and corporations are healthy. Alberta, as a whole, will potentially enjoy economic and environmental benefits from sustainable energy development. Healthy relationships between corporations can facilitate this type of development whereas unhealthy relationships could impede development as wary landowners witness and learn from any early adversities experienced by others.

Wind towers in particular may affect neighbors' enjoyment of their properties. If impacts are not managed, neighbors may be set in opposition against one another. Opposition could lead to increased civil court cases and potentially tie up an already strained court system.

Untimely or unsatisfactory remedies could lead to rifts in the community between those who support the industry and those who are unhappily affected by it. Highly charged societal differences can impair healthy social relationships and thus can be harmful to entire communities.

Landowners who benefit by hosting energy production on their land may find themselves financially unable to bear the costs of addressing unintended consequences inflicted on their neighbors. If the corporation lessee won't address the problem, neighborly relationships could be caught in the impasse. Some landowners who find their property rights encroached on may feel compelled to defend their property rights and may expect or need an accessible forum that can address the issues.

Landowners entering into an agreement today may also find themselves caught in conflicts with future regulations or bylaws that may evolve over time. For example changes in siting, zoning, development, operations, remediation and reclamation requirements.

The success of green energy projects will require a comprehensive and cohesive suite of checks and balances to manage risk, taking into account all externalities. Risks are incurred by industry, by individual families and collectively by Alberta taxpayers potentially through higher power rates or through public funding for reclamation of bankrupt operators' infrastructure. There are notable differences between the impact experienced by industry players' profitability, a family's quality of life and economic liabilities inherited by future generations.

The market should provide some checks and balances. However government could examine existing policies and laws to ensure ethical corporate practices are encouraged. Carefully balanced, well thought out new laws and policies may be needed that bear in mind the fine line between interference and safeguards to ensure rules are followed. Rules should be strictly enforced with escalating penalties to address infringements. Strict rules would help level the playing field in favor of good corporate citizens because less honourable industry players will suffer consequences if they choose not to follow the rules. Strong corporations should support and facilitate the creation of solid laws and policies by providing a deeper understanding of what could go wrong and what to do when the inevitable happens.

While the economic benefits to Albertan taxpayers are important, individual families must be treated fairly and expect their government to examine its role in the jurisdiction of sustainable energy as it exists, or will exist, in Alberta. This may include timely and cost effective access to a tribunal that can resolve conflicts.

Freehold Mineral Rights

Some freehold mineral owners have expressed feeling trapped between unintended impacts from some government policies and energy operators. A body of property rights holders feel they must defend their property rights against corporations of greater financial means and ready access to legal support. Sometimes mineral rights owners are faced with paying the operator's share of royalties when they themselves have received nothing from that operator.

As with surface rights, unenforced or unenforceable terms in an agreement may create unfair advantages for some corporations. Unlike surface rights owners, there is no mineral rights compensation board for freehold owners to appeal to and legislation does not provide the Surface Rights Board with jurisdiction to hear mineral rights cases. For families of modest financial means seeking fairness in a court of law may be out of reach. It seems reasonable to work with freehold mineral owners to explore whether potential cost effective solutions can be found that could work to the benefit of all.

The Municipal Government Act

The Property Rights Advocate Office continues to hear from landowners regarding the way land use planning decisions are made. Citizens feel decisions in some instances are erratic and poorly founded, either from the perspective of the proponent or affected owners. Partially in response to these concerns, changes to the *Municipal Government Act* were initiated and additional changes are being contemplated by government.

The office remains interested in hearing these concerns and will monitor the effect of changes to the *Municipal Government Act* to assess whether these issues subside. At this time, it is very early days with work on regulations yet to be completed. The potential impact of changes will take time to become known.

In the interim, the Property Rights Advocate Office is pleased to note the changes that are responsive to the property rights concerns raised by Albertans. This office is hopeful

changes to the *Municipal Government Act*, along with future contemplated changes, will result in greater transparency and fairness as to how land use decisions are made; ideally with a corresponding reduction in the number of complaints.

The Condominium Property Amendment Act

In December of 2014, the [Condominium Property Amendment Act](#) was passed by the Alberta Legislature. Regulations are under way that will bring the amendments into force. Service Alberta intends to proclaim the changes and supporting regulations in two phases with the first phase planned to be introduced in 2017. The first set of changes focuses on new protections for buyers of newly-built and conversion condominiums. Notably, there is also intent to create a dispute resolution service for condominium owners. Service Alberta's website offers additional information on the proposed changes.

