
Legislative Assembly of Alberta

The 30th Legislature
Second Session

# Select Special Committee on Real Property Rights

Stakeholder Presentations

Friday, September 10, 2021
9 a.m.

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

## Select Special Committee on Real Property Rights

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## Select Special Committee on Real Property Rights

### Participants

**9 a.m. Friday, September 10, 2021**

[Mr. Sigurdson in the chair]

**The Chair:** Morning. I'd like to call this meeting of the Select Special Committee on Real Property Rights to order and welcome everyone in attendance.

My name is R.J. Sigurdson, MLA for Highwood and chair of the committee. I'd ask that the members and those joining the committee at the table introduce themselves for the record, and then I will call on those joining in by videoconference. I will begin to my right.

**Mr. Rutherford:** Thank you. Brad Rutherford, Leduc-Beaumont.

**Mr. Milliken:** Thank you. Nicholas Milliken, Calgary-Currie.

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

**Ms Glasgo:** Michaela Glasgo, MLA, Brooks-Medicine Hat.

**Mr. Nielsen:** Good morning, everyone. Chris Nielsen, MLA for Edmonton-Decore.

**Ms Govindarajan:** Vani Govindarajan, lawyer with the office of Parliamentary Counsel.

**Mr. Kulicki:** Good morning. Michael Kulicki, clerk of committees and research services.

**Mr. Huffman:** Good morning. Warren Huffman, committee clerk.

**The Chair:** We will now go to those joining virtually to introduce themselves. I can see first Ms Sweet.

**Ms Sweet:** Morning. MLA Heather Sweet, Edmonton-Manning.

**The Chair:** Next I have MLA Ganley.

**Ms Ganley:** Good morning. Kathleen Ganley, Calgary-Mountain View.

**The Chair:** And next and final, I think, I have MLA Schmidt.

**Mr. Schmidt:** Marlin Schmidt, Edmonton-Gold Bar.

**The Chair:** Thank you.

Today for substitutions we have Tany Yao for David Hanson.

A few housekeeping items to address before we turn to the business at hand. Pursuant to the most recent direction from the hon. Speaker Cooper I would note for members that masks should be worn in the committee room except when you are speaking, and members are also encouraged to leave an appropriate amount of physical distance around the table. Please note that the microphones are operated by *Hansard* staff. Committee proceedings are live streamed on the Internet and broadcast on Alberta Assembly TV. The audio- and videostream and transcripts of meetings can be accessed via the Legislative Assembly website. Those participating by videoconference are asked to please turn on your camera while speaking and mute your microphone when not speaking. Members participating virtually who wish to be placed on a speakers list are asked to e-mail or send a message in the group chat to the committee clerk, and members in the room are asked to please signal the chair. Please set your cellphones and other devices to silent for the duration of the meeting.

We'll now move on to approval of the agenda. Are there any changes or additions to the draft agenda?

If not, would somebody like to make a motion to approve the agenda? I see MLA Glasgo. Moved by MLA Glasgo that the agenda for the September 10, 2021, meeting of the Select Special Committee on Real Property Rights be adopted as distributed. In the room all in favour, say aye. In the room all opposed, say nay. Online all in favour, say aye. And as well online anybody opposed, say nay. Thank you. Hearing none, that motion is carried.

Moving on. Approval of minutes. Next we have the draft minutes of our August 9, 2021, meeting. Are there any errors or omissions to note?

If not, would a member like to make a motion to approve the minutes? I see MLA Nielsen. Moved by MLA Nielsen that the minutes of the August 9, 2021, meeting of the Select Special Committee on Real Property Rights be approved as distributed. In the room all in favour, say aye. In the room all opposed, say nay. Moving online, all in favour, say aye. Online any opposed, say nay. Hearing none. Thank you. That motion is carried.

We're now moving on to agenda item 4, stakeholder presentations. Hon. members, before we begin with the stakeholder presentations, there's one item that needs to be resolved. Due to an administrative error the Farmers' Advocate office was not captured in the motion passed at our August 9 meeting to provide a submission today. As such, in order for the Farmers' Advocate to present to the committee today, we would need to pass a motion to that effect. I believe there is a motion on notice that can be brought forward at this time. MLA Milliken.

**Mr. Milliken:** Yeah. I think that just in order to move things forward as quick as possible, I'd happily put forward a motion in regard to essentially what you just mentioned, and it would be that I move that

> the Select Special Committee on Real Property Rights invite the Farmers' Advocate office to provide an oral presentation to the committee and answer questions at today's meeting.

I think that overall it would be valuable to have them, and I'd like to hear what they have to say.

**The Chair:** Excellent. Thank you, MLA Milliken.

I think we will just wait – and the clerk does have that up on the screen for the benefit of those online at this time. Moved by MLA Milliken that the Select Special Committee on Real Property Rights invite the Farmers' Advocate office to provide an oral presentation to the committee and answer questions at today's meeting. All those in the room in favour, say aye. All those in the room opposed, say nay. Moving online, all those in favour, say aye. Online any opposed, say nay. Hearing none. Thank you.

> That motion is carried.

Before we move on to the next item, I have just noticed that MLA Yao has joined us at the committee table. MLA Yao, can you please just introduce yourself to be on the record?

**Mr. Yao:** Tany Yao, Fort McMurray-Wood Buffalo.

**The Chair:** Thank you.

With that, we can now move forward with the stakeholder presentations. This process will be a five-minute presentation from the invited stakeholder, followed by up to 20 minutes of questions from the members. Our first presenter this morning is Mr. Ted Morton. Please introduce yourself for the record, and then you will have five minutes for your presentation. Please proceed, Mr. Morton.

**Ted Morton**

**Dr. Morton:** Good morning. Can you hear me?

**The Chair:** We can. Please proceed.

**Dr. Morton:** Good. Thank you, Chairman Sigurdson, for inviting me to speak to the committee this morning. I appreciate your time. You're asking me to address or I'd like to address two issues that are important to me, both the issue of property rights and the issue of biodiversity, environmental sustainability and stewardship in Alberta. I was the minister of sustainable resource development in the government of Alberta from 2007 to 2010. During that period we passed something called the Alberta Land Stewardship Act, which was committed to balancing economic growth and productivity and economic security for Albertans into the future with stewardship in healthy air, land, water, and wildlife, which makes Alberta such a special place to live and work in.

I often in that legislation quoted Aldo Leopold, who was one of the founders of the American conservation movement. He wrote, "Conservation will ultimately boil down to rewarding the private landowner who conserves the public interest." I've said then and I say again today that it's neither fair nor realistic to expect private landowners to incur financial loss to support the public good, so when we have environmental regulation or stewardship legislation like the Land Stewardship Act, to the extent that it impacts or negatively affects the current use and thus the current value of privately owned property, there must be adequate compensation and procedures for compensation to the owner of that land. That's property rights.

The specific issue I address in the paper I gave you is regulatory takings, not expropriation, where the government comes in and takes title away from the landowner, but where a new government program or regulation leaves the ownership, the title, with the private landowner but the restrictions that are placed on the use of that land in the name of the public interest diminish the use and thus the value. The Land Stewardship Act was written to both, as I said, protect environmental stewardship and protect fairness to private property owners, the owners of land. In Alberta that's especially important, especially in southern Alberta, where 80 per cent of the surface land outside of the foothills and the mountains is privately owned.

Now, as all of you probably remember, the initial version of the Land Stewardship Act was criticized for not sufficiently providing that protection for compensation for regulatory taking, so in 2011 the government, that I was still part of at that point, introduced new legislation, Bill 10, which rewrote sections of the Land Stewardship Act and specifically section 19. Section 19 reads today – you'll see this in the submission I made to you – "A person has a right to compensation by reason of this Act, a regulation under this Act, a regional plan or anything done under a regional plan." That amendment was intended to ensure that any adverse impact of regional plans or regulations under regional plans that adversely affected the use of private property – there would be adequate and just compensation to that landowner.

