



Legislative Assembly of Alberta

The 30th Legislature  
Third Session

Select Special  
Committee on  
Real Property Rights

Public Input Meeting in Fort Macleod

Tuesday, April 12, 2022  
7 p.m.

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**Legislative Assembly of Alberta  
The 30th Legislature  
Third Session**

**Select Special Committee on Real Property Rights**

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## Select Special Committee on Real Property Rights

### Participants

Ken Allred  
Glen Alm  
Joe Barongay  
Daryl Bennett  
Marcia Friesen  
Allan Garbutt  
Harry Hoffman  
John McCanna  
William Newton  
Rosaline Petek  
Maryanne V. Sandberg  
Doug Thornton



7 p.m.

Tuesday, April 12, 2022

[Mr. Sigurdson in the chair]

**The Chair:** Hello, everyone. I'd like to call this meeting of the Select Special Committee on Real Property Rights to order and welcome everyone in attendance. We are meeting here in Fort Macleod, Alberta.

My name is R.J. Sigurdson, MLA for Highwood, and I am the chair of this committee. Now I'd ask that my committee members introduce themselves for the record. We'll begin to my left and then work to my right.

**Ms Sweet:** Good evening. I'm Heather Sweet, the MLA for Edmonton-Manning.

**Mr. Hanson:** Hi there. Dave Hanson, MLA for Bonnyville-Cold Lake-St. Paul.

**Mr. Rowswell:** Garth Rowswell, MLA for Vermilion-Lloydminster-Wainwright.

**Mr. Milliken:** Nicholas Milliken, MLA, Calgary-Currie.

**The Chair:** Excellent. Just a few housekeeping items to address before we turn to the business at hand. The audio of today's meeting is being live streamed on the Internet and broadcast on Alberta Assembly TV. The audiostream and transcripts of meetings can be accessed via the Legislative Assembly website. Please set your cellphones and other devices to silent for the duration of the meeting.

Just to give a little bit of background on the committee and the committee's work, the Legislative Assembly struck this committee on March 22 of 2021. The committee's mandate is limited to the consideration of five separate items: number one, whether legal remedies available to a real property owner who is deprived of their use of the real property are adequate; two, whether the real property rights should be expanded or, in the case of an individual, constitutionally protected; three, whether the law of adverse possession should be abolished; four, whether the expropriation processes provided under the Expropriation Act are adequate; and, five, any other matter that the committee decides is necessary to ensure the completeness of its review. The committee may review as a part of its mandate any part of the following statutes, including the Alberta Bills Rights, Alberta Land Stewardship Act, Expropriation Act, Land Titles Act, Law of Property Act, Limitations Act, Responsible Energy Development Act, and any review of any other act that the committee deems necessary to ensure the completeness of its review.

So far the committee has received technical briefings from government ministries and has also received written submissions and oral presentations from identified stakeholders from across the province. We have now turned our attention to hearing presentations from members of the public. We've had four public meetings so far. The first was a virtual meeting hosted in Edmonton last month, then we had meetings in Edson and St. Paul, and one this morning in Medicine Hat. Today's meeting is the fourth of six in-person public meetings planned in locations around the province. Information about these meetings can be found on the committee's website.

Just before we proceed with the presentations, as a note, those interested in presenting to the committee this morning were to preregister with the clerk at the front door. If you have not done so so far, you can do so any time during the duration of the meeting. Based on the list that we have so far, presenters will have up to 10 minutes each to make their presentation. At the end of the meeting, of course, if there is still time remaining after hearing from all the

presenters, members will be permitted to ask questions to any of the individuals that have presented. Members, if you do have a question, please make your notes, and we will conduct that at the end of the meeting. As well, to the presenters, we would please ask, if it's within your capacity and time – we understand that your time is important – that you do stick around in case there is a place at the end of the meeting where we do have time for the committee members to ask clarifying questions.

With that, we'll move on to our first presenter. I apologize if I get any of your last names incorrect. As I mentioned, once I call your name, please proceed to the mic, state your name for the record, and then proceed with your presentation. First I have Daryl Bennett.

**Mr. Bennett:** Good evening. My name is Daryl Bennett. I am a farmer in the Taber area, and I also represent landowners in their dealings with the energy industry. I'm a director of the Action Surface Rights Association and a director of the Alberta Surface Rights Federation.

I'd like to begin by reminding the panel that in most cases landowners cannot refuse energy industry entry on their lands and that this force taking is governed by the Surface Rights Act, which was put in place to level an uneven playing field and an implied social contract that requires a landowner be compensated for the property rights that are taken. This social contract presumes that in exchange for the right to expropriate private land, the energy industry will pay landowners for the loss of use and adverse effects to the lands taken, exempt landowners from having to pay the property taxes associated with the energy infrastructure – and that's in the Municipal Government Act – and clean up the mess that they make and restore the land to reasonable productivity once they leave, and this is backstopped by the Orphan Well Association. Unfortunately, this social contract has been breaking down. I'd like to comment on a few of the issues that landowners are forced to deal with as their property rights are infringed upon. I have five copies of my submission if the panel members want them.

First off, I'd like to discuss cutting red tape. Many of the rules and regulations that were cut were put in place to address landowner concerns, and we're already seeing how industry is taking advantage of the cuts to place landowners at a disadvantage. Reducing the standard of review from the Supreme Court Vavilov standard of correctness to the lower standard of reasonableness, which is found in section 19 of the Land and Property Rights Tribunal Act, and then further reducing the time to file a judicial review from six months to 60 days, found in section 17(1), was a great disservice to landowners and inexcusable. In the recent Sabo versus AltaLink decision the judge stated that if the appeal had been filed a couple of weeks later, after Bill 48, the Red Tape Reduction Implementation Act, had been passed, the landowner would've lost the case because the standard of review would've been reasonableness instead of correctness. That decision is a landmark decision that I'm sure AltaLink will appeal to the courts.

The implementation of the Land and Property Rights Tribunal, combining the Surface Rights Board with three other boards, has been a disaster, and frankly the new tribunal in many ways is incompetent. The time delays, the inconsistency of its rulings, misplaced submissions, poor rulings, and the mistakes coming from this board, which are acknowledged by industry as well, are unacceptable, especially in light of the increased funding that was provided. Some applications have sat for three years, and the tribunal just ignores requests for updates. It certainly speaks poorly of this government's priority of landowner property rights when the procedures put in place to address those concerns are deliberately lengthened and complicated.

Recently the AUC changed rule 7. Prior to those changes, any landowner that was within 2,000 metres of a proposed wind or solar project had the right to object and to be notified. That distance has now been reduced to 1,500 metres. Considering the fact that wind turbines are now two to three times taller than the older turbines, it is absolutely ridiculous that anyone would think that the notification distance should have been reduced.

The AUC has now approved more than \$6 billion of new transmission infrastructure to connect renewable energy projects. The recent AUC decision will burden ratepayers with another \$350 million solely to service two wind farms that have not yet been built. This cost is borne directly by the ratepayers, and it is a subsidy to the renewable energy industry. The fact that the transmission facility owners will then make a guaranteed 8.5 per cent rate of return on this \$6 billion is offensive. Electrical distribution and transmission charges are going through the roof and making irrigation uneconomical in southern Alberta.

The public interest mandate of the AUC does not allow compensation for a wind or solar project's negative impacts and forces adjacent landowners to subsidize big industry due to loss of aerial spraying opportunities, property devaluation, noise, and adverse health impacts. The rural quality of life is compromised by allowing industry to pollute the rural environment, and lax Canadian standards allow foreign companies to take advantage of rural Alberta and build wind and solar projects that would not be allowed to be built in their home country. The AUC has not denied a wind or solar farm application yet. They commonly accept Alberta Environment's waiver of wildlife setbacks that were put in place to protect our environment.

In regard to oil and gas the relaxations that were introduced because of COVID were unjustified and unwarranted. It is unclear whether these have now been revoked. However, the fast-track reclamation certificate process, the high percentage of uninspected sites, and the resulting fraudulent reclamation certificates that have been issued are also allowing industry to falsify documentation, usually without consequence.

Well sites already have a permanent setback and access requirements and inhibit future development of private property, and allowing further permanent agricultural productivity losses is inexcusable. Landowners must now watch the AER's website to see if companies are trying to transfer wells on their own land to another company, especially orphan wells. This is a ridiculous process as the vast majority of landowners will not even know of this process and requirement. Industry should be required to notify landowners of changes in ownership of oil and gas infrastructure on their lands, especially if orphan wells are involved.

