

Standing Committee on Resource Stewardship

Review of the Alberta Property Rights Advocate Office 2012 and 2013 Annual Reports

Twenty-Eighth Legislature
Third Session
February 2015



Standing Committee on Resource Stewardship

801 Legislature Annex

9718 – 107 Street

Edmonton AB T5K 1E4

780.415.2878

committees@assembly.ab.ca



STANDING COMMITTEE ON RESOURCE STEWARDSHIP

February 2015

**To the Honourable Gene Zwozdesky
Speaker of the Legislative Assembly
of the Province of Alberta**

I have the honour of submitting, on behalf of the Standing Committee on Resource Stewardship, its final report pursuant to section 5(5) of the Property Rights Advocate Act on the **Review of the Alberta Property Rights Advocate Office 2012 and 2013 Annual Reports.**

Sincerely,

[Original signed by Chair]

Hector Goudreau, MLA
Chair, Standing Committee
on Resource Stewardship

c. Dr. David McNeil
Clerk of the Legislative Assembly

CONTENTS

Members of the Standing Committee on Resource Stewardship..... ii

1.0 Introduction 1

2.0 Summary of Committee Recommendations.....1

3.0 Committee Activities..... 2

4.0 Recommendations of the Standing Committee on Resource Stewardship.....3

MEMBERS OF THE STANDING COMMITTEE ON RESOURCE STEWARDSHIP

28th Legislature, Third Session

Hector Goudreau, MLA
Chair
Dunvegan-Central Peace-Notley (PC)

Jason Hale, MLA
Deputy Chair*
Strathmore-Brooks (PC)

Mike Allen, MLA
Fort McMurray-Wood Buffalo (PC)

Rick Fraser, MLA
Calgary-South East (PC)

Joe Anglin, MLA
Rimbey-Rocky Mountain House-Sundre
(Ind)

Linda Johnson, MLA
Calgary-Glenmore (PC)

Gary Bikman, MLA
Cardston-Taber-Warner (PC)

Brian Mason, MLA
Edmonton-Highlands-Norwood (ND)

Laurie Blakeman, MLA
Edmonton-Centre (AL)

David Xiao, MLA
Edmonton-McClung (PC)

Dr. Neil Brown, MLA
Calgary-Mackay-Nose Hill (PC)

Steve Young, MLA
Edmonton-Riverview (PC)

Pearl Calahasen, MLA
Lesser Slave Lake (PC)

Wayne Cao, MLA
Calgary-Fort (PC)

Ron Casey, MLA
Banff-Cochrane (PC)

Substitutions Pursuant to Standing Order 56 (2.1–2.4):

Matt Jeneroux, MLA[†]
Edmonton-South West (PC)

Members also in Attendance:

Kerry Towle, MLA[‡]
Innisfail-Sylvan Lake (PC)

* Jason Hale resigned his position as deputy chair on December 18, 2014. The position of deputy chair became vacant as of that date.

[†] Substitution for Steve Young on December 10, 2014.

[‡] December 10, 2014.

1.0 Introduction

The *Property Rights Advocate Act, 2012*, established the Property Rights Advocate Office as part of the Ministry of Justice and Solicitor General. The Property Rights Advocate Office is tasked with distributing independent and impartial information about property rights to the public, including information to landowners, and information about proposed legislation and its possible effects on property rights. Sections 5(1)-(5) of the Act state that after the end of each year, the Property Rights Advocate must prepare an annual report summarizing the activities of the Property Rights Advocate Office in that year and submitting any recommendations in relation to property rights which the Property Rights Advocate considers appropriate. The report must be tabled by the Speaker of the Legislative Assembly, and within 10 sitting days after the report is tabled, the Government must bring forward a motion to have the report referred to a committee of the Legislative Assembly. On November 25, 2014, the Assembly agreed to Government Motion 9, which referred the *Alberta Property Rights Advocate Office 2012 Annual Report* and the *Alberta Property Rights Advocate Office 2013 Annual Report* to the Standing Committee on Resource Stewardship.[§] In accordance with section 5(5) of the *Property Rights Advocate Act*, the Committee, in turn, “must report back to the Legislative Assembly within 60 days of the report being referred to it if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.”

This report contains the recommendations of the Standing Committee on Resource Stewardship following the Committee’s review of the *Alberta Property Rights Advocate Office 2012 Annual Report* and the *Alberta Property Rights Advocate Office 2013 Annual Report*. It also comments upon the structure and contents of these annual reports.

2.0 Summary of Committee Recommendations

The Standing Committee on Resource Stewardship makes the following recommendations with respect to the *Alberta Property Rights Advocate Office 2012 Annual Report* and the *Alberta Property Rights Advocate Office 2013 Annual Report*. For additional information concerning the context and rationale for these recommendations, please refer to section 4.0 on page 6.