In a subsequent – several years later the Alberta Land Institute, which I became a member of after I left the Legislature, held an initiative and also a conference that studied property rights, and I would commend the research of that initiative from the Alberta Land Institute to the entire committee. I suspect your staff has already given you a copy. It's called property rights in Alberta, a plain-language guide written by Eran Kaplinsky and David Percy, both law professors at the University of Alberta. Specifically, in their paper they argue that section 19, the amendments to the Land Stewardship Act, did not achieve what we intended to achieve; that is, to extend protection to property rights owners for any adverse impact of regulations under the Land Stewardship Act.

***9:10***

My piece, that I submitted to you, basically argues three things. While this is a plausible interpretation, it's not the only interpretation. Specifically, it's not what was intended by the government of the day, which I was part of. I recommended then and I recommend again today three steps that the government can take, that your government can take. The important one is simply revisit, revise section 19, talk to your lawyers, and make it clear that adverse impact on property rights and value or use of property under any aspect of the Land Stewardship Act is eligible for and deserves just compensation.

Thank you.

**The Chair:** Thank you, Mr. Morton.

We will now open the floor up to the members for questions. Of course, we have 20 minutes for Q and A. First up on the list I have MLA Sweet. MLA Sweet, please proceed.

**Ms Sweet:** Thank you, Mr. Chair. Actually, I was hoping to just maybe allow Dr. Morton – thank you for your presentation – a little bit more time to finish the two other points that he wasn't able to finish in the five minutes if that's okay.

**Dr. Morton:** Sure. That'll take me 20 seconds. I think the minister in charge, no longer the minister of sustainable resource development – that department has been changed. I think it's the minister of environment and public lands now. A simple declaration from that minister that the interpretation given by the authors of the Alberta Land Institute article is not the interpretation and not the policy consequence intended by the government; secondly, that the government will proceed to administer and enforce section 19 to compensate landowners for any financial loss due to current land-use value caused by a regional plan; and then, third, restating what I already said, that if the government deems it necessary, simply introduce another bill, amend the wording of section 19 to resolve this ambiguity in favour of the broader interpretation of what can and will be compensated.

Thank you.

**The Chair:** MLA Sweet, do you have a follow-up?

**Ms Sweet:** I just have a quick follow-up. Dr. Morton, in your experience, how have you found looking at the surface rights of landowners and then the complication between the appeal processes through the AER or the surface land rights? Do you have any recommendations or thoughts around how we can improve that process?

**Dr. Morton:** That was not the focus of my submission to the committee, so anything I'm about to say is a bit ad hoc and off the cuff. I think it's inevitable that when government regulations, laws, or policy put restrictions on land use and most specifically the use of land by our farming and ranching community, there's bound to be a conflict of interest. A lot is at stake for farmers and ranchers. Their ranch, their farm is not just their office; it's where they live. It's their savings account. It's their retirement account. It's not like all of us who live in cities. So a lot is on the line when governments begin to regulate and place restrictions on the use of private property of our farmers and ranchers. I think that all parties and certainly the party that I was a part of, because we had such good support from rural Alberta, have an obligation, really a moral obligation, to make sure that the rules, the regulations, the procedures that address these conflicts that inevitably arise are fair and affordable to landowners.

I don't think I should go much further beyond that at this point, but thank you for that question.

**Ms Sweet:** Thank you.

**The Chair:** Next on the speakers list we have MLA Glasgo. Please proceed.

**Ms Glasgo:** Good morning, sir. Thank you so much for presenting to our committee today. I am the MLA for Brooks-Medicine Hat, which means that I am down in the hot area for shallow gas as well as a lot of farming and ranching operations. I say this with all due respect, but I remember significant uproar over that bill specifically and many protests as well as large-scale town hall meetings. I guess my question would be to you: what caution would you give? I respect very much that you had put forward some changes yourself even to your own act. Aside from those things, what advice would you give to this committee in dealing with our farmers and ranchers and in dealing with this act? Are there any other things that you can think of that might be outside the scope of your former bill, and is there any other legislation that might need to be altered, amended, et cetera?

**Dr. Morton:** Again, I'm reluctant to speak to issues beyond the immediate scope of the Alberta Land Stewardship Act and section 19 other than what I just said in response to the first question. Again, specifically with respect to the land stewardship act and the reaction against that, I am not a lawyer. I have some background, from my teaching in the area of constitutional law and public policy, with legal issues, but we depended in the original wording of section 19, of course, on lawyers to write it, and they wrote it in a negative way. I don't have it in front of me, but it said: there shall be no legal appeal with respect to the impact of conservation easements and so forth except as specified elsewhere. So what happened was that – and, again, this is partisan politics; I had a lot of friends in the Wildrose Party, as most of you know – that opening sentence was used to characterize no legal recourse as being anti property rights. If they'd finished the entire sentence, it said that there were provisions elsewhere in the bill for legal recourse.

In a technical legal sense the way that section was originally drafted was legally more accurate and tighter, but it led to political misinterpretation, so when we introduced Bill 10 and rewrote section 19, it says, as I said already – it states the issue positively. "A person has a right to compensation by reason of this Act, a regulation under this Act, a regional plan or anything done under a regional plan." That makes it very clear, the full scope of the compensation that's envisioned, and I think there is less opportunity there for misinterpretation or miscommunication. But probably a lawyer would look at it and say – lawyers probably liked the original wording better.

I guess my advice would be that when you write these things up, you have to take the advice of lawyers. Get their advice, take their wording, but then kind of kick it around amongst yourselves a little bit, test it amongst yourselves and with some of your constituents or constituency associations, and see if it's open to misinterpretation. Then rewrite it. Don't let lawyers have the final word in the wording of key sections like that.

And my apology to any of you that are lawyers.

**The Chair:** MLA Glasgo, do you have a follow-up?

**Ms Glasgo:** Yes, Chair. There are a few lawyers at this table. I'm sure they won't take any offence or maybe all of it. I don't know.

You opened the door to this question. In your previous role as minister – you are also a scholar with an interest in constitutional rights. I was wondering. Part of our platform commitment was to push for an entrenchment of property rights into the Constitution. Given that property rights do not currently exist in Canada's Constitution, is there a potential path that Alberta could take, in your opinion?

***9:20***

**Dr. Morton:** That sounds like a question I might have planted, so I thank the MLA for asking that question. Yes. I am in favour of an Alberta constitution, and I would be in favour of an Alberta constitution that explicitly and specifically protects property rights but with one caveat. As most of you may know but probably not all of you do know, the superior court judges, the Court of Queen's Bench and Court of Appeal, in Alberta, those judges are all appointed by Ottawa. In my lifetime, the last 50 years, I think I counted in 39 of those 50 years that the government has been a Liberal government, and in all but nine of those years the Prime Minister has been from Quebec. The only nine years where it wasn't was Joe Clark for six months and then, of course, Stephen Harper for almost nine years.

So what kind of judges get appointed from Ottawa by the Liberal Party? I'm not sure they're judges that share the majority of Albertans' concerns for property rights. In the past when I've endorsed a constitution for Alberta, a constitution that includes the protection of property rights, I've also urged the Alberta government – and they can find allies in other provinces – to move the appointment of superior court judges, which in our case is the Court of Queen's Bench and the Court of Appeal, put that appointment power in provincial governments, not just for Alberta but for all provinces.

I think this will shock you. Of all the federal states that I am aware of – and I studied this as an academic – there are only two federal states where the state or provincial judges are still appointed by the central government. It's India and Canada. What do India and Canada have in common? They were both British colonies. Why did they like that central control? Because they didn't trust the people in the hinterlands. Now, maybe the people in London had good reason not to trust us, but that was in the 19th century. We're now in the 21st century, and I think the majority of Canadians, not just Albertans but in all of Canada, would be much happier seeing their judges appointed by provincial governments rather than by a faraway government in Ottawa, particularly for western Canada. Our lack of success in having Prime Ministers from western Canada doubles down on the importance of moving that judicial appointment power back to the provinces as well.

Thank you.

**The Chair:** Excellent.

Next on the list we have MLA Ganley. MLA Ganley, please go ahead.