**7:10**

The new innovative development – the geothermal bill and Bill 82, the Mineral Resource Development Act, have laudable goals. We don't object to having innovative energy infrastructure on our lands. However, it is unclear whether this new development will have the existing protections of an orphan well association or the MGA exemption for property taxes or the jurisdiction of the Surface Rights Board for damages and unpaid compensation applied to them. Making the AER a superregulator and granting them overriding provisions so that they can void any provision in any existing surface lease is foolish and probably illegal.

Finally, government departments are now using the same legal firm to write this new oil and gas legislation that industry uses to oppose landowners and Surface Rights Board, AER, and AUC hearings. This is a huge conflict of interest, where this legal firm is allowed to create loopholes in the legislation that they will then take advantage of when they face landowners in tribunal hearings and in

court. Bill 2, REDA, already took landowner appeal rights away, and now hiring this legal firm to write legislation further strips landowners of their property rights.

In conclusion, things have gotten worse since this government took power. Normally rural Alberta supports a Conservative government, but many rural Albertans are getting upset with how this government is allowing industry to infringe upon their property rights. I would encourage this committee to change that.

Thank you.

Do you want copies?

**The Chair:** Yes, please, Daryl, and thank you for your presentation as well.

Next we have on our list Glen Alm to present. Once you get to the mic, please just state your name for the record. As I mentioned, we will provide 10 minutes for the presentation. Roughly with about one minute left I'll give a little bit of a signal, and then we'll go from there.

Thank you.

**Mr. Alm:** Good evening, and thanks for being here. I really signed up thinking that I needed to sign up to just sit and listen, because that's what I came to do, but I do have just one question, I guess. I wasn't ready for it, but I hope that you guys will be looking at adverse possession and changing that antiquated law that came from the BNA Act, I believe. We have surveyed land titles here. We do not need adverse possession to change things after it's been surveyed and people have purchased land, and I hope that you guys will make something happen with that. I believe that almost all of the rest of Canada has gotten rid of it except for Alberta, and I think it's terrible that it's still sitting in here on the books, and it still gets used. I know first-hand that it's been used locally in the last two years, so it seems that something needs to be done. I hope you guys will address that.

Thank you.

**The Chair:** Excellent. Thank you, Glen.

Next on the list of presenters we have Joe Barongay. With your presentation just make sure to state your name for the record.

**Mr. Barongay:** Yeah. Good evening. My name is Joe Barongay, and I'm here representing the oldest conservation organization in Alberta, the Alberta Fish and Game Association. Our membership is concerned with the lack of access to ground grazing lease lands. The Alberta government has passed the Petty Trespass Act, and it seems that leaseholders believe that they can press charges against people for accessing these leases. These are not deeded lands but government- or Crown-owned leases. Alberta environment and protection issues licences to the public to help manage game populations and control crop damage and feed damage. We pay for these licences, and they are issued in wildlife management units that contain Crown leases, yet we are denied access by leaseholders that do not own these properties. They only hold the lease rights for grazing purposes. These are not deeded lands; they are Crown and public lands.

The recreational access regulation, the grazing lease stewardship code of practice, and the Public Lands Act state that leaseholders of agricultural leases must allow reasonable access for recreational use. It seems that in some cases leaseholders and outfitters are denying access to Crown leases and using it as their own personal hunting preserves and businesses at the expense of Alberta recreational users. At a landowners' meeting fish and wildlife officers have stated that lease owners own the land and they have the right to charge for trespassing. How can this be when we have purchased a licence from the government to harvest Crown-owned

game on Crown-owned lands? The act clearly states that there are certain criteria that recreational users must abide by and also that leaseholders must do to give access.

Leaseholders are required to follow the intent of this legislation, which is to balance the right of recreational users to access. For the record our membership would like to know what rights Albertans have to access these Crown lands without confrontation and persecution. There's only a certain amount of Crown land available to the public, and as our population is increasing, there will be more people looking for recreational access to Crown leases. We believe that the regulation and policies need to be brought up to date and that lease holders should not be the ones to control access to Crown lands indiscriminately.

Thank you for your time and consideration.

**The Chair:** Excellent. Thank you for your presentation.

I will comment again because I had a couple of comments from the members on both sides of me. Just to be clear, once we get through the presentations, the members up here as part of the committee would like to ask a few clarifying questions to some of the presenters. So please do stick around. Once we get through the formal presentations, we'll move into more of an informal Q and A.

Next on the list for presenters I have Rosaline Petek. I apologize if I got that pronunciation wrong. Please just state your name and then proceed with your presentation.

**Mrs. Petek:** My name is Rosaline Petek, and I'm here as a private citizen in regard to personal property ownership, not selective to any ranching or municipal, town, all of them included. It was interesting listening to all of the audios of all the presentations you've done across the province. I've gathered a lot of information from people.

I'm here to remind people that the Canadian Charter of Rights and Freedoms is founded under the principle that recognizes supremacy of God and the rule of law. I believe at this point in time, especially over the last two years during COVID, this is a time of intellectual laziness. That is what we're coming up with now. I didn't know if this was advertised properly or if there was just not very much interest in coming to these meetings, so I'm chalking it up to intellectual laziness from the last two years.

Property rights were founded on common law and are now shifting to property rights based on social consensus with, it seems, the cabinet and the government acting as the arbiter of the social consensus versus the property owner having rights to this for themselves. Common-law property rights have been significantly eroded in the last recent years, and this committee has an opportunity to recommend measures to halt and repair that erosion.

One of my concerns was that the committee was struck on March 22, 2021, and with a finality date of June 2022, which is what I've already said. I just wondered why the committee was struck within a pandemic period when there's limited parliament attendance and distracted electorates during COVID time. As Joyce from Medicine Hat mentioned this morning, she thought these meetings were poorly advertised, along with addressing that federal bills have been slid under the table in the last two years also. I'm in agreement with her that I don't think it was very well advertised. Property rights are very important to people.

I'm here for the purpose of (c): is the adverse possession, squatter's rights, to be abolished? I'm against abolishing the adverse possession. Like, currently the statutory period timeline is 10 years; that was established in 1935. Without that statutory 10-year timeline it prohibits stale claims being brought forward because you're only allocated to bring them forward within that 10 years.

7:20

If you abolish the squatters' rights, there won't be a timeline as to when these stale claims cannot be resurrected. So if you abolish that, what's to say that without this adverse possession law, what stops the government through the reconciliation land-back strategies, which are upcoming and very prevalent in Alberta and Canada? What stops the government through these reconciliation land-back strategies addressing that the Indigenous were actually the original owners of the land and that the settlers were recognized as the squatters? You abolish the rights of the squatters, you abolish that 10-year timeline of resurrecting a stale claim.

I have concerns for landowners and municipalities that usually when the meetings are opened, they're opened with: we are recognized as being on Treaty 7 land. So we're somewhat conditioning people to accept that we're on treaty land, which some of us aren't in agreement with. So that's my concern with abolishing the squatters' rights instead of maybe just reforming them a bit but to still keep included in there the timelines just in case what we're coming up with now is Indigenous affairs and the priorities they set for recognizing land compensation in regard to the atrocities that have happened to them. That's my concern.

I'm hoping that we don't abolish it. It has been brought up, I think, five times since 2012: 2014, '15, '17, '18, and now in 2022 again. I think we should hold off until the Indigenous practices for land reclamation are addressed before we put vulnerable people in a situation where there are no stringent timelines.

Thank you.

**The Chair:** Excellent. Thank you for your presentation, Rosaline.

Next for presentations on the list we have Ken Allred. Ken, if you're ready to present, please just state your name prior to moving forward with your presentation. Thank you.

**Mr. Allred:** Yes. My name is Ken Allred, and I currently reside in Blairmore. I was formerly a resident of St. Albert, where I was the MLA in 2008 to 2012. I'm here to address the elimination of adverse possession in Alberta.

I first became aware of adverse possession, squatters' rights, back in elementary school when a teacher read *Waltzing Matilda*. *Waltzing Matilda* said: "Up rode the squatter, mounted on his thoroughbred. Down came the troopers, one, two, three. Who is that jumbuck you've got in your tucker bag? You'll come a waltzing Matilda with me." At that time we thought it was rather ironic, and we were going to squat on a neighbour's land that we always cut across to make a shortcut. That's not really adverse possession, that's prescription, which is the creation of an easement, an access easement. But it's rather ironic that in Alberta prescription is not allowed. Prescription is a lesser right, or prescription and easement is a lesser right than a fee simple. But you can acquire land by adverse possession for fee simple but not for a simple lesser interest such as an easement.

