

Standing Committee on Resource Stewardship

Review of the Alberta Property Rights Advocate Office 2015 Annual Report

Twenty-Ninth Legislature
Third Session
March 2017



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STANDING COMMITTEE ON RESOURCE STEWARDSHIP

March 2017

**To the Honourable Robert E. Wanner
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 2015 Annual Report.**

Sincerely,

[original signed by]

Rod Loyola, MLA
Chair, Standing Committee
on Resource Stewardship

c. Robert H. Reynolds, QC
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..... 1

4.0 Recommendations of the Standing Committee on Resource Stewardship 3

MEMBERS OF THE STANDING COMMITTEE ON RESOURCE STEWARDSHIP
29th Legislature, Second Session

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Edmonton-Ellerslie (ND)

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Denise Woollard, MLA
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Substitutions Pursuant to Standing Order 56 (2.1-2.4):

Dr. A. Robert Turner, MLA[§]
Edmonton-Whitemud (ND)

Annie McKittrick, MLA^{**}
Sherwood Park (ND)

Graham Sucha, MLA^{††}
Calgary-Shaw (ND)

Members Also in Attendance:

Rick Strankman, MLA^{††}
Drumheller-Stettler (W)

^{*} Deputy Chair and Member from December 13, 2016

[†] Deputy Chair to December 13, 2016

[‡] Member to December 13, 2016

[§] Substitution for Jamie Kleinsteuber on January 9, 2017

^{**} Substitution for Erin Babcock on January 12, 2017

^{††} Substitution for Christian E. Nielsen on January 12, 2017

^{‡‡} January 9 and 12, and February 21, 2017

1.0 Introduction

The *Property Rights Advocate Act*, S.A. 2012, c. P-26.5, 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 provide that after the end of each year the Property Rights Advocate must prepare an annual report summarizing the activities of the Office for that year and making 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 22, 2016, the Assembly agreed to Government Motion 25, which referred the *Alberta Property Rights Advocate Office 2015 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 respecting the *Alberta Property Rights Advocate Office 2015 Annual Report*.

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 2015 Annual Report*. For additional information concerning the context and rationale for these recommendations please refer to section 4.0 on page 3 of this report.

- 2015.01 The Standing Committee on Resource Stewardship endorses recommendation 2015.01, that Alberta Environment and Parks be asked to establish a crossdepartmental 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.
- 2015.02 The Committee endorses recommendation 2015.02, that 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 Legislative Assembly or where the committee requests additional action.

The Committee also recommends that the government introduce legislation abolishing the common-law doctrine of adverse possession in Alberta and all statutory references supporting adverse possession in Alberta legislation.

3.0 Committee Activities

During its review the Committee met on January 9 and 12, 2017, and February 21, 2017. On January 9, 2017, the Acting Property Rights Advocate, Karen Johnson, gave a presentation to the Committee on the purposes of the Property Rights Advocate Office and the recommendations contained in the 2015 Annual Report. Ms Johnson has been serving in the role of Property Rights Advocate in an acting capacity since December 18, 2015. During the meeting the Committee discussed the recommendations contained in the Annual Report and asked Ms Johnson a number of follow-up questions.

Recommendation 2015.01 – that 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.

According to the Annual Report recommendation 2015.01 aims to “find better ways of addressing past, current and ... future property rights conflicts,” noting that “property rights conflicts ... may be exacerbated by [the existence of] a fractionalized system of laws, operational policies and procedures.” The report indicated that in spite of the fact that property rights factor into much of the Government’s work (e.g., projects that support energy, transportation, and infrastructure development), “no one ministry is responsible for coordinating changes or evaluating impacts from changes in property rights laws or processes in Alberta.” Having so many ministries administer property rights laws and policies contributes to “gaps, overlap, duplication and confusion at the property rights stakeholder level.” According to the Annual Report if there are no means to address the ongoing concerns of property owners, the Government may face challenges garnering support from stakeholders when establishing property rights legislation or policies because of a potential lack of trust by those stakeholders. In addition, the report suggested that without a plan to modernize and better organize property rights laws and policies, more interest groups may develop out of a sense of frustration with the ways in which property rights issues are addressed by the Government, which could in turn lead to an increase in civil property cases because such groups may feel that they have no other options for settling disputes. The Annual Report suggested that several ministries (Agriculture and Forestry, Energy, Environment and Parks, Indigenous Relations, Infrastructure, Justice and Solicitor General, Labour, Municipal Affairs, Service Alberta, and Transportation) should comprise the recommended crossdepartmental committee. Ms Johnson elaborated on this recommendation, suggesting that the “current property rights system is complicated and needs changes to make it more responsive and accessible to Albertans.” She went on to say that “thoughtful reflection and information sharing by [the relevant] ministries ... is a necessary first step toward government developing [a] greater understanding of how its property rights policies and laws function together so that work toward integration can begin.”