**Ms Ganley:** Thank you very much, Mr. Chair. I apologize. It looks like Heather and I were kind of having a similar wavelength when I initially raised this. Dr. Morton, thank you very much for your presentation. I just wanted to ask about – certainly, you've talked a lot about property rights and your feeling that not just when something is taken from someone but when their use of something is infringed, they ought to be compensated. The material before us certainly deals with the Public Lands Act, but it also deals with regulation by the AER. Now, admittedly, I was never the minister of environment, but my recollection from my time in government is that the majority of complaints, at least that my office received, tended to have to do with things the AER did and the impact that that had on the people who owned the land. I guess, really, what

I'm coming to is just whether you think the same principles – obviously, you won't have examined the issue in the same level of depth – ought to apply in both cases.

**Dr. Morton:** My broad answer would be yes. Again, the friction if not the conflict between our rural-based economy, farmers and ranchers, and the oil and gas sector – 99.9 per cent of their wells, of course, are drilled outside of urban areas, on farms and ranches, so that tension if not conflict becomes inevitable. Again, my call for clarity, fairness, procedures that are efficient and open to farmers without the necessity of hiring expensive lawyers would apply there.

I would note that for regional plans, if you look back at the land stewardship act, that issue could be addressed and, as far as I'm concerned, should be addressed, if not in full at least in part, through the regional plans because regional plans, once enacted, actually take priority over AER regulations if you go back and look at the land stewardship act. So there's room for that. I know that right now for most of you, in your years in the Legislature, the idea of too much growth too fast seems like ancient history. Alberta has had a terrible last decade or so, driven mainly by bad policy from outside of Alberta, but prosperity will return in Alberta.

I'm speaking to a group of American investors later this morning about the federal election and what it might mean for Canada and specifically the energy sector. I'm telling them that Canada will be back and western Canada will be back. The oil and gas sector will be back. Yes, we're in a transition to a lower carbon economy, but that transition doesn't take a couple of years; it's going to take several decades. If you look at oil and gas prices right now, particularly gas prices, they're higher than they've been in decades. The investment will come back. The jobs will come back. Alberta has a future, and that future requires, again, that balance between growth, wealth creation, opportunity for families, and a healthy natural environment.

The land stewardship act: I know for most of you in your time in Edmonton that there has been not enough growth, not enough investment, but prosperity will come back, and there's still an important role for these regional plans.

**The Chair:** MLA Ganley, do you have a follow-up?

**Ms Ganley:** No. Thank you, Mr. Chair.

**The Chair:** Thank you.

Just before I proceed, I'm going to apologize. Dr. Morton is the correct way to address you, I understand, and I apologize. I had that incorrect in my notes.

Moving on to our next question on the list, I have MLA Rutherford. Please proceed, MLA Rutherford.

**Mr. Rutherford:** Thank you, Chair, and thank you, Dr. Morton, for joining us, and I do appreciate your optimism. I'll be fairly quick. Just to get your thoughts or advice on how to potentially recommend to the government a direction to ensure that just compensation for regulatory taking is done quickly and is done fairly. I think that would be an important thing to be able to cover off so that people understand the process, they understand maybe an appeal process, and that it can be done in a timely manner. Could you just go over any thoughts on that, please?

**Dr. Morton:** My short answer is simply to rewrite the relevant section, section 19 of the land stewardship act, which makes it clear that the principle of compensation is embedded, not just in what are called conservation directives but anything in that act, a regulation under the act, a regional plan, or anything done under a regional plan. Make that clear and explicit. I think from there the procedures may be different whether the conflict arises under a regional plan or maybe something under what the AER is doing under conflict or disagreements between oil and gas companies and landowners. There may be different procedures for different types of restrictions on current use and effective current value, but the same principles should apply to all of those.

As far as whether it's Mr. Morton or Dr. Morton, my kids always said that I was the wrong kind of doctor.

**The Chair:** Thank you, Dr. Morton.

We have about two and a half minutes left here. I will go back to MLA Rutherford for a follow-up.

**Mr. Rutherford:** Thank you, Chair, but I don't have a follow-up.

**The Chair:** Excellent.

Next on the list I have MLA Milliken.

**Mr. Milliken:** Perfect. Thank you, Dr. Morton, for being here. I'm going to be mindful of the time and be quick. Feel free to respond in a similar fashion.

Building off what MLA Glasgo mentioned, when she talked about the potential of constitutionalization of property rights, potentially at the federal level, I'm just wondering, since I've got you here as a constitutional scholar, in your time have you in any way, shape, or form looked at the possibility of perhaps using the bilateral amending formula – and I'll just say that I think it's section 43 of the Constitution Act – as some sort of mechanism to potentially entrench Alberta's property rights into the Canadian Charter?

***9:30***

**Dr. Morton:** I have written a piece, which I can send to the committee, on the process for creating an Alberta constitution. One of them, as you correctly note, is through section 43 of the Constitution Act, 1982. Again, I'd be a little reluctant – I'd rather see the protection of property rights, for Alberta at least, in an Alberta constitution rather than the federal Constitution. You're aware that the historical liberal democratic concept of rights and freedoms is freedom from government, too much government, unfair government, government that intrudes too far. Unfortunately – and that's, I think, the way the Canadian Charter of Rights was written, in that spirit, in 1981-1982, when it was adopted in conjunction with the Anglo-American-Canadian . . .

**Mr. Milliken:** I'm so sorry to interrupt you. I know that the time is super-duper tight, and you actually managed to answer my follow-up question in your comment.

I'll just quickly say that in your submissions with regard to regulatory takings, have you considered whether or not compensation should be applied to adjacent lands, to those lands that have been affected regulatorily?

**The Chair:** Dr. Morton, that does conclude our 20 minutes, but I will give you a chance briefly to answer that question. Please proceed.

**Dr. Morton:** I think adverse impact on adjacent lands should also be eligible for compensation for the same reason that the adverse impact for the primary property owner is available.

As far as the Charter of Rights goes, unfortunately the interpretation of the Charter of Rights has been captured by an influential group of legal scholars, some people in the bar association, that has interpreted it to entail more government intrusion, more regulation, more redistribution, which I think is contrary to the spirit in which it was written and adopted, but it

makes me nervous if you put property rights in there. There are a lot of academic law professors and even judges out there that would say that that includes not just real property but also things like government benefits and actually could be interpreted to require the extension of more government regulation or more government redistribution of wealth, which may or may not be good policy but certainly shouldn't be made by unelected judges.

**The Chair:** Excellent. That concludes our time for questions. Thank you, Dr. Morton, for being with us today and answering all those questions and for your presentation. You're welcome to remain on the call with your microphone muted and your camera turned off, or if you have any other engagements, you may leave. Once again, thank you for your time today.

**Dr. Morton:** Thank you.

**The Chair:** We will now move on to our next presentation, from the Alberta Law Reform Institute. With us we have Ms Sandra Petersson, the executive director, and Ms Stella Varvis, counsel. Good morning, ladies. You will have five minutes for your presentation, which will start once you begin speaking. Please go ahead when you are ready.

**Alberta Law Reform Institute**

**Ms Varvis:** Thank you, Mr. Chair. My name is Stella Varvis, and I'm legal counsel at the Alberta Law Reform Institute, also known as ALRI. With me is Sandra Petersson, ALRI's executive director. For those of you who may not be familiar with ALRI's work, we conduct independent legal research, consultation, and analysis and make recommendations to the government and other agencies about how the law can be reformed in Alberta. We're the oldest law reform agency in Canada, and some of our recent projects include common-law property division and reforms to the Dower Act. We are pleased to present to the committee our work on adverse possession, which is based on our final report, published in April 2020, entitled Adverse Possession and Lasting Improvements to Wrong Land. I understand that the report has been forwarded to the members of the committee, and it is also available to the public on the ALRI website at www.alri.ualberta.ca.