I became quite involved with adverse possession. I took a land titles course in 1970, and I found out that, really, adverse possession is real in Alberta. I got doing some studying on it, and I read a lot of material on it, and for the last 20 years I have been on the case of getting rid of adverse possession. I must say, I am awfully frustrated with the lack of action.

When I was in the Leg., I introduced a private member's motion, which was unanimously passed. I introduced Bill 204, a private member's bill, which was unanimously supported, but it died on the Order Paper with the election in 2012.

Adverse possession, in my opinion – and I think you've probably got my very lengthy epistle. You've probably got several copies of it. You're probably sick and tired of it. Adverse possession came in

in Alberta in the early 1900s, but it was based on a case called *Belize versus Quilter*, I believe it was, in British Honduras, but it was never argued in that case. The North-West Territories Act was passed in the 1890s, which basically said that the English system, common law – that’s where adverse possession came from – was different than the Canadian system. The English system is called settlement before survey. In Canada we had the Dominion Lands Act, which puts survey before settlement, because we surveyed all of western Canada before the homesteaders came in so their boundaries would be defined. In England boundaries are defined by hedges and fences and ditches and stone walls and stuff like that.

Now, the introduction of adverse possession in the early 1900s was frustrated because the Land Titles Act wouldn’t recognize it. In 1922 the Legislature passed an amendment to the Land Titles Act to recognize adverse possession, and that stayed for quite a while. But in 1949 there was a very interesting case, *Boyczuk versus Perry*, where one of the parties was actually dispossessed of part of his farmland and his buildings because of adverse possession. The Legislature, in their wisdom, passed what is called the improvements based on improvements on the wrong property, as currently exists in the Law of Property Act, and that is a very good piece of legislation. It’s been copied in virtually every province across the country, and it’s really beneficial where there are minor encroachments, where the encroachment was built not recognizing the boundary.

Since 1949 and 1965 there was a property in the city of Calgary that was possessed by an adverse possessor, so the Legislature passed an amendment so that adverse possession was banned in municipalities. Somewhat later, 1993, there were two cases, actually, on the irrigation act, and the Legislature banned adverse possession on irrigation properties. But the key court case was *Lutz versus Kawa* in Edmonton. A small piece of property – I think it was 1.93 feet tapering to virtually nothing on an urban property where the lady had built a fence. That went to the Court of Appeal, and Justice Laycraft really sympathized with the case, but he said: “I can’t do anything about it. I’ve got precedents that I’ve got to follow. The only way it can be amended is through the Legislature.” That’s why I really became involved with *Lutz versus Kawa*. I wasn’t involved in that case, but I read about it, and I actually had a seminar with the lawyer that represented one of the parties.

Now, in 2008 or 2010, I guess it was, when I introduced the bills in the Leg. in 2011-12, since then there have been about three attempts to get rid of it. I believe there’s been pretty well strong support for abolition of adverse possession. Unfortunately, it gets bound up, like with your committee, with a whole bunch of other real property problems. So I am suggesting that it should go ahead in this current Legislature as a stand-alone bill to get rid of it once and for all, because we’ve been frustrated. I’m certainly frustrated. I’ve been 10, 12 years now trying to get rid of this bloody thing in a formal manner, and it just keeps getting put off and put off.

I’ve been involved in a number of cases. My colleague Evan Berger had a case when he was a minister south of Pincher, and he passed it off to me because he knew I was familiar with it. Unfortunately, that got settled out of court. Then I got involved in the Woodward case after the decision had been made by the lower courts, and I said to Mr. Woodward: “You haven’t got a hope in hell. The legislation is very clear. The judge’s hands are tied. You’ve lost.” I think he lost 10 acres.

7:30

Then I got involved in *Moore versus McIndoe*, and that was a piece of urban property on Lake Bonaventure in Calgary. He lost about 10 feet. That land was valued at \$150,000. That was a real case of land theft, where his neighbour knowingly and deliberately

took that land. Poor Jim McIndoe didn’t really understand the details of adverse possession. He went to move the fence, and the guy filed a caveat, and – bingo – the court had no choice. He lost that piece of land.

Now, it’s rather ironic that this is common law in England. In 2002 England took steps to abolish adverse possession. Every tort jurisdiction in Canada except Alberta does not allow adverse possession, so I’m really hoping that your committee will recommend to the Legislature to get rid of adverse possession in a bill all on its own. Don’t get it bound up with the Surface Rights Act and all this other more controversial legislation. I was very pleased – a previous speaker strongly supported adverse possession. Another speaker somewhat upheld that it should be retained although she seemed to have it bound up with Indigenous rights, which has nothing to do with Indigenous rights.

I’ll leave that with you. I wish you all the best in your deliberations, and I look forward to your final report. Thank you.

**The Chair:** Excellent. Thank you for your presentation, Ken.

Next on the list for presenters I have Doug Thornton. As always, when you get to the mic, please just state your name for the record and proceed with your presentation. Thank you.

**Mr. Thornton:** Thank you, Mr. Chairman. My name is Doug Thornton. I live in Lethbridge, and I own some land in Pincher Creek. I’m here to talk about adverse possession and my experience with it. My piece of land came to me as it had been a part of our family for many years. When I finally acquired possession of it, I took a look at the town of Pincher Creek’s GIS system, and I found that a neighbour had built a fence encroaching onto my property by approximately eight feet. No big deal; it’s a big piece of land. What’s eight feet? So I thought I’d ask a lawyer, “What can I do?” The first thing the lawyer says, “Well, it depends on adverse possession.” I said, “What’s that?” He said, “Well, for \$5,000 as a retainer we can look at the problem.” I hired the lawyer. He suggested that I should really hire an Alberta land surveyor to ensure that there really was encroachment across the land. So I’ve got a few dollars invested in this.

As I have done my research, I’ve come across this document. This document was produced by the Alberta Law Reform Institute of the University of Alberta. It was published in 2020, and in this document the Alberta Law Reform Institute recommends the abolition of what we call adverse possession. It’s a very well-done document, and I would like your clerk, please, to include this document as part of evidence that you will consider. I included in my initial application to speak here tonight the location of this on the Internet. It’s a wonderful document.

It incidentally represents former MLA Allred’s presentation, Mr. Chairman, your presentation on adverse possession in the Legislature. Many different Members of the Legislative Assembly have, at the behest of their constituents, come up with a request to remove adverse possession because of its antiquated history. Mr. Allred just told you that the British common-law system and the land survey in Britain depends on hedges, fences, creeks, and lanes. Canada has a different system, and we don’t need this.

It also is a little bit interesting to me – and it came to light in this report – that adverse possession doesn’t apply in the case of Crown land, doesn’t apply in the case of municipal land. It doesn’t apply in the case of Indigenous land. It doesn’t apply in the case of irrigation districts. Only single landowners or corporations are affected by adverse possession. In other words, if you’re just one guy, too bad for you; we’re flipping a coin, and your neighbour can maybe take your land. Or maybe he can’t – who knows? – but it’s up to the judge. It’s a very expensive process to begin this. I urge



you: please take a look at the recommendations that are laid out in this document. It lays out all of the changes that need to be done to the acts that you're considering here tonight, and it will help you come to a decision.

The one thing that I would like to ask you to consider in addition to the recommendations of the Alberta law reform society is a change to the Municipal Government Act. We're all familiar that if we buy a lot and want to build a house on that property, we have to get a real property report. We have to prove to the municipality that that house is within the confines of the border. But there's not even a development permit required in most municipal laws for a fence. That's where the bulk of the claims on adverse possession come up, the case of, "Well, I'll just build a fence from here to there. The neighbour won't mind. It's only a couple of feet on his land. It makes it a little – there was a rock there. I had to kind of look after it" or "There was a tree there, so I had to fence it." Now, all of a sudden when the title comes to transfer: can't do that. And if the person making the encroachment decides that he wants to exercise the rules of adverse possession, then the proper landowner has to pay money to defend, to not give up his land.

So I urge you: please, in your recommendations, take a look at the acts that are outlined here in this document and consider making a further change to require that municipalities require development permits on fences and that a real property report be required when the fence is constructed. If that was the case, we would never have to worry about adverse possession again.

Thanks very much for your time.

**The Chair:** Excellent. Thank you, Mr. Thornton, for your presentation.

Next presenter I have on the list is John McCanna. As always, just before you proceed, please state your name. Thank you.

