

## Standing Committee on Resource Stewardship

### Review of the Alberta Property Rights Advocate Office 2016 Annual Report

Twenty-Ninth Legislature  
Third Session  
October 2017



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**STANDING COMMITTEE ON RESOURCE STEWARDSHIP**

October 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 2016 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

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**MEMBERS OF THE STANDING COMMITTEE ON RESOURCE STEWARDSHIP  
29<sup>th</sup> Legislature, Third Session**

Rod Loyola, MLA  
Chair  
Edmonton-Ellerslie (NDP)

Grant R. Hunter, MLA  
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Erin Babcock, MLA  
Stony Plain (NDP)

Todd Loewen, MLA  
Grande Prairie-Smoky (UCP)

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Eric Rosendahl, MLA  
West Yellowhead (NDP)

Anam Kazim, MLA  
Calgary-Glenmore (NDP)

Denise Woollard, MLA  
Edmonton-Mill Creek (NDP)

Jamie Kleinsteuber, MLA  
Calgary-Northern Hills (NDP)

**Substitutions Pursuant to Standing Order 56 (2.1-2.4):**

Jonathon Carson, MLA\*  
Edmonton-Meadowlark (NDP)

**Members Also in Attendance:**

Rick Strankman, MLA†  
Drumheller-Stettler (UCP)

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\* Substitution for Anam Kazim on October 10, 2017

† October 10, 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 Alberta 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 make 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 of Alberta, 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 Assembly. On June 1, 2017, the Assembly agreed to Government Motion 25, which referred the *Alberta Property Rights Advocate Office 2016 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 2016 Annual Report*.

## 2.0 SUMMARY OF COMMITTEE RECOMMENDATIONS

The Standing Committee on Resource Stewardship makes the following recommendation with respect to the *Alberta Property Rights Advocate Office 2016 Annual Report*. For additional information concerning the context and rationale for this recommendation please refer to section 4.0 on page 3 of this report.

2016.01            The Standing Committee on Resource Stewardship endorses recommendation 2016.01, that a cross-ministry committee discuss options to provide Albertans with cost-effective access to fairness and equity in settling property rights disputes and that 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 Committee further recommends that the Government conduct a comprehensive review of the *Property Rights Advocate Act* and, as part of that review, consider the future role of the Property Rights Advocate Office.

## 3.0 COMMITTEE ACTIVITIES

During its review the Committee met on October 10, 2017, at which time 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 2016 Annual Report. During the meeting the Committee discussed the recommendations contained in the Annual Report and asked Ms Johnson some follow-up questions. The Committee first considered recommendation 2016.01, as outlined below.

**Recommendation 2016.01** – that 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.

According to the Annual Report the objective of recommendation 2016.01 is to explore the possibility of establishing a property rights resolution “system that is timely, accessible and affordable.” The Acting Advocate indicated in the report that currently Albertans may find it challenging to find resolutions to their property rights issues, predominantly because property rights resolution services exist as a “complex collection of services” rather than one all-encompassing service. For instance, the Acting Advocate stated that quasi-judicial boards exist to address certain property rights issues “such as land use planning decisions, landlord tenant disputes, surface rights takings and expropriation.” However, she argued that “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.” In addition, the Acting Advocate noted in the report that there are municipalities that provide sporadic services to address property rights disputes (e.g., conflicts between neighbours). While the Acting Advocate suggested such services “are helpful” she also informed the Committee that these services “are often only available on a local basis and only for so long as they continue to exist.” Furthermore, the Acting Advocate stated in the report that where the only recourse to resolve a property rights dispute is the court system, “if an Albertan does not have the financial means” to incur the costs associated with going to court to resolve an issue, then that option is also not available, leaving Albertans with no recourse at all, “not even for the opportunity to be heard” if their property rights have been violated. The Acting Advocate argued that having access to an “affordable resolution service” that is available across Alberta “could make life better for Albertans and is worth exploring.” She elaborated on this recommendation, suggesting that this proposal relates to “fundamental justice and finding ways for people to have a case heard, understood, and remedied without undue financial risk or hardship.”

The Committee then considered recommendation 2016.02, as set out below.

**Recommendation 2016.02** – that 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.

With respect to recommendation 2016.02 the Acting Advocate noted in the Annual Report that the *Property Rights Advocate Act* has been in force since 2012 and that the Property Rights Advocate’s Office was created under that Act “in response to requests” by Albertans to the Property Rights Task Force in 2011. The task force, which was formed by the Government of Alberta, held consultations with Albertans to hear their concerns regarding property rights. The Acting Advocate argued that “best practices for policy development require policies to be assessed at some point after they have been implemented” and that it is “time for a review because government has not had a recent conversation with Albertans on this subject.” She suggested that “an evaluation could determine if the [Act] and the office are achieving all the outcomes they were put in place to achieve.” In addition, she argued that it is “appropriate for the [Act] and the office created under that act to be subjected to the same evaluation as Alberta’s other laws and policies,” noting that “a review would provide clear direction on which functions the office should maintain and which should be replaced or removed entirely.”