ALRI agrees that adverse possession can be eliminated in Alberta. As part of our work on this topic we conducted a public consultation process, which took place between July and October of 2019. We carried out a number of activities, including media interviews, online publications, electronic newsletter distribution, MLA outreach, and meetings with the ministers of Justice and Service Alberta. We had a number of fruitful conversations with the Alberta Land Surveyors' Association as well as with legal academics and lawyers from across the province. We conducted an online survey, which generated 279 responses from the general public. Approximately 87 per cent of survey respondents agreed that adverse possession should be abolished in Alberta. Details about the survey demographics can be found in chapter 2 of our final report. Certainly, our consultation results suggest that there is growing political and public support for getting rid of adverse possession, yet we have to recognize that even if adverse possession is abolished, the underlying disputes don't automatically disappear with it. So the question we have to ask is: how should the law resolve those underlying disputes in a way that's both fair and efficient?

Our final report provides a road map for how to change the law to achieve the goals of both fairness and efficiency. Our recommendations can be summarized in the following three points. First, there should be a positive statement that no title or interest in land may be acquired by adverse possession after the proposed amendments come into force, so this wouldn't affect titles that have already been issued through adverse possession. Pending adverse possession claims, those commenced before the amendments come into force, would also be allowed to proceed. But if an occupier has a potential adverse possession claim and did not start an action before the amendments came into force, then the adverse possession claim would essentially be extinguished.

Our second recommendation is that a registered owner can bring a claim to recover land at any time. Currently a registered owner only has 10 years to bring a claim to recover their property. However, we have seen many examples where the registered owner did not realize that they actually owned the land the occupier is using until it's too late. Our recommendation to eliminate the limitation period for these types of claims would help those landowners recover their land regardless of how much time has passed, and 66.8 per cent of our survey respondents agreed with this recommendation.

Our third recommendation is that an occupier can bring a claim regarding a lasting improvement at any time. Section 69 of the Law of Property Act provides a remedy to an occupier who made a lasting improvement on land they mistakenly and, most importantly, innocently believed actually belonged to them. Currently these claims are also subject to a 10-year limitation period. In the interests of fairness an occupier who may have spent a great deal of time and resources to build a lasting improvement on the wrong land by honest mistake should also be allowed to bring a claim under section 69 at any time, and 64.2 per cent of our survey respondents agreed with this recommendation.

Taken all together, the recommendations would affect the Limitations Act, the Law of Property Act, and the Land Titles Act. They would allow for a fair solution between a registered owner seeking to recover possession of land and an occupier who has made, maintained, or benefited from a lasting improvement on land they believed they rightfully owned. These recommendations would protect future ownership, ensure transferability, promote the efficient and fair resolutions of disputes, and prevent the case of the deliberate trespasser.

I'll end my introduction at that, and I'll be happy to take any comments that the committee may have.

**The Chair:** Thank you, Ms Petersson and Ms Varvis.

Committee members will now have up to 20 minutes for questions. At this time the first question I have on the list is MLA Nielsen. Please go ahead.

**Mr. Nielsen:** Well, thank you, Mr. Chair, and thanks to our presenters for their time here this morning. I was hoping maybe I could direct your attention towards Bill 206, that's currently been referred to the committee from the Legislature, which also deals with adverse possession, but I see there are some differences between some of the recommendations in your report. I'm just wondering if you've had a chance to look at those and maybe have done an analysis on what effects that that could be.

**Ms Varvis:** Thanks for the question. As you know, the proposed amendments in Bill 206 that relate to adverse possession have been introduced to the Legislature before, in 2012, 2017, and 2018, so we've had a chance to look at those amendments, which are very similar. The concern that we have is that they might not work as intended, especially that they may introduce new ambiguity and uncertainty into the law. The current state of the law of adverse possession is relatively clear and easy to understand. A registered owner has 10 years to recover their land, and it's only after those 10 years have passed that an occupier can bring a claim for adverse

possession. It seems to me that the intention behind Bill 206 is to ensure that a registered owner can bring a claim to recover their land at any time.

***9:40***

It's our opinion that instead of doing that, the amendments will actually make the law more unclear and uncertain, and when there's ambiguity in legislation, then you have no choice but to resort to the courts for judicial interpretation, which costs people a lot of time and a lot of money and is something we were told quite frequently during our consultation processes, how expensive these kinds of claims are to litigate. From a law reform standpoint you want to make a law easier to use and understand and not make it more difficult or confusing, so clarity should really be the goal here.

Luckily, there's a pretty easy fix. If the intention is for claims to recover possession of real property to be brought at any time, then the amendment should say that there's simply no limitation period for these kinds of claims. In our opinion, the amendments should also say that there's no limitation period for claims regarding lasting improvements brought under section 69 of the Law of Property Act. We're not drafters, but if you want to get very specific, a place that you could put that kind of provision would be in section 3.1 of the Limitations Act, which is where other claims with no limitation period currently live.

We have more detailed information about this in our final report, and if you have a follow-up question and want me to go into more detail, I'm happy to do that as well.

**The Chair:** Follow-up?

**Mr. Nielsen:** I do have a follow-up, Mr. Chair, yeah. Thanks. Not quite to keep going here, but in the bill itself here on page 3, about a third of the way down: section (6), the right to damages for a holder of statutory consent. I know you've mentioned about having clear language. It's something I bring up in the Legislature on a consistent basis, and we've been trying to kind of find out from people, including the original presenter of the bill, what statutory consent is. I'm wondering if you might have some thoughts on that.

**Ms Varvis:** I don't, simply because that particular section, I think, pertains to a different act, and it was outside the scope of the research that we did on the claim of adverse possession specifically.

**The Chair:** Thank you.

Next we have on the list MLA Milliken. Please go ahead.

**Mr. Milliken:** Thanks. Yeah. I think that was the Regulations Act.

I have a couple of quick questions. One is – and I'll just put them out straight – if we abolish adverse possession, do we have a good mechanism, to your knowledge, to deal with natural boundary changes? I know from your organization's assessment that the doctrine of adverse possession could be beneficial in a small subset of these types of claims, and we're dealing with a small subset of claims generally.

Then also, if it's a small subset I'm wondering – that can sometimes be a little bit ambiguous because of the fact that just because there's a small number, that doesn't necessarily mean that it's small in substance or, potentially, monetary value. Looking over the document that you guys provided, Adverse Possession and Lasting Improvements to Wrong Land, I was just wondering, because it kind of mentioned that there might not be a good opportunity or a good mechanism to deal with those: any thoughts on that?

**Ms Varvis:** Natural boundary changes were something that we considered in the early stages of the project. At the end of the day, because it involves a more full review of riparian rights and how they work in Alberta, we determined that it was really not within the scope of our project but certainly ripe for another type of project. I'm sure the Alberta Land Surveyors' Association also has things to say when it comes to natural boundary changes.

We did find a specific case where adverse possession was used to deal with a natural boundary situation, and I believe that case was called Bennett and Butz. It might have been out of 2013, but – again, don't quote me on that – in that case what happened is that Buffalo Lake had receded, so there was this amount of land that was revealed after the lake was receded, and no one really knew who had ownership rights to it. At some point it was thought that the Crown had it, but it was really unclear as to who owned it. That was resolved using adverse possession because the occupier had been using that land for grazing livestock and for other uses for over a 20-year period of time.

That was a situation, a very specific situation, where adverse possession was used to address the natural boundary change, but those are rare situations. Quite frankly, to see how the mechanism for natural boundary changes would work would require a larger review than what we've done in our project here.

**The Chair:** Thank you.

A follow-up?

**Mr. Milliken:** Yeah. Just following up on a general theme with regard to the ramifications of the abolishment of adverse possession, you did mention this – I will give you credit – at the start. I just want to push a little bit with regard to – often it seems like, throughout all the presentations that we've had or the submissions that we've had, it's been slightly glossed over with regard to applying the abolishment of adverse possession to, potentially, previously decided cases. What I'm taking from this is that – as you know, once cannabis became legal, there was a really big push with regard to whether it was making sure that we could fix previously perceived wrongs if it was from, say, some sort of small-time possession kind of level thing, to try to make sure there could be pardons quickly or something or essentially fixing previous wrongs. Have you or anyone, since I've got you here, considered if abolishing adverse possession should allow for old sort of, quote, unquote, successful adverse possession cases to potentially have the opportunity to be relitigated?