**Mr. McCanna:** Good evening. John McCanna from Milk River, Alberta. My question is a proposal to update the definition of real property and also to include real property in Alberta's new written constitution, whenever that happens. The question is: what is real property? Real property is land and other assets that are permanently attached to the land. These other assets must be permanently placed on or under the land. It also includes not only the face of the Earth but everything of a permanent nature over and under it, including structures and minerals. Examples of real property are buildings, canals, crops, fences, land, landscaping, machinery, minerals, ponds, railroad tracks, roads, and messageage.

7:40

Now, messageage is just a fancy term for your home or dwelling, but it also includes adjacent buildings and the enclosed space of ground and buildings which immediately surrounds your home and is commonly used with, in this case, a dwelling. This area is referred to in law as curtilage and is generally comprised of the courtyard or the space of the ground adjoining the dwelling house which is necessary, convenient, and normally used for family purposes and the carrying out of domestic employment and enjoyment.

Real property also includes mobile homes, the building. It's a manufactured assembly, which is completed or substantially completed and is equipped with competent plumbing, electrical heating, that's designed to be moved to a site for installation on a foundation and in connection with service facilities and is occupied as a place of residence.

Also included in real property, in the updated version, are floating homes. A floating home is a structure that is composed of a floating platform and a building designed to be occupied as a place of residence for individuals that's permanently affixed to the platform and connected to civil services.

The third component is a motorhome, a travel trailer, or a boat that is designed as a person's permanent residence and used for more than 170 days per year as a permanent residence, but it does not include any motorhome, travel trailer, camping trailer, boat, or other vehicle designed solely for recreational use and occupied for less than 170 days per year. Now, this is important because there are a lot of senior citizens in Alberta that have been frozen out of the real estate market by the pricing of homes nowadays that has just exploded astronomically, and they can no longer afford to purchase a home or to live in a home.

The next question is: what is the significance and importance of real property? As some of the other presenters have mentioned, there are many, many different requirements for it, but the most important of all is that property signifies your dominion or your right of use. It's the control and disposition which one may lawfully exercise over things, objects, or land free from government or state interference. Example: in a legitimate constitution, whether it's federal or provincial, the sovereignty of the people and the sovereignty of the province and nation cannot and shall not be infringed upon.

Why is this important to recognize real property rights in Alberta? Since the 1960s the federal government has been attempting to take control of the land and resources, which is the sovereignty of Alberta, away from the provinces and the people. Fortunately, prior to 1990 the Premiers of the four western provinces stood fast to protect the sovereignty of each of their own applicable provinces and the people. The Premiers wanted a definitive definition of real property so that they would know what they are giving up, but the federal government refused to define property and wanted the courts to decide very broadly what is meant by property. This ended the attempt to include real property rights in the Constitution of Canada, and the federal government chose to abandon the move at that time.

But now we are once again entering very dangerous waters. The federal government has decided to bypass the Constitution and the provinces and utilize the World Economic Forum agenda 2021, agenda 2030, and the great reset to take landownership and real property rights away from the people of Alberta. You must have heard their phrase: you will own nothing and be happy. They mean it. So this committee is our last hope to peacefully save the sovereignty of the province of Alberta and the people of Alberta from losing control of our lands and resources to Ottawa or whatever international entity they're giving it to.

The committee must be allowed to achieve two items of great importance to the people of Alberta. The first one is a sound definition of real property rights, and the second one is a written constitution for Alberta in which to include real property rights. Without a constitution legislation is meaningless and can be changed at any time by any government. As a side note, the constitution must be written by and for the people of Alberta and approved by the people through a referendum.

For illustration, where these real property rights would apply in a constitution – for example, here's the first article in a constitution. Alberta is a nation of sovereign people defined by three elements of sovereignty: dominion, which means individual landownership of private land, which is your private domain, and collective ownership of all common lands, also known as Crown land; agency means that all authority in government comes from the people; and possession, the active right or real property rights to exercise your agency and control your rightful substantive dominion. The people shall never grant any form of government full sovereignty for that would require each landowning people knowingly, willingly, and voluntarily giving up their allodial, absolute, private domain, which is landownership and real property rights, and respectively granting complete control of it and of them, which means all of us, to the government.

The people do grant the government limited eminent domain, the right of government or its agents to expropriate private property for public use with a payment of just and transparent compensation as determined by the agreeable negotiations with the landowner.

All of the natural resources in Alberta, which are also property rights, belong to the people of Alberta. The people direct the government to establish, for example, a sovereign wealth fund to deposit all of the royalties and other forms of income from these natural resources. These funds belong solely to the people, which could be placed in trust for the people of Alberta.

Another application of real property rights in a constitution is that everyone's private life, honour, and the sanctity of your home, real property rights, are guaranteed. The secrecy of correspondence – mail, telephone, e-mail, and other forms of electronic communication or electronic surveillance and other forms of confidential communication – is inviolable, which means not to be violated or invaded by the government.

Regulation of evidence collection. During investigation of a crime the sanctity of your home, your real property rights, the workplace, and other areas shall not be breached without a legal, very specific warrant authorized by the courts, and inalienable rights as listed within a constitution cannot be bought, sold, or surrendered to the government or its agents.

The province of Alberta, counties within Alberta, and municipalities shall not utilize any form of paper or electronic social credit scoring system to restrict real property rights or force the citizens of Alberta off their land, force the citizens of Alberta to sell their single-family dwellings and live in high-density housing complexes, restrict the citizens of Alberta from owning free and clear any form of property, or create different classes or divisions of people as a tool to reward or punish citizens, restrict their movement, restrict their participation, and so on and so forth.

Then we move on to the . . .

7:50

**The Chair:** John, I apologize for interrupting. We're at 10 minutes. I'll give you a few just to wrap up your thoughts here, and then, of course, if we have some time at the end, as members we can bring you back up to ask a couple of questions in clarification.

**Mr. McCanna:** Okay. I just have a closing paragraph here.

It says: protection of property. The real property rights of everyone are protected. Provisions on expropriation of property for public needs against full compensation are laid down by an act. The people of Alberta, when purchasing a primary property residence, should pay a one-time sales tax as set by the government. Once paid, that property shall be free from taxation until sold or transferred to another individual, which, again, then would be taxed. The reason for this is that the government can never seize a person's residential property for unpaid taxes, real property rights, once the tax has been paid initially, and the government can never seize a person's other lawful private property or create bills, laws, acts, or enable civil forfeiture or seizure of the people's real property.

Thank you very much.

**The Chair:** Thank you very much, Mr. McCanna, for your presentation.

Next on the list we've got Dr. Allan Garbutt. Please state your name, and you'll get 10 minutes for a presentation. Thank you.

**Dr. Garbutt:** Yeah. It's Allan Garbutt. I'm here as a private citizen. I'm retired now. I own three quarters in the Porcupine Hills. When I reviewed the proposed legislation, it was, to put it mildly, confusing. The bill that was presented to us keeps saying that we

will repeal page such-and-such, section such-and-such, in a variety of different acts. To try and sort out exactly what this bill would say for a private citizen who has not been trained in law is difficult at best, impossible for many. I have four postsecondary degrees, and I can't fight my way through most of the lawyerese. I went into land titles – and I got lost in encumbrances and encumbrancees and encumbrancers – and a variety of other pieces of legislation. I was pleased to see that they were actually stating that laws from the time of Henry VIII were not applicable in some circumstances. I got up to, I think, Queen Victoria; some of her acts were also not applicable. Having said that I was confused, I was also concerned.

Several years ago there was a bill on land rights that circulated that raised a lot of questions in rural Alberta. If you read that bill – and Evan Berger did not read the bill because we had a confrontation on it – essentially that bill said, in complete contravention to 800 years of British common law, that the King could steal your property. There was a big meeting at a place called Runnymede 800 years ago, where King John and a bunch of his best frenemies got together and had a long conversation. They came out of it with a document called Magna Carta, that essentially said, "No, the King can't steal your stuff," which is not a surprising result because he'd been doing it to the frenemies. That bill, fortunately, died, but when the government sends a bill around for consultation on surface rights and things of that nature, I get a little suspicious.

I thought that I would go through what I think legislation covering property rights in this province should provide or should not provide. To start off, I think you'll probably hear from various places that there will be a number of people who present what amounts to: it's my land; I can do what I want on it. I'm not going to argue with that argument, with that statement, but I will argue that as soon as whatever you're doing on that land causes impacts outside of your land, if it gets across the fenceline, even if the fence is in the wrong place, for the province, the government, the town, whoever the affected legal body is or the landowner next door or even a long way away, depending on what the offensive material might be, there needs to be legislation that will allow us to control that, and that may include a raft of things.