Recommendation 2016.02 elicited discussion with respect to the role of the Property Rights Advocate in Alberta, how much interaction the Acting Property Rights Advocate has with bodies that handle property rights disputes (e.g., the Surface Rights Board), and how property rights are addressed in other Canadian jurisdictions. The Committee heard that in other provincial jurisdictions “property rights are split up in various ministries depending on the ... issue” rather than being managed by a single advocate.

During the October 10, 2017, meeting the Committee also heard from officials from the departments of Justice and Solicitor General, Municipal Affairs, and Environment and Parks, who commented on the recommendations made in the *Alberta Property Rights Advocate Office’s 2016 Annual Report* and

provided status reports with respect to outstanding recommendations of the Property Rights Advocate related to their respective ministries that were endorsed by the Committee in prior years. Regarding the Acting Property Rights Advocate's recommendation 2016.01 concerning a cross-ministry committee looking at a comprehensive board or service to address property rights grievances, Andrew Horton, Director, Strategic Policy, Department of Municipal Affairs, indicated that the Department would be "willing to participate in such a committee should it be established." However, he noted that the Department "already has existing legislative requirements" with respect to addressing such issues. He indicated that the Department "has adopted new policies that address" the advocate's recommendation (2014.02) "regarding dispute resolution between landowners and municipalities." Specifically, Mr. Horton provided the Committee with information regarding amendments to the *Municipal Government Act* to improve "appeal mechanisms under the Act" (e.g., municipal councillors are prohibited from "forming the majority on any panel hearing these appeals"). He also noted that "the mandate of the Alberta Ombudsman has been expanded to include municipalities," giving the Ombudsman "authority to objectively investigate complaints from Albertans to determine if a municipality has acted fairly and reasonably on a matter." Rick Blackwood, Assistant Deputy Minister, Strategy, Department of Environment and Parks, indicated that the Department is working with other departments to strengthen and improve the "surface rights system" in order to "address concerns and issues ... in a more systematic way to strengthen landowner rights for fair compensation and due process." David Peace, Assistant Deputy Minister, Justice Services, Department of Justice and Solicitor General, briefly addressed recommendation 2016.02 regarding a review of the *Property Rights Advocate Act*, noting that the Department has "already started some of this work as ongoing discussions are happening at the Deputy Ministers' Council" and that the Department "would like to take the time needed to see what comes of these discussions before proceeding with any reform to the act or the role of the advocate."

#### 4.0 RECOMMENDATIONS OF THE STANDING COMMITTEE ON RESOURCE STEWARDSHIP

At its meeting on October 10, 2017, the Standing Committee on Resource Stewardship came to a decision on recommendation 2016.01 from the *Alberta Property Rights Advocate Office 2016 Annual Report*.

Recommendation 2016.01 states the following: "that 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." With respect to this recommendation, the Committee suggested that although there are several entities that address property-rights related issues and that the Government is "working on this issue," it is not apparent that "every Albertan has a clear idea about how to address a grievance if they have one." The Committee also noted that based on information contained in the *Alberta Property Rights Advocate Office's 2016 Annual Report*, the Acting Property Rights Advocate is not satisfied with the processes that exist to address disputes with respect to property rights.

Based on these considerations, **the Standing Committee on Resource Stewardship endorses the recommendation that a cross-ministry committee discuss options to provide Albertans with cost-effective access to fairness and equity in settling property rights disputes and 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 Committee addressed recommendation 2016.02 by making a recommendation with respect to a review of the *Property Rights Advocate Act*. In considering the issue, the Committee acknowledged that the Act should be reviewed because it has been in force for nearly five years without being reviewed. It noted that although there is no mechanism in the Act requiring that it be reviewed, some other statutes require a review of the statute after a specific period of time. The Committee indicated, for instance, that the *Child and Youth Advocate Act*, which was in force by April 1, 2012, contains a provision requiring a



committee of the Legislative Assembly to undergo a comprehensive review of the Act by July 1, 2016, and noted that such a committee completed this review in June 2017.

The Committee also noted that with advancements in the “green energy sector ... new technology and methods of extracting resources” have been developed that did not exist when this legislation was enacted in 2012. Therefore, the Committee suggested that “the advocate’s role and ability to deal effectively with all property rights issues need to be reviewed” and possibly adjusted to accommodate these advances.