**Ms Varvis:** We heard that concern during consultation, about whether past resolutions of adverse possession claims could be, in fact, unwound. To be completely frank, it would create a lot of chaos in the land titles system, especially where there have been intervening purchasers or owners from the time the adverse possession claim was initially determined to the present day. You basically would have to say that that title wasn't really meaningful anymore and that the principles of the Land Titles Act are kind of irrelevant when it comes to these previous claims. The beauty of our land titles system is, of course, that it is a certain government guarantee of ownership to property. People have come to rely upon it, and they know that when they pull title, it should reflect every interest that there is in the land. If we allow past adverse possession claims that have been successfully registered on title to be unwound, then it breaks apart that entire system, and it would create, I think, a great deal more mischief than it was intended to solve.

**Mr. Milliken:** Thanks.

**The Chair:** Thank you.

Next on the list I have MLA Ganley. Please go ahead.

**Ms Ganley:** Thank you, Mr. Chair. Sorry about that. My chat function isn't working, so I only have the raised hand.

I think Mr. Nielsen covered my question, but I'll just ask sort of by way of a follow-up. I take the point to be that there's a better way to deal with the limitations portion than what is in Bill 206, which is to say, the legislation before us. Are there any other sections that occur in the ALRI report that haven't been captured in the legislation before us, or would you say that that's probably the only change?

**Ms Varvis:** When we were doing this work, one of the things that became clear to us was that adverse possession claims, for all of their public perception problems, are really a mechanism to resolve disputes, often between landowners. There are related claims to adverse possession that haven't been really addressed by the bill. From our perspective if the law of adverse possession is abolished, then you have to think about how you resolve that underlying dispute. In our opinion section 69 of the Law of Property Act would then become the central dispute-resolution mechanism when you have very specific circumstances. Unlike adverse possession, what section 69 requires is that there is in fact a lasting improvement, meaning something that's permanent or not removable. It also requires an honest, mistaken belief on the part of the occupier, so a deliberate trespasser could not benefit from a lasting improvement claim.

The other beauty about section 69 is that it allows compensation to the registered owner if it turns out that a court decides it is fair for the occupier to retain the land or to retain some use of the land. The compensation piece is really important. The other thing, though, most importantly, I think, from section 69 is that it allows for a great deal more flexibility and judicial discretion when it comes to these kinds of claims, so a court can look at the fairness of the situation and make a better result than would be the case in adverse possession, where there's absolutely no discretion at all if you make out the elements of the claim.

***9:50***

Bill 206, of course, doesn't reference section 69 of the Law of Property Act at all, and in our report our recommendation is for two specific changes. One is that claims regarding lasting improvements brought under section 69 of the Law of Property Act should also not have a limitation period to them. The second part is that section 69 refers to the person who made the improvement or their assigns, and the trouble is that there is not a lot of judicial interpretation as to who technically qualifies for an assign. If section 69 is going to become the central mechanism, then I think that some clarity to section 69 to show that it's not just the person who made the improvement but a subsequent occupier who has maintained or benefited from the improvement and who came to it, again, honestly and innocently, also would be able to benefit from bringing that claim.

**Ms Ganley:** Thank you. That's very helpful.

**The Chair:** MLA Ganley, a follow-up?

**Ms Ganley:** No. That's everything. Thank you very much.

**The Chair:** Excellent. Thanks.

Next I have on the list MLA Rowswell. Please go ahead.

**Mr. Rowswell:** Thank you. I'm just wondering, like, adverse possession across the country – I'm just curious. How did that ever get started? If we can get a bit of a history lesson from you, I would appreciate it, and give us some kind of comparison as to how we relate to the rest of Canada.

**Ms Varvis:** Sure. Happy to do so. Adverse possession has existed in Alberta law since we became a province. The roots of it can be traced back to around 12th-century England, if not earlier. It was at that point in time, though, you have to keep in mind, that possession was a key element in establishing who had rights to land. If you had a single parcel and multiple people who were laying claims, possession would be used as a way to prioritize who had the best claim.

If you fast-forward a few hundred years, the law of adverse possession was received by us from England in about 1875, when we were still part of the Northwest Territories. Nine years later the Torrens system of land title registration was adopted. By the time you get to Alberta's inception in 1905, we inherited both the law of adverse possession as well as the land titles registration system that we know. It's continued to coexist ever since that time.

In terms of how adverse possession looks in other parts of the country, a lot of time you'll hear people say that Alberta is the only place that still has adverse possession, which is not entirely true. In our report we have an appendix in there that cross-references adverse possession and when it was abolished in other provinces and where it continues to exist. It looks a little different in other provinces, depending on where you go.

In Alberta, of course, it's only available against privately held land. It's not applicable to public lands, Crown lands, municipal lands, or irrigation districts, but it is available to basically everything else that's in our land titles system. In other provinces, like I said, in B.C., Saskatchewan, they've abolished adverse possession, but in some cases they may have done it in a way that didn't necessarily get rid of all the claims of adverse possession that crystallized before the claims themselves were abolished.

**The Chair:** A follow-up?

**Mr. Rowswell:** Yeah. When it was abolished in those provinces, what were the results? Like, what was the result of that abolishment? Did it create more problems? How smoothly did it go?

**Ms Varvis:** It's hard for me to give a province-by-province review on how it went, but again, you know, the context has been a little bit different. I think one of the things, though, that is interesting to note is that in British Columbia, which technically got rid of adverse possession on July 1, 1975, I believe it was, the way that the legislation was drafted left it open still for claims for adverse possession to be brought after that 1975 date, which results in a very odd Supreme Court of Canada decision from 2017 in the case of Nelson city and Mowatt, where that adverse possession claim was actually initially brought in 2006, and that's in B.C., which said: we don't have any more claims after 1975.

So there was a lot of judicial ink spilled about how you go about establishing this kind of claim in a province that no longer technically has it, and it required evidence going back to the early 1900s to show chain of possession. So it's a very weird, anomalous situation, and it's something that in the drafting of this legislation and in Bill 206 should be looked at carefully to ensure that the same mischief doesn't happen here in Alberta.

**Mr. Rowswell:** Thank you.

**The Chair:** At this point in time I have about three and a half minutes left but nobody on the questions list, which I think speaks to the fullness of your presentation. I'll open it up one final time, and I see MLA Milliken does have another question.

Please go ahead.

**Mr. Milliken:** Yeah. I'll just jump in, just to build off MLA Rowswell there. In your submissions you mention that obviously

with the abolition of adverse possession, then section 69 of the Law of Property Act would have to take a more prominent role. Again, to build off what MLA Rowswell brought up and then sparked my interest on this, were you able to identify any situations, again, apart from the idea of natural boundary changes or anything like that, but was your organization through the research able to identify any potential claims where 69 would not be sufficient?

**Ms Varvis:** That's an interesting question.

**Mr. Milliken:** It's pretty general. And the reason why I ask it is just because it could lead to the desire to potentially make unthought-of-as-of-this-moment changes to different legislation, right?

**Ms Varvis:** So when we were examining section 69 claims, we looked at – let me backtrack for a second. In our research we looked at the reported decisions in Alberta from basically 2003 to 2020 to determine how many successful claims of adverse possession there were during that time, and we identified five cases, which was approximately a quarter to a third of all reported decisions on adverse possession at the time.

What we did is that we took the section 69 lens and applied it to those cases to see what would happen, and in every one of those situations there would not be a section 69 claim simply because the adverse possession was based on a fence being in the wrong place or near use or occupation of the land. The beauty of a section 69 claim, like I said, is that it recognizes when an occupier has spent time, money, expense, effort to build something that is permanent and not removable. It comes to us out of a 1949 case in which an occupier, unknown to them – they thought they were building on their own land, so they build their home, they built a well, they built a number of farm buildings on the land, thinking that it belonged to them. The land was ultimately sold to a third-party purchaser, who realized: well, I own all of this now. So the person who actually made all that effort was left out in the cold, with no compensation or anything. So the Legislature responded by creating the section 69 claims in order to make it easier and more fair, quite frankly, to recognize that in certain cases where there's an honest, mistaken belief, where time and effort and expense have been made, there should be some recognition for that and some balancing of the fairness here.