Most of you probably weren't down here two or three years ago when the wind picked up the dirt from the badly farmed land and basically blacked out a big chunk of highway 2. We happened to be driving near Fort Macleod at that time, and you could go up, if you took the back roads so that you avoided the cloud of dust on highway 2, and you could tell who'd been doing bad farming practice.

There are folks who destroyed the stream going through their land. I know of a feedlot that was planted, illegally I'm sure, right on top of a creek. Anybody who was downstream of that creek was not going to be very happy about water quality for a long time. Many of us have lived downwind of commercial hog farms. There's a problem if you're trying to live in the Pincher Creek hospital with a breathing problem and all you're breathing is the effluent from the pig farm upwind. Those problems from various things can extend a long way downstream if you happen to be releasing poisonous materials into watercourses.

I'm not sure if it's been brought to your attention, but there's been a study on how much selenium you have to take out of the effluent from a coal mine to make the water in Lethbridge safe, and it's in excess of 90 per cent of, really, the selenium in a coal mine. But under most of the direct and adverse impact legislation, if you're down that far, you don't have any recourse in law at the hearing. You need to fix that. Direct and adverse impacts need to be defined in a real-world situation, not an arbitrary X number of metres, kilometres, or whatever. If the stuff coming off that land can ruin my life, I should have some say in what they can do on that land. It's a pretty straightforward proposition.

There has been reference to the Surface Rights Board. I am fortunate in that I don't have any encroachments on my land, but some years ago we were presented with a probable move by an oil company or a gas and oil company that would have resulted in high-density drilling on our land. We'd have had at least four and perhaps as many as 16 wells in a quarter section. Now, claiming that I still own the land is putting it a little bit – it's a little bit hard to take if I have to negotiate my way around potentially 16 well sites that I really, effectively, had no chance of stopping. If that application went to the Surface Rights Board, unless I have bottomless pockets – and I don't – my chances of winning a fight against Corporation X are vanishingly small. I can't do it. We're looking at chequebook justice in a case like that.

If you get a well site or other use on your property that you don't really want, you should have a reasonable chance of fighting it, particularly if you already know that the person or company asking for that right, that surface lease, is a bad tenant. If my neighbour has Company X on their property and they're a shitty tenant, why do I have to take that problem onto my land? I bought that land, I paid for it, and this guy wants to ruin it.

8:00

It also brings up the question of: how do we police the people and corporations who get access to my land? Many of my neighbours have the infamous orphan wells on their property. They're not getting paid. They've got all the problems that go with having disturbed land, particularly those wells that get put into native grasslands, where we have weed problems and all sorts of other things. If you have a bad tenant, you may have a lot of problems with trespass from the workers. They may go outside the prescribed limits of the lease. It may provide access to people that you don't want on your land, whether those are hunters or recreationists of any kind or just plain curious. You don't really want to come around to the surface rights access point and find out that somebody has dumped an old couch or worse on your property, but that does happen.

We also have the problem, as has been made very clear in many places, that a lot of our oil and gas companies took the money and ran. They didn't pay anybody. They didn't pay their taxes. They didn't pay their leases and things like that. We need some way to make sure that the landowner is going to be compensated regardless of what happens to the company, and we need some way to make sure that reclamation of the site is going to be paid for and done right. Unfortunately, under the current rules that's not necessarily going to happen.

**The Chair:** Dr. Garbutt, I apologize. That's 10 minutes. I'll allow you, as I did before, just some time to wrap up your comments. Thank you.

**Dr. Garbutt:** I'll leave it at that. I have copies, committee members.

**The Chair:** Excellent. On behalf of the committee thank you for your presentation. If you want to leave those up here, we'll distribute them down the line. Thank you.

Next for presenters we have Maryanne Sandberg. Once again, just before you begin, please state your name – I apologize if I got the pronunciation wrong – and please proceed with your presentation. You'll have 10 minutes. Thank you.

**Mrs. Sandberg:** Much like another presenter, I just put my name down in case, but I do have a couple of points, Mr. Chair. My name is Maryanne Sandberg. I'd like to go back to a comment that someone made, I believe, about the use of Crown land. One issue I would seriously have the government look at is the fact that we have leaseholders on grazing leases that benefit from oil and gas

companies or from the mineral rights on those properties. That money goes into the leaser's pockets, not those of the public of Alberta, who own the land as Crown land. That's one issue.

The other one is the power of the AUC, the Alberta Utilities Commission, with regard to municipalities. I'm sure you're aware, when you read the MGA, that many local municipalities' hands are tied when it comes to making rulings from a development point of view with solar farms or wind farms on good agricultural land. In the case of the MD of Willow Creek our municipal land-use bylaw restricts the use on classified soils 1 and 2. In one particular case we denied an application, but it was overruled because the AUC trumped us. These companies know that if they go to the Alberta Utilities Commission, they can get permission, and our hands are pretty well tied. As a local government you start to wonder: what is your role?

I'll leave that with you as a committee to have a serious look at. Thank you.

**The Chair:** Thank you, Maryanne. There was a typo there in your name. I promise I don't pronounce names that terribly though I'm not that great, and I think I've proven that tonight. Thank you for that presentation, and thank you for your comments. I appreciate it.

Next we have on our list Dr. William Newton.

**Dr. Newton:** Thank you, Mr. Chair. You nailed it. I'm Bill Newton, a retired veterinarian and active rancher. Thank you for coming around this evening and giving us an opportunity to make presentations to you. I think that quite a lot of the impetus for this committee came out of the UCP's 2019 election platform, wherein they made a commitment to further entrench property rights in provincial legislation.

In fact, they had a couple of specific initiatives there, one considering treating government regulation of real property to be the same as government expropriation. So if government legislation or regulation impacts real property, there should be compensation or other off-setting measures for the landowner or the property owner similar to an expropriation. Then the second specific initiative was to allow private property owners to convert government attempts to regulate property into an expropriation action if the property owner desired that. If, for example, the province proposed something that I thought was going to impact my property, my ability to use my property, my property value, then I could ask for that to be treated as an expropriation. That's great. I hope – those things really do appeal to me.

Just so we're clear in terms of the mandate of the committee, it's my opinion that the legal remedies available to a real property owner who is deprived of the use of their property are not adequate. It's my opinion that real property rights should be expanded and constitutionally protected. It's my opinion that the law of adverse possession should be abolished, and it's also my opinion that the expropriation processes under the Expropriation Act are not adequate to completely protect property owners' rights.

Much of my involvement in property rights came about, oh, 2008 and later with the land bills, the four pieces of legislation previously passed by the Conservative government in Alberta. Those are the Alberta Land Stewardship Act, the Carbon Capture and Storage Statutes Amendment Act, the Land Assembly Project Area Act, and the Electric Statutes Amendment Act. There was a considerable amount of discussion amongst property owners in the province at the time. To me, these pieces of legislation all impacted property owners' rights, had the potential to adversely affect property owners' rights. They all basically prohibited landowners or property owners from taking the issue to courts to make their case, so if we go back to those first comments about the election platform,

that would certainly be a dramatic reversal of those former demonstrations of what Rick Bell would call Toryland at its finest.

I'd like to focus for a moment on the Carbon Capture and Storage Statutes Amendment Act. Actually, two of the other acts have since either been repealed or amended. They are not as onerous as they once were. This Carbon Capture and Storage Statutes Amendment Act deals with pore spaces, and if we were to use the analogy that the former Property Rights Advocate used – he said: well, if you wanted to define a pore space, certainly we can define it as that area between the soil particles. But if this building – if we used it as an example, then the walls and the ceiling would be the soil particles, but the room itself would be the pore space.

**8:10**

The major incentive for the province to bring in this piece of legislation was to allow for carbon capture and storage, deep underground storage of carbon dioxide, without having to rent the pore space from the landowner. Tonight the committee could have saved a little bit of money if you'd just not rented the hall; rather, you'd claimed pore space for yours, and the community of Fort Macleod could have the walls and ceilings but not the room. That's what you've done to landowners. It's an unworkable situation. Who's going to put up walls and a ceiling if they don't have control of the room, the pore space? In agriculture, well, in all land use the pore spaces are where all the action is. It's where the water is. It's where the carbon, the organic matter are stored. It's where the microbial populations live that cycle nutrients. It's where farmers put their seed or their fertilizer.