Property Rights Advocate Act – Section 4

In June 2015, the 2014 Property Rights Advocate's Annual report was tabled, and recommended that section 4 of the *Property Rights Advocate Act* be removed. This recommendation was made because the advocate at that time found section 4 of the Act to lack utility. Members of the public continue to request reviews by the Property Rights Advocate Office. The current provisions of section 4 of the Act have not yet proven readily applicable and no request has met the requirements for triggering a formal review. However, the demand for this function is noted.

Assistant Deputy Minister Frank Bosscha, as representative of Justice and Solicitor General, when speaking to the Standing Committee on Resource Stewardship, stated, "...the government of Alberta recognizes that landowners need an accessible process to resolve disputes relating to expropriation or compensation for land taking....The department is currently assessing how property-related issues are dealt with in Alberta..."

The review Mr. Bosscha mentioned above is in reference to the Standing Committee on Resource Stewardship's earlier report endorsing the Property Rights Advocate Office's 2015 recommendation to remove section 4 of the Act. The Property Rights Advocate Office sees no harm in waiting to learn the findings of this assessment before taking a final decision. A closer look to clarify the section's original purpose and the consideration of whether the original purpose remains relevant and desirable could prove useful. If section 4 of the Act is removed, it is possible it would need to be placed in some other Act, or its function and usefulness might be realized with a few minor changes to the existing Act.

Recommendations for 2016

Recommendation 2016.01

It is recommended a cross-ministry committee discuss options to provide Albertans with cost effective access to fairness and equity in settling property rights disputes. As part of those deliberations, the committee should discuss whether a comprehensive board or resolution service should be formed to determine or facilitate fair and equitable outcomes for property rights disputes

Albertans face a diverse range of challenges defending their property rights, one of which is lack of access to a uniformly available, affordable and timely resolution service. There are quasi-judicial boards for some types of property rights or some forms of dispute such as land use planning decisions, landlord tenant disputes, surface rights takings and expropriation. Services have been provided (many off and on) by some municipalities for some disputes such as neighbor to neighbor conflicts. These services are helpful but are often only available on a local basis and only for so long as they continue to exist.

These variables contribute to making access to justice for Albertans appear inconsistent and complicated. In turn this complex collection of services can make it difficult for Albertans to know if an option outside of court is available to them. When a resolution service outside of court does not exist or when an Albertan does not meet criteria (where criteria apply), often the only recourse is the court system. If an Albertan does not have the financial means to hire a lawyer or incur other costs to get to court, then court is also not an option.

This can leave families who have had their property rights violated with no recourse, not even for the opportunity to be heard. Yet the situation may be one for which the landowner, homeowner or tenant, if not for a lack of financial power to bring the matter to trial, would rightfully expect an award in their favor. This financial disadvantage is one wealthy people (or corporations) can easily exploit. When that happens, outcomes are based on financial power rather than justice.

Many Albertans want a system that is timely, accessible and affordable. Property rights disputes tend to add to any existing stresses that some Albertan families may also be dealing with. For example, beyond financial stress such as paying a mortgage or a child's post-secondary education, families may deal with several other stresses such as unemployment, job relocation, mental or physical health issues, drug addiction or the grieving of the death of a loved one.

While these other stresses are outside of the scope of this office and this report, they are common stresses that many North American families must manage. For some Albertan families facing these life stresses, the added stress caused by feeling helpless to defend their property rights can prove to be one stress too many.

Access to a province wide, affordable and accessible resolution service could make life better for Albertans and is worth exploring.

A cross-jurisdictional review may uncover programs or a range of services that have successfully diverted civil cases away from the court system. Such a program could free up court time to deal with other significant matters while making access to justice more uniformly available, affordable and timely for Albertans.

A comprehensive board or resolution service is one option that could lead to a simpler more readily accessible service. A single point of access option makes it easier for Albertans to know what to do in the event of a dispute because they do not have to navigate a menu of potential options that they may not qualify for – i.e. as might result if they do not live in a community that offers a service or the subject matter of their case is not currently being managed. A single entity for resolution of property rights cases could offer a range of services from information to mediation to a quasi-judicial panel. Affordable court counsellors could potentially be available to assist and guide participants with information, mediation or arbitration. Albertans could obtain information on their property rights and responsibilities through public outreach targeted to areas of greatest need. For these reasons, it is worthwhile to discuss the feasibility of this option.