If you can't fit within section 69 claims, you just simply don't have a section 69 claim. I think you would get rid of a lot of the types of adverse possession claims that people tend to get most upset about, which are cases involving a deliberate trespasser.

**The Chair:** Thank you.

Thank you, Ms Petersson and Ms Varvis, for presenting today. That is the end of the 20 minutes for Q and A. You are as well welcome to remain on the call with your microphone muted and your camera turned off. And, once again, thank you so much for your presentation and answering these important questions.

***10:00***

Next we have the president of the Rural Municipalities of Alberta, Mr. Paul McLauchlin. Good morning, Mr. McLauchlin. Thank you for joining us. You have up to five minutes to make your presentation. Please begin when you are ready.

### Rural Municipalities of Alberta

**Mr. McLauchlin:** Good morning. Thank you for having me today. Very excited to speak about this topic. I represent all the rural municipalities in Alberta, and the major responsibility of our municipalities is land-use planning. It's really important to consider that any changes to property rights consider impacts on the ability of municipalities to fulfill this goal. Before getting into those details, I just want to emphasize that RMA members are unique. We represent all the municipal districts and counties, those truly rural parts of the province.

Our members recognize that property rights are crucial to many rural residents and businesses, generally trying to develop planning policies and approaches that impact property owners as little as possible. That being said, our members understand the need for balance between individual property rights and ensuring efficient and orderly development and service delivery, protecting the environment, and respecting the right of property owners to not be unreasonably impacted by activities on neighbouring land.

With that in mind, I'll shift to some of the specific areas that the committee is looking at. RMA would support the removal of adverse possession as a legal option in Alberta. This is an issue that arises from time to time in rural areas and is usually linked to those property line disputes. Based on our research on this topic, it sounds like the Law of Property Act already has mechanisms to compensate someone that mistakenly makes improvements to another's property, so adverse possession is likely too strong an option to address these types of disputes.

The other issue I want to touch on in more detail is whether legal remedies available to property owners deprived of their property rights are adequate. For municipalities this is a big question with some potentially major impacts. Our submission to the committee recommended maintaining the current scope of legal remedies at least in relation to municipal regulation of property. As I mentioned earlier, the core municipal function is land-use planning, and by its nature such planning is going to place some restrictions on the use of some private property. In fact, this type of planning is not only a function but a legislated municipal responsibility within the MGA. Municipalities undertake land-use planning for a range of reasons, but at a high level they do their best to balance development and economic growth with the need to protect the environment and ensure that all landowners are able to enjoy their property without being unreasonably impacted by their neighbours.

This is never a perfect science, and there are certainly cases where landowners feel unreasonably restricted by municipal planning decisions. Fortunately, the MGA already includes several avenues for landowners to address planning decisions that they may disagree with. Examples include local subdivision and development appeal boards, the provincial Land and Property Rights Tribunal, and also participating in council meetings when land-use laws are discussed. While property right owners could be expanded more to easily oppose every planning decision made by the municipality, without some limits on this municipalities would be subject to huge cost increases and likely administrative impacts. Repeated one-off land-use changes could undermine municipal goals of balancing individual property rights with overall community considerations for property owners, and this could have major unintended consequences.

Linked to the general idea of expanding legal remedies is the committee's examination of the current expropriation process. RMA believes that the current process is adequate and that broadening the scope of expropriation to consider anything beyond a public entity actually seizing property could have unintended consequences and undermine the land-use planning mandate assigned by municipalities.

Overall, property rights is a complex topic that impacts all Albertans, and municipalities often see themselves as a protector of property rights by making planning and development decisions that balance general community growth and development with the ability of individuals to use their properties as they see fit. Every decision we make is within the public interest. Basically, we look at this as

an opportunity for us to protect property rights, individual rights, and we do so under the mandate of the Municipal Government Act.

I'll leave it there and look forward to any questions you folks may have.

**The Chair:** Thank you, Mr. McLauchlin.

We will now move into 20 minutes of question-and-answer period for the members. First on the list I have MLA Milliken. Please go ahead.

**Mr. Milliken:** Thank you very much, Chair. Thank you very much for your presentation. Okay. First and foremost, let me just say that I really liked your submissions, just simply the way that they were formed and the way that they were justified, et cetera, all that kind of stuff. I really appreciated it.

However, I do still want to have an opportunity to kind of push back. My experience with regard to dealing with land-use redesignation, going over the MGA in detail, et cetera, comes from having spent time in my riding of Calgary-Currie as a volunteer member of a development committee for Richmond Knob Hill for years. I've seen how difficult it is for members of the community, landowners to try to influence the juggernaut that often is a city and the goals of the city with regard to whether it's subdivisions, whether it's densification within an inner city, whether it's maybe perhaps removing certain green spaces for the purposes of development. On that one I'm actually thinking and emphasizing on an aside for Richmond Green, and if you're a Calgary-Currie resident, you know exactly what I'm talking about.

Getting back to your submissions, in your submissions you note that you are against extending the expropriation process to apply to the regulation of land, especially by municipalities. I'm not trying to put words in your mouth – and correct me if I'm wrong – but that's not the point; the point is the question here. Some other stakeholders within this whole committee experience will and have talked about how constructive a regulatory taking should be compensated and then even going so far as to say that it should apply not only to direct land within the regulation, which would be in this case sort of the municipality, but adjacent land, which is kind of what we're talking about, and then even perhaps some land that could even go farther depending on what the regulation does to affect adjacent and further than adjacent land, I mean, perhaps with regard to whether it would have a further effect to inhibit a landowner's enjoyment of the land or perhaps decrease its value.

It can be pretty traumatic for some sort of hypothetical landowner who has their whole life savings wrapped up in a piece of property that potentially is now being negatively affected by perhaps the decisions of a municipality. If I am correct, you're essentially stating in your submissions that this should be something that shouldn't be within the consideration of the decisions made by the municipality if they have broader goals with regard to regionality or within their area. I'm just wondering if you've – I didn't really hear anything about that within your submissions orally or within what you submitted to us in black and white, so I'm just wondering what your thoughts are on that.

**Mr. McLauchlin:** Well, you know, I look at this, and my hope would be that this would be a shield, not a sword. I think expropriation and sort of compensation thereof can actually be treated as a sword, and I'll give you a few recent examples. You can look at the land-use framework that's being developed by the government of Alberta or has been developed. It historically has changed people's ability to have their speculative use of their land; therefore, they would actually want to be compensated because this is regulatory expropriation. The other piece is that I have a CFO that was approved by the NRCB proximal to my land, and therefore there are setbacks by that decision on that land, and therefore I have setbacks and development restrictions on my farm, and therefore I would be compensated because regulatory expropriation would occur.

The other conversation goes: what about expropriation of viewscapes? You know, we can really get into sort of those aesthetics. The laws aren't great at dealing with aesthetic interpretation of individuals, and speculative future land use is an interesting conversation.

Municipalities constantly deal with: I was going to make this a subdivision in the future; this is my retirement plan. Again, it's a thin, thin wedge, and I understand the concerns, but what I'm concerned about is that if the government releases the flood mapping, for example, and that flood mapping actually creates restriction, that's actually regulatory expropriation by interpretation, and there's a possibility that that could become a sword and not a shield to property rights.

**The Chair:** Thank you.

Follow-up, MLA Milliken?

**Mr. Milliken:** No. On that last point I think you're talking about some case law out of Ontario, I believe. Yeah. All I wanted to do with that question was just draw attention to the fact that sometimes the little person who owns the property adjacent or whatever can be pretty seriously affected, and I think it's just something that I wanted to make sure was on the record for this committee, so thank you very much.

**The Chair:** Thank you.

Next on the list we have MLA Sweet. Go ahead, MLA Sweet.