To date the province hasn't exercised their ownership of these pore spaces particularly, but it's certainly a threat. They've only exercised them in the case of their carbon capture projects, where they've then not recognized the former ownership of the pore spaces. It's really an unworkable situation and getting so far as to have a gas co-op manager tell a landowner, when they wanted to plow a new line across his land: well, it's not your property anyway where we're putting the line; the line is in the pore space, not your property. Along with that, the used oil, if I dump it on the ground, is not on my property. Chemical disposal sites: why would we take care of things anymore? It's on your property, not mine. I really encourage you to fix that, repeal those sections of that carbon capture statutes amendment act that took away the pore spaces. I can refer you to the legislation or to the particular sections if you need to.

One of the things that I think we need to recognize is that property rights can't be absolute if we're going to develop society and build roads and do things that we need to do, but if it's in the public interest to affect an individual's property, then it should be in the public interest to pay for that, to compensate the property owner for that impact. Again I commend the initiatives that were laid out in the platform. I really think that it would serve as a very effective balance to intrusion into property rights if there was this requirement for treating them as an expropriation.

I guess I'll close by just saying that if Alberta is not going to have a strong property rights legislative framework and, more importantly, respect for property rights, tell me now so I don't put in days like I put in today. I spent the day in blowing snow and cold trying to keep baby calves alive, and I did that because I have a responsibility to the animals, for sure, but that's how I earn my living. It's how I make my payments on my real property, and I'm not unique. There are 4 million Albertans out there doing this, right? We're all working away, trying to get ahead, trying to pay our bills, trying to get a piece of that real property. These property rights are so foundational, so important to a free and prosperous society that I really strongly recommend that you push beyond just the narrow

mandate that you've been given and try to really overhaul and stormproof Alberta's property rights for the future.

Thank you.

**The Chair:** Excellent. Thank you for the presentation, Dr. Newton, and also allowing me to hit 10 per cent for the pronunciation of names this evening.

At this time we'll move on to the committee members for questions. I have MLA Hanson first. Please go ahead.

**Mr. Hanson:** Thanks. My question is to Joe, so if you want to jump up to the mic there, Joe.

**The Chair:** Just as we're answering questions as well, please always just state your name before you do.

**Mr. Barongay:** Joe Barongay.

**Mr. Hanson:** Very good. It was just interesting. I was listening to your comments on – because you represent hunters and fishing?

**Mr. Barongay:** I'm representing Alberta Fish and Game and our members throughout the province.

**Mr. Hanson:** An interesting topic came up when we had our consultation up in Edson, where under the Wildlife Act it's actually against the law for a landowner to receive compensation for access to hunters. So it's a little interesting to hear your take on it, that leaseholders here are kind of reserving access to their property for what almost sounds like guides that would be, you know, being paid by foreign hunters. Is that kind of what you were alluding to? Is that part of the problem?

**Mr. Barongay:** Some of our members are concerned because when they ask leaseholders for access to fill their tags, they're denied access, yet outfitters are allowed in there to use it. Whether they are paying under the table or they're a friend of the leaseholder, it's just not an even playing field. That's why some of our members are concerned and are trying to get a fair deal.

**Mr. Hanson:** Yeah. I would say rightfully concerned, because it was definitely brought up that – and these are from private landowners up in Edson. You know, they say that it costs a lot to maintain their roads and keep their fences and that, so if they're going to allow hunters on there, if the guy could pay them a couple hundred bucks so they can help with the fencing and that kind of thing. They didn't see a problem with that, but it is against the Wildlife Act.

**Mr. Barongay:** Well, that's true. A lot of our members have taken time out to go out and help ranchers fix fences, do whatever they can to build a good relationship, and then they find out that, on leased land that they've been working on for months to help them, they're denied access for the first couple of weeks, and guess who's in there? The outfitter. We understand that deeded land is deeded land. We all have reservations about respecting landowners and even leaseholders, but we need to be able to get to a common denominator, and everybody should be able to partake and be able to – well, if the government is issuing us tags, we're paying for them, so we should be able to access those lands and not have to always fight and have contentious issues.

**Mr. Hanson:** Okay. Thank you for that. I just wanted to clarify. Thanks, Joe.

**Mr. Barongay:** Thank you.

**The Chair:** Thank you.

At this time I'll just provide a little bit of a brief comment. If anybody does wish to present, of course you can proceed to the back and sign up and be able to come to the mic and be on the record.

At this time I'll just continue to work with my committee members to see if there are any additional clarifying questions at this time. Sorry, MLA Rowswell, please go ahead.

**Mr. Rowswell:** For Glen Alm. Thank you.

**Mr. Alm:** Glen Alm.

**Mr. Rowswell:** Okay. Great. Yeah. I have been asking about adverse possession at a lot of these meetings, and I've been asking people: have you got an example of one that, like, is a real-life situation, right? And you guys did, and there are other ones that have been presented here tonight, but I was just wondering if you could kind of state the example and how it came about, what the result was.

**Mr. Alm:** Sure. Not far from where I live, two landowners purchased land, one probably 15 years ago, I guess, maybe 20 years ago now, and one five years after that, from the same bigger ranch that split up. The fence lines were already in place. It was taken for granted that they were on the property line. A few years – well, more than 10 years later one of them got a survey and found out that the fences weren't on the property line. There were 3.7 acres in dispute. The landowner that had the 3.7 acres in his possession that weren't his had enough money to hire a lawyer; the other one didn't. So the one guy lost 3.7 acres because he didn't go to court and fight it and probably wouldn't have won anyways because the fence line had been in place probably for 50 or 60 years. It was a cross fence originally, when it was put in probably in the '40s or '50s, and it ended up – you know, they considered it was on a quarter line. It wasn't; it was off slightly.

**8:20**

Anyways, long story short, they inherited what they thought was real property and what they owned, and it wasn't. You know, the one had enough money to hire a lawyer and go to court, and the other one, a 75-year-old man, didn't want to spend the money, so he lost three point some acres. I'm afraid that happens too often. Maybe there are places where adverse possession is needed, but I haven't seen one, and I don't think there's any reason to have it.

The land was all surveyed. Like, people walked with chains and surveyed it a hundred years ago. Why would we throw that work away because the fence line was arbitrarily in the wrong place for more than 10 years? It makes no sense. Either get rid of the Surveys Act, you know, or else you use that as the possession, not where the fences are. Yeah. Possession, to me, isn't nine-tenths of the law; the survey is the law.

I know of two other ones in southern Alberta in the last 15 years that were similar. Like, I have land myself. I have 20 acres fenced in the neighbour's field, has been since 1950 something, since my father came there, and until three years ago I had no agreement in place, and now I do. Now I have an agreement in place. They have the use of the land, but I have an agreement so it's protected from adverse possession, but it wasn't for 70 years.

**Mr. Rowswell:** Yeah. So they could have taken it from you.

**Mr. Alm:** They could have taken it at any time.

It was placed there for the convenience of both landowners. It was a better place to put the fence. It also shared some water that was much, you know, needed on both sides of the fence, and by

moving the fence 20 acres offline, it was a natural thing and nobody – like, we all knew what it was, the landowners that originally put it together, but we didn't put anything on paper. It was a handshake. But, yeah, in a court of law it wouldn't have stood up, and we could have had that land confiscated. In most of the ranching country that's native grass, the fences are rarely on the exact property line. Rarely. If people want to use adverse possession, they can go creating little chunks and taking little chunks all over the place, and it's not right.

Thank you for considering this.

**Mr. Rowswell:** Yeah. No. I've been looking for an example, and you gave me one.

**Mr. Alm:** Great.

**The Chair:** Next I have MLA Sweet, with a clarifying question. Please go ahead.

**Ms Sweet:** Thank you, Mr. Chair. Mr. Bennett, I believe you were talking about notification of landowners for oil and gas, right?

**Mr. Bennett:** Well, rule 7 applies to wind projects, solar projects. It's the AUC rule, Alberta Utilities Commission. They're not over oil and gas.

**Ms Sweet:** But had you mentioned – so the land: if the oil and gas company changes from one to another on notifications, it isn't necessarily the landowners that are being notified, correct?