- | | |
|---------|---|
| 2012.01 | The Committee recommends not to proceed with recommendation 2012.01 pending receipt of full and sufficient information regarding its implications and, further, that the Alberta Law Reform Institute be requested to inquire into said recommendation. |
| 2013.01 | The Committee recommends that the Government retain direct and full ownership and operation of the land registry system under its existing format. |
| 2013.02 | The Committee does not recommend proceeding with recommendation 2013.02, which is a full public review of the <i>Surface Rights Act</i> and the <i>Expropriation Act</i> . |
| 2013.03 | The Committee recommends that the Legislature amend section 19(2) of the <i>Surface Rights Act</i> to allow the amount of entry fees to be set by regulation and establish a mechanism for setting the amount of those fees that is sensitive and responsive to market trends. |
| 2013.04 | The Committee recommends that the Legislature not act on recommendation 2013.04 at this time, but that the recommendation be forwarded to the Alberta Urban Municipalities Association (AUMA) and the Alberta Association of Municipal Districts and Counties (AAMDC) for their comments. |
| 2013.05 | The Committee recommends that recommendation 2013.05 not be accepted. |

[§] Although the Property Rights Advocate submitted an annual report in 2012, the Office had only been open for seven days between the proclamation of the *Property Rights Advocate Act* on December 18, 2012, and the end of the year. Therefore, the 2012 annual report was not referred to a committee until the 2013 annual report came out.

3.0 Committee Activities

During its review the Committee met three times: on November 26, 2014; December 10, 2014; and December 18, 2014. At its meeting on December 10, 2014, the Property Rights Advocate, Lee Cutforth, gave a presentation about the purposes of the Property Rights Advocate Office and on the recommendations contained in his annual reports. During the meeting the Committee discussed Mr. Cutforth's recommendations and asked several follow-up questions.

As noted above, the Property Rights Advocate Office was established in December 2012 to distribute independent and impartial information about property rights to the public, including information to landowners and information about proposed legislation and its possible effects on property rights. At the end of each year the Property Rights Advocate prepares an annual report to document the activities of the Property Rights Advocate Office and make recommendations on property rights to the Legislative Assembly. Since the Office was newly established and only open for seven days in 2012, the *Alberta Property Rights Advocate Office 2012 Annual Report* discussed activities which occurred over a very short time frame and made only one recommendation. The *Alberta Property Rights Advocate Office 2013 Annual Report*, in contrast, covered the activities of an entire year and contained five recommendations.

In its discussions the Standing Committee on Resource Stewardship acknowledged the expertise of the Property Rights Advocate and expressed gratitude for the work of the Property Rights Advocate Office in advocating for the property rights of Albertans. The Committee also reflected on the content and structure of the annual reports.

With regard to recommendation 2012.01, "that the Legislative Assembly study and implement the availability of beneficiary deeds as an estate planning tool in Alberta, based upon the Montana model, with the appropriate legislative and regulatory amendments being made to our existing testamentary land conveyancing regime," the discussion focused on the proposed choice of Montana as a model for the beneficiary deeds of estates in Alberta and the tax implications of changing estate rules. Mr. Cutforth explained to the Committee that personal experience dealing with clients who own property in Montana led him to believe in the efficacy of the Montana system of beneficiary deeds, under which individuals can transfer at death real property without probate. Mr. Cutforth had not examined the systems used in other places and so could not offer a crossjurisdictional comparison on beneficiary deeds. Responding to concerns raised by the Committee about the tax implications of changing estate rules in Alberta, Mr. Cutforth stated that conveyancing is within provincial jurisdiction and therefore federal taxes do not apply.

Recommendation 2013.02, "that the Government direct the prompt commencement of a full public review of the *Surface Rights Act* and the *Expropriation Act*," generated discussion about the need for a full review as opposed to a more targeted examination of specific clauses in each Act. Questions were raised about the section of the *Alberta Property Rights Advocate Office 2013 Annual Report* that lists concerns reported to the Property Rights Advocate Office pertaining to the *Surface Rights Act*. These concerns, as listed in the *Alberta Property Rights Advocate Office 2013 Annual Report*, were brought to the attention of the Property Rights Advocate and pertain, for example, to applications for a right-of-entry order to the Surface Rights Board, operator bankruptcy, accountability of resource companies if they fail to follow the rules, timely and cost-effective mechanisms for landowners to enforce contractual rights, compensation calculations, and entry fees. Mr. Cutforth explained that individuals had reported their experiences and concerns to his Office, and these were recorded in the annual report without further investigation.

The discussion pertaining to recommendation 2013.03, "that the Legislature amend section 19(2) of the *Surface Rights Act* 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," focused on how the Property Rights Advocate Office arrived at the suggested rate of compensation. Mr. Cutforth explained that the figure was intended to reflect that land values had changed since that section of the *Surface Rights Act* was enacted, but also that there was no formula in place to establish or justify this figure. The Committee then discussed differential land values across the province and relative rates of compensation based on changes in market value.

With regard to recommendation 2013.04 “that the Legislature amend the *Municipal Government Act* to delete section 14(2)(d), and remove from the municipal powers of expropriation the purpose of selling land as building sites,” Mr. Cutforth explained that the recommendation was intended to deal with situations where a municipality expropriated property for the purposes of reselling, and he suggested that in cases of intended development the municipality should purchase the property like any other developer.