***10:10***

**Ms Sweet:** Thank you, Mr. Chair, and thank you, Mr. McLauchlin, for your presentation. Given that your focus is, of course, rural municipalities, I'd like to do a little bit more focus on the impacts that have happened for our rural municipalities given recent legislative changes as well as, of course, because we're talking about the impact of property rights, looking at the abandoned oil and well revenue, unpaid taxes, et cetera, that are impacting many of your municipalities.

When we're looking at this piece of legislation and how we can support rural municipalities not only in their regional planning but also in looking at trying to recuperate some of that tax deficit that obviously has been unpaid, what are some of the things that your community and your association are talking about that would be helpful to be supporting the rural municipalities better as well as, obviously, when we look at property rights, our local farmers and ranchers? Are there things that you're hearing from them as well that we should be taking into consideration?

**Mr. McLauchlin:** Well, I think that if we look at one specific industry, at oil and gas and long-term liabilities, the folks that I represent want to be able to use the land for future use. If you actually look at a map of this province, that's criss-crossed with hundreds of thousands of kilometres of pipeline, that in some ways has sterilized it for potential uses other than agriculture, potential future uses as well. That's a consideration. In many ways it does walk down the road of expropriation. I know a transaction has occurred, but it's the longevity of this, when you take that into consideration on the times that we're dealing with. A hundred years from now: it seems like it's far from now, but you imagine a pipeline underground a hundred years from now. It is a sterilization

of land that creates some complexities for all of us. The same can be extended to conversations around contamination.

The folks I represent want to continue to do what they're doing. They want to farm and create food for Albertans and ultimately, truth be told, for the world. But we also need to make sure that we have healthy land, healthy water, et cetera. But farming is changing, and a lot of folks are using their land and looking at their land. To speak to the further conversation, also in many cases for rural Albertans that's their RRSP. They're self-employed, and their land is their asset, and it is their future retirement plan. We need to look at land in that perspective, that there are opportunities that could be sterilized or changed based upon sort of the misuse of some forms of legislation.

**The Chair:** MLA Sweet, do you have a follow-up?

**Ms Sweet:** No, Mr. Chair. I'm good. Thank you.

**The Chair:** Next I have on the list MLA Rutherford. Please go ahead.

**Mr. Rutherford:** Thank you, Chair, and thank you for the presentation as well. I know from my colleague MLA Milliken that you touched on some of the aspects surrounding landowners and municipal land use as well. Do you have any comments around regulatory changes that the province puts in that affect municipal land use and therefore property owners within a municipality? I'm thinking that in my specific riding I have something called the airport vicinity protection act, put in in the '70s, which has greatly restricted the use of people's land in certain areas of Leduc and has really encompassed a great deal of the city whereas it's not having the same effect on the surrounding municipalities as well. Sort of any comment on how the municipalities can better, you know, fight for regulatory changes that protect landowners as well, be part of the solution as to making it not always going down the path that we're not working together on protecting landowners but also just working in conjunction with each other?

**Mr. McLauchlin:** Thank you. No. That's an excellent question. I feel that municipal government decision-making is always a public interest conversation. We do the best we can with the information we're given. The frame of time is hopefully long enough to consider those conversations.

I'll just repeat sort of the discussion that the government of Alberta is releasing the flood mapping. Slowly it's coming out, but there is some anticipation that it's coming out and that flood-mapping regulation will change land use. I think that we need to look at that setback conversation. We need to look at those considerations because where you see one economic development opportunity, it could sterilize other economic development opportunities, and I think that's what you're speaking to, whether it's land use or otherwise.

I think municipalities and the public interest of our council meetings, using the best information possible, working in conjunction with the other agencies of decision-making, which include the GOA and may include the government of Canada when you start dealing with airports, for example – we need to have all of us in the same room at the same time making those long-term decisions. I think that we need to ensure that we're making those decisions in light of all the unintended consequences.

I think that when we talk about property rights, which, again, we live and breathe – I've dealt with this my entire political career, for the past 14 years. Property rights is that two-edged sword, and public interest can impact negatively property rights. Economic development which is in the public interest can impact the individual. That is the daily battle that municipal leaders have, and that's how we, hopefully, do the best we can with the information we have in our public interest tests and our council meetings.

**The Chair:** A follow-up?

**Mr. Rutherford:** Yeah. Just a quick follow-up. In regard to land-use planning, I can respect the position that municipalities are tasked with land-use planning, but then property owners make decisions off those plans and what they expect the future uses to be. Can you discuss sort of the frequency that those plans are reviewed and published? Also, what do you think should happen if there are abrupt or sudden changes to land-use planning that affect property owners who had a certain expectation of what the land uses would be?

**Mr. McLauchlin:** Yeah. I think every municipality is different, and I think that that's an important conversation. I represent 69 sovereign entities that definitely have different policy and processes. To speak to your point on how long a land-use plan, in many ways they can be considered in perpetuity, and that does create a problem because then often you can have development plans and area structure plans that should probably not exist in perpetuity. There should be a stale date on some of those planning documents because those planning documents can sterilize and/or change other land-use planning. Basically, getting a subdivision approval and not doing anything with it for 20 years sort of doesn't make any sense in the context of what opportunities are available to your neighbours.

There's probably a likelihood of looking at that. Stale-dating, creating timelines on development and planning instruments, I think, is probably an important thing. Many municipalities do have systems in place. They have a five-year cycle for their general municipal development plans as a standard, but really looking at the local level, having sort of a fixed stale date on an area structure plan probably would be a healthy thing to have from a planning standpoint.

**The Chair:** Next I have on the list MLA Ganley. Please go ahead.

**Ms Ganley:** Thank you, Mr. Chair, and I would just really like to thank you for your presentation, Mr. McLauchlin. Yeah. I found it very balanced, and I like the way you sort of draw back to the human scale, so I really appreciate that.

You mentioned a couple of times being concerned about expropriation being used as a sword instead of a shield, and you mentioned sort of off the top that you want to maintain the current scope of remedies. I mean, obviously, the committee is considering property rights in their entirety, but is there anything in particular in the way Bill 206 is currently structured that's giving you concern?

**Mr. McLauchlin:** Well, I think, specifically, I guess, that we have to make these broad decisions, again, using the best information possible. What my concern would be is really gumming up the works as it relates to us trying to move forward as a government. I represent a very large change of scale on the size of municipalities. I represent municipalities that have 160 people. I have municipalities that have 80,000 people. If you create a situation where every single municipal decision causes impairment to another person's use of land and therefore could be interpreted as some form of expropriation, for lack of a better word, the ability for us to make land-use decisions could change dramatically, and I think that it could change to the point that you start having apprehension in us moving forward and making those decisions.

I guess I probably have repeated myself on this, but my concern is that we protect property rights on a daily basis with every decision we make, with the understanding that there's no such thing as no impact to your neighbours. You cannot legislate good neighbours. Good neighbours require – and my grandfather taught me this: it takes work to be a good neighbour. To legislate good-neighbour policy has been complex. Really, that role falls upon the municipal leaders that get elected every four years. That's our day-to-day battle, and we do the best we can with what we have, but that's a local battle.

I would say that any of you folks that have been involved with a gravel pit, which is so important to Alberta – the approval of a gravel pit is so important to the development of Alberta, but there are those folks that have a disproportionate burden that's placed on having a gravel pit. They're noisy. They're dusty. You're down the road. It can change your quality of life. We need to make sure that we're looking at ways to change the development instead of actually using forms of expropriation or interpretation of expropriation as a way to deal with that disproportionate burden on those folks that are being impacted by something that's critically important to economic development, critically important to the growth of Alberta, and basically to allow businesses to do what they want on their land.

***10:20***

**The Chair:** Thank you.

A follow-up?

**Ms Ganley:** Yeah. I just want to make sure that I've got you clearly because I think it's a really important point. Essentially, what you're saying is that we should absolutely care about the impact that is had on every individual landowner, but expropriation isn't necessarily the best way to capture that. It's not necessarily the best tool because what it creates is a series of very prolonged court battles, which are very expensive and beneficial only to lawyers. I am one, so I feel like it's okay if I say that.