The Committee therefore **recommends that the Government conduct a comprehensive review of the *Property Rights Advocate Act*, and as part of that review, consider the future role of the Property Rights Advocate Office.**

## APPENDIX: Minority Report

Office of the Property Rights Advocate – Minority Report October 2017: Grant Hunter, Wayne Drysdale, David Hanson, Todd Loewen and Don MacIntyre

On Tuesday October 10, 2017, the Standing Committee on Resource Stewardship met to discuss the report of the Office of the Property Rights Advocate. During this session it was moved by Mr. Drysdale that the Standing Committee on Resource Stewardship recommend that a committee of the Assembly conduct a comprehensive review of the Property Rights Advocate Act and, as a part of that review, consider the future role of the Property Rights Advocate office. This motion supports the recommendation from the Property Rights Advocate's 2016 report. The Property Rights Advocate Act was proclaimed in March of 2012, and there was no provision made in the act for a review. As a result, now it's been more than five years without a review occurring.

As described in the Committees report, *the Acting Advocate noted in the Annual Report that the Property Rights Advocate Act has been in force since 2012 and that the Property Rights Advocate's Office was created under that Act "in response to requests" by Albertans to the Property Rights Task Force in 2011. The task force, which was formed by the Government of Alberta, held consultations with Albertans to hear their concerns regarding property rights. The Acting Advocate argued that "best practices for policy development require policies to be assessed at some point after they have been implemented" and that it is "time for a review because government has not had a recent conversation with Albertans on this subject." She suggested that "an evaluation could determine if the [Act] and the office are achieving all the outcomes they were put in place to achieve." In addition, she argued that it is "appropriate for the [Act] and the office created under that act to be subjected to the same evaluation as Alberta's other laws and policies," noting that "a review would provide clear direction on which functions the office should maintain and which should be replaced or removed entirely."*

The Committee went on to *note that with advancements in the "green energy sector ... new technology and methods of extracting resources" have been developed that did not exist when this legislation was enacted in 2012. Therefore, the Committee suggested that "the advocate's role and ability to deal effectively with all property rights issues need to be reviewed" and possibly adjusted to accommodate these advances.*

As in the past however the NDP used their dominate majority to amend the Opposition motion to read:

**The Committee therefore recommends that the Government conduct a comprehensive review of the Property Rights Advocate Act, and as part of that review, consider the future role of the Property Rights Advocate Office.**

This becomes troubling as the review to be completed by government lacks any semblance of transparency now. The Committee and by extension the public will not know what stakeholders have met with Government, what they said and what their presentations entailed. Furthermore the NDP used their majority to vote down an Opposition amendment to put a timeline on the governments review. A committee led review has definitive timelines, in this case the government can stretch out the review for years, or defer it to a future undisclosed time. This does nothing for transparency and accountability which the Opposition believes was the underlying thought of the Property Rights Advocates recommendation to begin with. As pointed out by Mr. Drysdale and several Department representatives, the Government has been "reviewing" adverse possession since 2003. Leaving this review up to government is simply not in the interest of Albertans.

### Why do Property Rights need more protection in Alberta?

Property Rights are a fundamental right that need to be protected by the law. There will often be a tension between the needs of the many and the rights of the few when it comes to shared goods like public infrastructure or land planning, and the only way to ensure people are always treated fairly is to give them the right to resort to the courts.

While we should always expect that our laws will have adequate protections for all citizens, the purpose of the constitution is to ensure that fundamental rights are protected against government actions. Property owners affected by large government undertakings will always be a group that needs ultimate recourse to an adjudicator outside the government to ensure fairness. Individuals should not be able to hold up necessary public works or plans, but they should also get their day in court if they are not being properly compensated or listened to.

That is one reason why we have the judicial branch, which in its civil division decides matters when an individual has reached an impasse with the government. In fact the Acting Advocate stated in this year's report that ***where the only recourse to resolve a property rights dispute is the court system, "if an Albertan does not have the financial means" to incur the costs associated with going to court to resolve an issue, then that option is also not available, leaving Albertans with no recourse at all, "not even for the opportunity to be heard" if their property rights have been violated. The Acting Advocate argued that having access to an "affordable resolution service" that is available across Alberta "could make life better for Albertans and is worth exploring."***

The opposition argued that this was what we hoped to have accomplished with the review of the Property Rights Advocate Act. By the Assembly designating the Standing Committee of Resource Stewardship or another all party committee to review the pertinent Act and make its recommendations we had hoped to deal with several of the Advocates outstanding recommendations and set the direction for the Advocates Office for the next five years.