Recommendation 2015.01 generated discussion about the gaps, overlaps, fragmentation, and inequalities in the system that are mentioned in the Annual Report. It also led to discussion regarding how implementation of the recommendation would improve the issues raised in the Annual Report and why the Ministry of Environment and Parks was selected by the Advocate as the lead ministry to set up the proposed cross-departmental committee.

Recommendation 2015.02 – that 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.

With respect to recommendation 2015.02 the Annual Report indicated that, for recommendations that have been endorsed by the Standing Committee on Resource Stewardship or for which more information or follow-up has been requested by the Committee, there is no mechanism in place to report the Government’s progress on these recommendations or requests for information to the Property Rights Advocate’s office. According to the report “it may be desirable” for such a mechanism to be developed. In commenting on this recommendation, Ms Johnson suggested that “when [the] committee endorses a recommendation, there should be a way to determine if the committee’s advice was reviewed or acted on.” She went on to say that “a formal process is needed” to require the status of recommendations to be reported back to the Committee and the Advocate “to make the connection between actions and recommendations clearer.” The Annual Report noted that currently two recommendations of the Advocate have been endorsed by the Committee and a further seven require further information or follow-up. As part of the discussion related to this recommendation, the Committee noted that Standing Order 52.09(1) requires the Government to respond to a report of a Legislative Policy Committee, with certain exceptions, “within 150 days from the date on which” the Committee reports to the Assembly.

Recommendation 2015.02 elicited discussion with respect to the need to follow up with the appropriate ministry regarding current recommendations. To that end, the Committee agreed to a motion during its January 12, 2017, meeting to invite the departments of Environment and Parks, Justice and Solicitor General, and Municipal Affairs to appear before the Committee to provide a status report on the past

recommendations from the Property Rights Advocate at the earliest opportunity. Representatives of the three departments appeared before the Committee on February 21, 2017, to provide a status report and respond to questions from the Committee on the past recommendations of the Committee with respect to recommendations of the Property Rights Advocate in the Office's 2013 and 2014 annual reports. During that meeting a focal point of the Committee's discussions was the common law doctrine of adverse possession and whether a recommendation should be made to abolish this doctrine in Alberta.

4.0 Recommendations of the Standing Committee on Resource Stewardship

At its meeting on January 12, 2017, the Standing Committee on Resource Stewardship came to a decision on the two recommendations put forward by the Property Rights Advocate Office in the *Alberta Property Rights Advocate Office 2015 Annual Report*.

With respect to the first recommendation, 2015.01, "that 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 polices resulting in an accessible system that is responsive to the concerns of Albertans and stakeholders," the Committee acknowledged the importance of dealing with property rights issues "in a proper and respectful manner." It also noted that it is important for the Government to "provide the appropriate protections and avenues for resolution where issues arise concerning property rights" and that recommendation 2015.01 proposes "the appropriate method for reviewing ... property rights [issues]." Based on these considerations, **the Standing Committee on Resource Stewardship endorses the recommendation that Alberta Environment and Parks be asked to establish a crossdepartmental committee for the purpose of developing a framework to identify how government can systematically modernize property rights legislation and polices resulting in an accessible system that is responsive to the concerns of Albertans and stakeholders.**

While considering recommendation 2015.02, "that 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 Committee noted that the Government has not responded to its past reports regarding the annual reports of the Property Rights Advocate as required by Standing Order 52.09(1). The Committee argued that the Government needs to better communicate with the Committee and the Property Rights Advocate in response to the Committee's past recommendations and that recommendation 2015.02 was an appropriate mechanism to facilitate an improvement in this area. Consequently, **the Committee endorses the recommendation that 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 Legislative Assembly or where the committee requests additional action.**

During its meeting on February 21, 2017, the Committee made a recommendation with respect to the common law doctrine of adverse possession in Alberta. While considering the issue, the Committee acknowledged that the law of adverse possession is archaic and has been abolished in other provincial jurisdictions except in Nova Scotia, which is currently in the process of abolishing this doctrine. The Committee therefore determined that adverse possession should be abolished in Alberta. Based on these considerations **the Committee recommends that the government introduce legislation abolishing the common-law doctrine of adverse possession in Alberta and all statutory references supporting adverse possession in Alberta legislation.**