Recommendation 2016.02

It is recommended government undertake a review of the *Property Rights Advocate Act* and as part of that review, to consider the role of the Property Rights Advocate Office.

The *Property Rights Advocate Act* was proclaimed in 2012. The Property Rights Advocate Office was created under that Act in response to requests the Property Rights Task force received from Albertans during its tour of the province. In December 2012, the first Property Rights Advocate was appointed to office for a term of three years. Since December 2015, an Acting Property Rights Advocate has been in place.

Best practices for policy development require policies to be assessed at some point after they have been implemented. At the end of 2017 the office will have been in existence for five years. In addition, advances are being made in property rights laws and policies.

Since the recommendation to remove section 4 of the Act was later followed by the observation that the section bears a second look, this is an opportune time to consider the provisions of the Act and assess what is working well and where adjustments might be needed. The role of the Property Rights Advocate Office, as a creation out of the Act, should be included as a natural part of that assessment.

Appendix

| | |
|--------------------------------------------------|----|
| Past Annual Report Recommendations (chart) | 25 |
|--------------------------------------------------|----|

Past Annual Report Recommendations

* Edited for brevity- please see the original documents for complete wording

| ENDORSED by Committee | | | |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|----------------|
| Recommendation | Committee Comments | Status | |
| <u>2013.01</u> | Retain direct and full ownership and operation of the land registry system as it exists in LTO (Make no changes) | <u>Endorsed</u> STATUS NOTE: No changes were made | Implemented |
| <u>2013.03</u> | Amend section 19(2) of the <i>Surface Rights Act</i> to set the amount of entry fees by regulation (to be set at a minimum of \$1,200) | <u>Partially endorsed</u> (Entry fee amount to be sensitive and responsive to market trends) | <u>Pending</u> |
| <u>2014.01</u> | Remove section 4 of the <i>Property Rights Advocate Act</i> | Endorsed | <u>Pending</u> |
| <u>2014.03</u> | Abolish adverse possession in Alberta | <u>Endorsed</u> (Endorsed in 2017) | <u>Pending</u> |
| <u>2015.01</u> | Establish a cross-departmental committee to develop a framework for systematically modernizing property rights policies and legislation | <u>Endorsed</u> 2017 | Pending |
| <u>2015.02</u> | Develop a process to ensure committee endorsed recommendations of the Property Rights Advocate Office are followed up on | <u>Endorsed</u> 2017 | Pending |

DEFERRED – Additional action or information requested by Committee

| Recommendation | Committee Comments | Status | |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| <u>2012.01</u> | Study and implement the availability of beneficiary deeds as an estate planning tool in Alberta | <u>Not to proceed</u> PENDING information regarding implications and a request for inquiry to the Alberta Law Reform Institute | Unknown |
| <u>2013.04</u> | Delete section 14(2)(d) of the <i>Municipal Government Act</i> to remove power to expropriate for purpose of selling building sites | <u>Not to proceed</u> PENDING comments from the Alberta Urban Municipalities Association and the Alberta Association of Municipal Districts and Counties | Unknown |
| <u>2014.02</u> | Amend the <i>Municipal Government Act</i> to incorporate an accessible administrative or quasi-judicial dispute resolution process | <u>Not to proceed</u> Pending referral to Ministry of Municipal Affairs for review STATUS NOTE: <i>Recent changes to the Municipal Government Act took this recommendation into account</i> | Implemented |
| <u>2014.04</u> | Address the conflict between section 36 of the <i>Surface Rights Act</i> and the federal <i>Bankruptcy and Insolvency Act</i> | <u>Referred</u> Ministry of Environment and Parks to seek an opinion from the Ministry of Justice and Solicitor General | <u>Pending</u> |

NOT RECOMMENDED by Committee

| Recommendation | Status | |
|----------------|---------------------------------------------------------------------------------------------------------------------------|--------------------|
| <u>2013.02</u> | Prompt commencement of a full public review of the <i>Surface Rights Act</i> and the <i>Expropriation Act</i> | no action required |
| <u>2013.05</u> | Affirm respect and deference to private property rights in emergency situations under the <i>Emergency Management Act</i> | no action required |

- ✓ The office continues to listen to Albertans and stakeholders to learn about the outcomes from recent changes and will continue to monitor how property rights laws and policies are functioning.