**Mr. Bennett:** Okay. That was another issue. Yes, that is correct. That is the Alberta Energy Regulator. There are numerous circumstances now where wells from bankrupt companies are being transferred over to another operator, so they are as a receiver or the owner of some of these resources – when a company goes bankrupt, they will have some productive wells. It's in the public interest to transfer some of those to another company. Unfortunately, in many cases the landowner is not being told that those wells are being transferred. In some cases now, with new legislation, they might be transferred to some entity that wants to do carbon capture, geothermal hydrogen recovery that wasn't in the original surface lease agreement. That's the concern, that landowners may not know that the wells on their land that they signed up for oil and gas extraction 50 years ago are now being transferred to another company. Further to that, in Bill 82, section 41, the overriding provisions, the regulator can void any of the provisions that were in that existing surface lease. So that is of grave concern to landowners.

**Ms Sweet:** Can I have a follow-up? Oh, thanks.

I guess my concern is: was that a recent change, where landowners are not being notified? Because I appreciate – like, I go on the AER website all the time to try to figure out what's going on. Was it removed, and what did the language look like before?

**Mr. Bennett:** It may not be accurate to say that it was removed. Your private surface lease has an assignment clause that requires the company to notify the landowner that they're transferring it, but when that company is gone, when they're bankrupt, defunct, they cannot notify because they don't exist anymore. The AER is transferring the licence, which is separate from the surface lease, to another company, and that company then has to try to gain access rights to the land, get a new surface lease, but in many cases everybody is just assuming that old surface lease transfers with the assignment, when none of the assignment provisions in that lease were followed. If the AER has that overriding authority now to transfer all these leases to another entity for a different purpose, that

presents a problem to the landowner, especially if they don't know that it occurs. AER staff are telling landowners: you need to check our website every week to see if the wells on your land, especially orphan wells, have been transferred. If you object to that transfer, you have to file a statement of concern within 30 days and explain why you're objecting.

**Ms Sweet:** Thirty days from the day that it's transferred. So if you find it outside . . .

**Mr. Bennett:** Well, 30 days from notification that it's going to be transferred on the website. They will file it on the website: hey, we're going to transfer this well. And if you don't file within I think it's 30 days, it could go ahead.

**Ms Sweet:** Thank you.

**The Chair:** No, that's fine. Actually, Mr. Bennett, before you go sit down – I apologize to catch you mid-stretch – I did have a question, actually, relating to the AUC change about the decrease from 2,000 to 1,500 metres. We talked about – I mean, one of the concerns that we have heard about in previous meetings and some of the public submissions is the notification process and what that looks like and how do we strengthen that. I guess one of my questions relates to: they've changed the requirement from 2,000 down to 1,500, but is it only within that 1,500 that the people in that affected area are notified? How are they notified? Are they proactively notified, or do they have to search for the information themselves?

**Mr. Bennett:** No. They would be proactively notified. The company has to notify everybody within – it used to be the 2,000 metres, or if you were a village, maybe 2,500 metres. The company was expected to be proactive.

It's not just notification; it's standing. You're supposed to be notified, but when you apply to object, if you aren't within that 1,500 metres now, you won't get standing. Before within 2,000 metres you could gain standing. Now if the visual impact is going to be higher, if the noise, property devaluation, if you can't aerial spray by those turbines, you don't even have the right to come in and voice your objections because that standing distance has been reduced.

**The Chair:** Excellent. I appreciate that. You provided the clarification I was looking for, so thank you so much again for answering questions.

Next we have MLA Milliken. Please go ahead.

**Mr. Milliken:** Some of my notes aren't necessarily the best. MLA Sweet did a good job, actually, touching on one of the questions with regard to how – I think it was framed this morning as: it's nice to know, if you're getting a new renter, who that new renter is actually going to be on your property. So thank you for that.

What I would say – just a couple of comments, and then I'll ask a couple of questions. One of them is for Dr. Newton. If you could please forward us those sections with regard to I believe it was the Carbon Capture and Storage Statutes Amendment Act, just because I can see how – if the economic incentives aren't there, then why would anybody go through the process of building up or improving the property for that? I need to see those. If that would be made available, that would be great.

I would say to Maryanne, again, even this morning that you were not the first one to bring that up with regard to locations of where it seems the solar farms and wind farms are essentially being motivated to be put.

Allan Garbutt, you brought up a really good point, where I get frustrated when I see in legislation that certain distances or anything like that are sort of arbitrarily chosen. I like the way you actually kind of brought up the fact that the adverse impacts have to be defined in a way that it actually follows the actual real-world result, and that can sometimes be something extremely distant from the actual point of where the original impact occurred. I just wanted to say thank you for that one, too.

Next Doug Thornton, changes to the MGA. I personally am not sure if, with regard to the fence thing – this is a personal one for me because I had to actually grind down a stump in order to make sure that the fence on a property that we bought would be changed to actually follow the RPR. I'm a lawyer, so I wanted to make sure that that one was going to be, even though my neighbour didn't even care – she actually fully said: "Oh, don't worry about it. You can just box it out with the fence, and that'll be fine." I just, obviously, couldn't bring myself to do that.

**8:30**

If you have any other thoughts, if you have any other further conversations, if you want to reach out to perhaps even me directly with regard to maybe the best solution for something along those lines – I don't know if it's necessarily a DP specifically for fences or anything like that, but I do see that there should be some sort of a solution. Just from a real-world experience, it seemed like it was easier than anything to possibly say: "You know what? The RPR is done. The real estate deal is done. I have to get rid of some hedges. Now I can move this fence and da, da, da, and it can be so easy." That could lead to a really inequitable situation or could have led to a future neighbour of mine or even the neighbour of mine if he or she wasn't quite as sophisticated in that kind of stuff – so there are worries on that one, too.

I also wanted to thank Rosaline for your take. It was a take that I hadn't heard yet before with regard to some of the Indigenous rights, I believe, too.

Then one question, though, that I believe that I did also want to just ask for a little bit further clarification, I think, was to Mr. Bennett with regard to – and I haven't had the opportunity to review the presentation that you gave us, like the document. Fraudulent reclamation certificates: can you just go a little bit further into that one? It was about a three sentencer, and I was just wondering if you could . . .

**Mr. Bennett:** It used to be that they would send out inspectors to inspect leases before the reclamation certificates were granted. They maybe inspected 5 per cent. They don't do that much anymore. They implemented a fast-track reclamation process, but they also lengthened the time period of when companies would still be responsible for problems to 25 years.

What has happened in the last couple of years is that some companies, foreign companies, that are not familiar with our laws or are not familiar with keeping the law in their foreign countries have come in and just falsified the documents. It used to be that you had to give landowners notice that you were applying for a reclamation certificate. That's not followed very much anymore. There were circumstances that I know of where one company in particular falsified 50 reclamation certificates. They found out about it and revoked them all. That is occurring, and especially when the AER doesn't have the resources or the requirement to go out and send as many inspectors out, a lot of things fall through the cracks. Those are real-world examples that were happening.

**Mr. Milliken:** Yeah. Okay. That was the question, so I don't have any – I guess the last thing that I would say is just, since we do have

an ex-MLA in the house, thank you, Ken, for what you did in St. Albert. I think you actually represented my brother.

**The Chair:** Are there any other committee members at this time that have any clarifying questions?

We don't have any additional questions at this time, it looks like, from the committee members for clarification, but there were a couple of presenters that were cut short, so at this time I'll take a brief pause. If any of those presenters or anybody felt like they didn't get their full presentation in and they do want to move back to the mic, state their name, and complete their presentation, as we do have roughly 25 minutes here remaining, I will provide that opportunity at this time. Once again, just before you proceed, go ahead and state your name once again and then proceed with your presentation, and we'll allow you the time to wrap up. Thank you for your patience.

**Mr. McCanna:** Okay. John McCanna from Milk River. The last part of my presentation just has to deal with the economy and why it's important to have a good, clear, and concise definition of real property rights and why it's necessary to have it attached to the written constitution. If we look at this whole endeavour on the basis of economy, the government shall abide by the principles of economic freedom. It shall safeguard the interests of Alberta's economy as a whole and together with the private sector shall contribute to the welfare, economic security, and freedom of the population and the people of Alberta. It shall endeavour within the scope of their powers to create favourable general conditions attached to real property rights for the private sector, the resource industries, manufacturing industries, and the agricultural industries.

The reason why this is important is that farmers are unfairly being – I'm trying to think of a good word here. They're unfairly being hurt by government policies of, for example, restrictions in fertilizer use, where a lot of them are – they operate on such slim margins as it is. With the government bringing in these new rules, it puts them in a position where they're on the line of being bankrupt or it being a going concern. Any divergence from the principle of economic freedom and, in particular, measures designed to restrain competition, create monopolies shall only be permitted if they're identified in this written constitution that Alberta seems to be creating.