4.0 Recommendations of the Standing Committee on Resource Stewardship

At its meeting on December 18, 2014, the Standing Committee on Resource Stewardship came to a decision on each recommendation put forward by the Property Rights Advocate Office in the *Alberta Property Rights Advocate Office 2012 Annual Report* and the *Alberta Property Rights Advocate Office 2013 Annual Report*.

Concerning the first recommendation, 2012.01, “that the Legislative Assembly study and implement the availability of beneficiary deeds as an estate planning tool in Alberta, based upon the Montana model, with the appropriate legislative and regulatory amendments being made to our existing testamentary land conveyancing regime,” the Committee raised concerns about the implications of the recommendation on capital gains tax, the devolution of property, and the compatibility of the Montana model with the Torrens land registration system in Alberta. In addition, members of the Committee suggested that the Alberta Law Reform Institute might be able to provide more information and insight on the recommendation. Based on these considerations, the **Committee recommends not to proceed with recommendation 2012.01 pending receipt of full and sufficient information regarding its implications and, further, that the Alberta Law Reform Institute be requested to inquire into said recommendation.**

While considering recommendation 2013.01, “that the Government retain the direct and full ownership and operation of the land registry system under its existing format in the Land Titles Office,” the Committee agreed with the rationale put forward by the Property Rights Advocate Office. The Committee affirmed the importance of maintaining a high level of trust and integrity in the land conveyancing system as a core principle of protecting property rights in Alberta. The Committee agreed that privatizing or contracting out the land registry system would be problematic because land titles registration is an essential service of government. Based on these considerations, **the Committee endorses recommendation 2013.01 of the Property Rights Advocate and recommends the Government retain direct and full ownership and operation of the land registry system under its existing format.**

With regard to recommendation 2013.02, “that the Government direct the prompt commencement of a full public review of the *Surface Rights Act* and the *Expropriation Act*,” the Committee expressed the need for additional information and analysis to justify the need for a full public review. More specifically, the Committee proposed that the Property Rights Advocate Office conduct more research on and analysis of the concerns brought to its attention and upon which the request for the review is based. This might facilitate a more directed investigation of particular sections of the *Surface Rights Act* and the *Expropriation Act* in the event of a review. Based on these considerations, **the Committee does not recommend proceeding with recommendation 2013.02, which is a full public review of the *Surface Rights Act* and the *Expropriation Act*.**

Recommendation 2013.03 states “that the Legislature amend section 19(2) of the *Surface Rights Act* 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.” While considering this recommendation, the Committee expressed reservations about the arbitrariness of the \$1,200.00 figure and suggested that entry fees be sensitive and responsive to market trends. Instead of fixing the figure by legislation, regulation was considered a more responsive mechanism to changing land values over time. **The Committee recommends that the Legislature amend section 19(2) of the *Surface Rights Act* to allow the amount of entry fees to be set by regulation and establish a mechanism for setting the amount of those fees that is sensitive and responsive to market trends.**

Recommendation 2013.04 states “that the Legislature amend the *Municipal Government Act* to delete section 14(2)(d), and remove from the municipal powers of expropriation the purpose of selling land as building sites.” The Committee expressed the concern that this recommendation might have unintended consequences since there may be instances when municipalities need to expropriate land. In addition, the Committee expressed reservations about applying this recommendation to the province as a whole. Situations vary across the province, and a single solution may not be appropriate for all municipalities. It was additionally suggested that the recommendation be referred to the Alberta Urban Municipalities Association (AUMA) and the Alberta Association of Municipal Districts and Counties (AAMDC) for their consideration and comment. Furthermore, it was noted that Municipal Affairs is currently conducting a review to examine all parts of the *Municipal Government Act*. Based on these considerations, **the Committee recommends that the Legislature not act on recommendation 2013.04 at this time but that the recommendation be forwarded to the AUMA and AAMDC for their comments.**

Recommendation 2013.05 states

that the Legislature amend the *Emergency Management Act* to clarify and affirm the consistent respect for and deference to private property rights, even in the face of an emergency situation. Specifically, it is recommended that section 19 of the Act be amended to confirm that a natural disaster does not create licence to disregard the property rights of individual Albertans, nor does it absolve the authorities from a responsibility to follow the due process of law (including the need to obtain Ministerial authorization) if any encroachments do become necessary as an emergency response.

In consideration of this recommendation, the Committee expressed concerns that this change to the *Emergency Management Act* could tie the hands of emergency responders by putting in place constraints that might hinder future rescue efforts. Concerning specific incidents in High River that are referred to in the preamble to the Property Rights Advocate’s recommendation, the Committee noted that the actions of the Royal Canadian Mounted Police are under review by the Civilian Review and Complaints Commission for the RCMP. The Committee also discussed the need for enhanced communications between emergency responders and affected communities during emergency situations. Based on these considerations, **the Committee recommends that recommendation 2013.05 not be accepted.** At the same time, the Committee draws attention to the importance of assessing and enhancing communications during every emergency so that individuals directly affected by the situation are better informed of developments as they occur.