The next item is that in order to guarantee a supply of food to the population, which is a big concern nowadays, the government shall create conditions required for safeguarding the basis for agricultural production and agricultural land under real property rights, in particular food production that is adapted to local conditions and which uses natural resources efficiently; the use of fertilizers to improve production and animal husbandry best practices; an agricultural and food sector that responds to market requirements, cross-border trade relations; contribute to the sustainable development of the agricultural and food sector; using food in a way that conserves natural resources; and, if necessary, restricting urban sprawl or the creation of these solar farms and windmill farms on farmland to lands that are not suitable for farming.

The last item: it's fairly long. I just want to talk about government restrictions in times of pandemics – so I'll just quickly go through this here – where the governments are attempting or controlling the real property of private citizens and small businesses; for example, closing down local businesses but allowing international conglomerates to stay open, when the local businesses, whether they're small or medium sized, are the lifeblood of Alberta. These foreign international entities are getting a buy on everything. It's really important that for real property rights, if they're going to make a rule that applies to one group of people, it applies to everybody. Don't say that local Albertans have to give up their real

property rights and close down their businesses yet let some foreign entity succeed and make windfall profits off this.

That's basically the last part of my presentation. I just wanted to make sure that people understood that I agree with all of the presenters that were talking today, the mechanics of the real property rights, but it's much greater than just the individual items that have to be brought together by your committee and looked at and saying: okay; this is relevant for our times in these days.

That's it. Thank you very much.

**The Chair:** Excellent. Thank you once again for your presentation.

Are there any additional individuals that would like to proceed up to the mic to either clarify or provide additional comments? I'll leave the mic open at this point in time if anybody would just like to come up.

**Mr. Allred:** Well, you didn't cut me off, Mr. Chairman – Ken Allred is my name, by the way – but I thought I was pretty close to my time limit anyhow. I just want to make one other point. I mentioned in the Moore versus McIndoe case that he lost eight feet of land. That was with no compensation. In adverse possession there's no compensation. Under the Law of Property Act improvements on the wrong property: the judge has discretion to allow compensation or to allow just a temporary easement or something, if it's a structure, for instance, until the structure has reached its end of life or whatever. So there's quite a distinction between those two. That's why the improvements on the wrong property are so important.

8:40

I was involved in a liability case in Nova Scotia where they didn't have that legislation, and a person had actually built a house on the wrong piece of property, and he lost it because he didn't have any rights at all. Now they've got that improvements on the wrong property legislation which would have saved him. The judge would have said: "Okay. You made a mistake. You built on the wrong property. You pay the owner for that land and you keep it." It's a really good piece of legislation, and I really salute the Legislature in 1949 for bringing that in because it's a hallmark piece of legislation that has been copied across the country.

Just one other point I'd make. I'm a land surveyor. If somebody thinks they've got a potential problem, don't get a survey because as soon as you get it surveyed, you're giving the evidence to your neighbour to steal your land. If you can get a surveyor to go out there in the middle of the night and do it when nobody sees you, that's fine, but if you do a survey and monument the boundaries, that just gives the adverse possessor the evidence to steal your land.

I appreciate the opportunity to present. Thank you.

**The Chair:** Are there any other individuals here this evening that wish to present or be on record with any comments to the committee? If so, please proceed to the mic. As always, please just state your name and proceed with your comments.

**Mr. Thornton:** Thank you, Mr. Chairman. My name is Doug Thornton. I just want to read a small portion from the Alberta Law Reform Institute concerning the efforts of then MLA Allred. This is found on page 5 of the report.

In 2011, Ken Allred, the MLA for St Albert, introduced private member's Motion 507 for debate in the Legislature, which stated the following:

Be it resolved that the Legislative Assembly urge the government to introduce legislation abolishing the common-law doctrine of adverse possession in Alberta and all statutory references to adverse possession in Alberta legislation.

[15] While Motion 507 was passed, it does not appear that the government took any . . . steps to abolish adverse possession.

How does that work? A member presents a bill, the bill passes, and the government doesn't do it. It seems to me your decision on adverse possession was completed in 2011 with Mr. Allred's motion. I urge you to get on with the job.

**The Chair:** Yeah. I just will make one comment as a clarification. A private member's motion is different than a bill in the fact that a motion is an urge to the government to move on an action without a legally binding requirement for the government to do so. But, of course, motions are a very important part of private members' business for private members to be able to voice what they feel the government should be doing for direction, and we appreciate and respect what previous MLA Ken Allred had done in putting that forward. So thank you for that.

Are there any additional speakers at this time that wish to come to the microphone and be on record to the committee? Yes. Please just proceed to the mic and, as always, state your name clearly and proceed with your comments. Thank you.

**Friesen:** My name is Marcia Friesen from Cardston, a 40-minute drive south of here, and I'm quite interested in this meeting. I happened to read about it yesterday in an e-mail, so it was with luck I checked my e-mails. I find that you are interested in the province, you are diligent, you're meeting with people. I have listened with interest to the reports tonight.

One statement someone made caused me to think of a cairn. I travelled the number 2 to come from Cardston to Fort Macleod, but there's the 505. It goes west – it goes east also – through the Levern reserve, down over the Belly River, and there's a cairn there. When I first started driving past there – I used to live in Pincher Creek – it said that this land is designated by the founding fathers of this province to be used only for farming and so on. It was quite impressive. Now it has a difference. It just states the history of the people that lived in the area. So I went home, and I looked online – you can look up any law of the land – and there it says that different places are designated way back then, 100 years ago, 150 years ago, for specific uses, and the people of today, in 2022, still abide by that. I honour that. I honour how you know the laws and so on.

I also had to think of an ancient, ancient history, long after the wheel was invented or so we say, that the debts were to be forgiven every 49 years, and I heard someone say: that would be so nice. If we think of China today, like, boy, that would be a fresh start for each and every person. Not happening.

I hear a lot of things tonight from the past. We learn from the past, we are living in the present, we are matching the past with today. I'm a person; I think in the future: what designated land uses do we have for the future? I foresee a great abundance of people moving into Alberta. I think of my relatives in Brazil, where they make model cities. Brazil has a model city created, constructed 40 years ago or so. They already have other ones with roundabouts, no traffic lights. They plan the whole city long ahead of time. At that

time, we were living in Ontario, and then we lived in Saskatchewan and Manitoba, and I'd always ask – I'd talk to the banker. I'd say, "Why don't we do that here on the prairies?" And they said, "Well, Brazil has the population."

So I'm thinking we've got to be respectful of our past, and we are respectful of our present, but we are also planning for the future. These are things to think about, like, our waterways and so on. I think of the part of Alberta that doesn't have the greatest well water. This is probably an abstract idea to most, and maybe these thoughts don't even belong at this meeting, but I think of all the vast amount of water in the Mackenzie River, all the rivers and so on that drain and flow into the Arctic Ocean. I'm wondering. You know, way back and even today in Iraq and Iran and those countries they have conduits. Is there a future for us to use that water somehow with a natural process of water filtration? It's just something I'm thinking about.

Back to the present, I see there are many minds of great intellect, and I respect that. I'm proud of my province of Alberta, and I am looking to a great future, no matter the hard times that come. I value that Alberta is a province with property rights. The 1982 Charter of human rights and freedoms is a national act, but it does not include property rights. We must fight in our province for our own property rights.

Thank you.

**The Chair:** Thank you for those comments.

Are there any other individuals present that wish to speak at this time? I'll just pause briefly while people think about that.

To my committee members: are there any further clarifying questions, comments at this time?

Well, I guess, seeing that there is nothing else, on behalf of the committee members and myself I would like to thank everybody that came out to speak to the committee this evening. We understand how precious your time is. Many of you have animals and/or farms and family to tend to. We appreciate you taking time out of your busy schedules to come this evening and present to us. The comments provided to this committee are leading the discussion in the directions that we will be moving towards in our deliberations towards our final report, on June 15, so we are very appreciative of everything provided to us this evening.

**8:50**

Our next meeting, of course, will be tomorrow in Hanna at 1:30 p.m. If anybody here knows any individuals in that area wishing to come to speak to the committee, please reach out to them.

At this time I will call for a motion to adjourn. MLA Rowswell. Moved by MLA Rowswell that the meeting be adjourned. To the committee members: all in favour of adjournment, please say aye. Any opposed to adjournment, say nay. Hearing none, that motion is carried. Thank you once again to everyone this evening for coming out. This meeting is adjourned.

[The committee adjourned at 8:51 p.m.]