**Mr. McLauchlin:** The one follow-up, and this isn't basically to be insulting to rural folks: every single farmer has plans of subdivision. Again, going back, they look at the land, they want the land to be held intact, but their bank account is their land. That is their core asset. If we approved every single prospective subdivision in this province, there would be 90 per cent unoccupied country residential farmlands in Alberta, to the tune of 500,000 or 600,000 acreages that are unsold, if you looked at the speculative thoughts our folks would have on subdivision. So you need to understand that there's a balancing act to be played in that and a complex one.

**The Chair:** Thank you.

With about two and a half minutes left here, I have on the list MLA Rowswell. Please go ahead.

**Mr. Rowswell:** I was just curious. The appeal process – like, if you rezone something, and the owners want to appeal that. Is that in good shape, or does that extend things too long?

**Mr. McLauchlin:** I'll say unequivocally that our local subdivision appeal process as it exists is probably one of the finest forms of democracy I've ever seen. The fact is that we take members at large from the community that speak on behalf of the community, that aren't land-use planning experts. These are salt-of-the-earth people that are making decisions. They have regulatory and legal support, but it is the ultimate form of appeal. I've been involved with a few of them. I've experienced them from both sides of the table. That is what I believe. The subdivision appeal process that exists in Alberta: I believe it is probably one of the greatest forms of public interest test, speaking on behalf of the community, making local decisions at the local level, and it's something I support and many of my members support wholeheartedly.

**Mr. Rowswell:** Don't change that, then.

**The Chair:** A follow-up, MLA Rowswell?

**Mr. Rowswell:** No. That's good.

**The Chair:** Excellent.

With a minute and a half left, I have MLA Sweet. Go ahead, MLA Sweet.

**Ms Sweet:** Thank you, Mr. Chair. Just real quick, I'm interested in the comment, Mr. McLauchlin, that you made around creating a sunset clause when it comes to development permitting and future planning. We had a scenario in my riding where there was a heavy-haul bridge that was supposed to go through farmland and some really developed, prime agricultural land that would have removed some very prominent farms in my area. That was a 20-year plan, right? It had been planned 20 years ago. We needed a heavy-haul bridge. It made sense for the oil and gas industry. In 2016 the decision was made that that bridge would be cancelled and we would move it further up, closer to Fort Saskatchewan. In the interim there were obviously concerns around people being able to sell that land, being able to sell their homes because there was this prospect that at some point a bridge would go through and then a highway would be part of that.

When we talk about a sunset clause on planning and regional planning, what would that look like? You know, from a provincial perspective, it's like a 20- to 30-year plan. How would that work from a municipal perspective if you're looking at doing long-term planning?

**Mr. McLauchlin:** Well, I think that there's always a scale. There's a regional plan that has a spirit and intent at a higher level. You look at the North Saskatchewan regional plan, and it's got motherhood statements and a high level. As you keep moving down the line, I think it speaks exactly to that when you get down to the local, let's say, quarter section or road-plan level, there needs to be an understanding that you can't use planning tools on spec. That has to be real. Use it or lose it. I think there's some merit in the use-it-or-lose-it concept as it relates to land-use planning, which is probably . . .

**The Chair:** Mr. McLauchlin, I hesitate to interrupt. That is the end of our 20-minute Q and A. I will just give you a quick little wrap up just to that question if you want to just wrap it up there quickly.

**Mr. McLauchlin:** Thank you. You can tell I'm a fast talker, but I wasn't fast enough. I think the sunset clause conversation has does have some merit. I think that, again, it's using as it as a shield, not as a sword. I think that the concepts on spec – and this world has changed. You folks know it's changed. What was it like two years ago? What a different world we were in. So having an idea that this world is changing is something that we need to consider. Land use is changing, agriculture is changing, people's thoughts and the world is changing, so I think we need to consider that this is a moving world and that not everything should be held in perpetuity.

**The Chair:** Thank you for joining us today, Mr. McLauchlin, and I really appreciate your time and effort you've put into your presentation and your answers to these questions. As with the other presenters, you may remain in the meeting with your microphone muted if you like. Once again, thank you.

**Mr. McLauchlin:** Thank you.

**The Chair:** Our next presenter is from the Action Surface Rights Association. Mr. Daryl Bennett, the director, is joining us today. Mr. Bennett, please begin when you are ready. You have five minutes. We'll begin the timer when you start speaking.

Thank you.

**Action Surface Rights Association**

**Mr. Bennett:** Can you hear me?

**The Chair:** I can.

**Mr. Bennett:** Okay. Thank you for the opportunity to meet and to discuss issues that are important to landowners throughout Alberta. I'm a farmer from the Taber area, and I've been a director of Action Surface Rights Association and the federation for more than 10 years. I'd like to point out that our association is well aware of the need for energy development in Alberta as our members use the oil, gas, and electrical resources produced by the energy industry. Many of our lands host the oil and gas infrastructure, the wind and solar farms, and the power lines that bring electricity to southern Alberta.

We are extremely concerned that Bill 36, the Geothermal Resource Development Act, various renewable energy surface lease agreements, and many repurposing proposals for suspended wells will take many landowner protections away and that unscrupulous companies will likely take advantage of the system, ensuring the landowners will bear the burden of reclamation, paying property taxes, and being forced to rely upon the court system against the deep pockets of industry to find redress.

I'd like to point out or describe some of the problems that are being reported to us. I understand that the next presenter and the last will be explaining why these problems occur in the current system.

First off, in regard to oil and gas well sites in general, the courts have recognized that individual landowners face an uneven playing field when they are taken to the various regulatory commissions and the court system. Bill 2, REDA, greatly restricted landowner rights to appeal regulatory decisions within the courts and greatly decreased the landowner's right to object to energy projects on their lands. We're now seeing higher property taxes as municipalities increase property taxes to make up for shortfalls in oil and gas revenues. There are no effective timelines requiring industry to abandon and reclaim surface leases. Many leases have been abandoned for up to 40 years and have yet to be reclaimed.

A broken system that allows oil and gas companies to privatize the profits and socialize the losses is not in the interest of society. Tens of billions of dollars in outstanding reclamation liabilities exist. Already over $2 billion in direct subsidy to industry has been paid by the federal and provincial governments, and that is a drop in the bucket of what will be required.

We're concerned about the loss of the Property Rights Advocate as it was merged with the Farmers' Advocate office. We're concerned that the Land and Property Rights Tribunal's amalgamation with four other boards has resulted in insufficient staff and funding, which has resulted in an almost incompetent office, which routinely loses landowner applications, sends cheques and notices to the wrong landowners, and often takes two to three years to render their decisions. Many of the red tape cuts that occurred eliminated many of the musts and shalls that protected landowners from industry.

Specifically, landowners are telling us that they have wellheads left on their land in unsafe conditions, weeds are left uncontrolled, and farmers are colliding with abandoned infrastructure. Food safety concerns due to contaminated oil and gas leases and food safety legislation prevent landowners from farming near contaminated sites. Many operators are improperly reducing lease size without reclamation and are attempting to surrender contaminated lands and reduced compensation to landowners. Many operators are slashing landowner annual compensation as a cost-cutting measure, forcing landowners to subsidize these operators' property acquisitions. Some landowners face mortgage restrictions on their land due to environmental contamination from oil and gas development. Some face builders' liens placed upon their land due to unpaid operator debts such as unpaid utility bills, contractor invoices, and taxes. Many receivers are refusing to follow surface lease conditions, and they're ignoring keeping equipment free of weeds and crop diseases, fixing fences, avoiding wet soil and crop loss, or following other lease conditions.

***10:30***

There are lengthy time delays for rental recovery during Surface Rights Board proceedings. The Surface Rights Board has been reducing some compensation, because in the end the government ends up paying for a lot of the orphaned sites. There's lots of vandalism and theft suspended in orphaned sites, and the fast-track reclamation certificate process allows industry to self-inspect leases for reclamation. Recent audits found 100 per cent failure to restore full production, and the AER has been revoking reclamation certificates because of operator fraud. These burdensome regulatory procedures fail to redress landowner concerns while industry is afforded quick access to the land.

There are crossjurisdictional deficiencies within the regulatory agencies as they claim that they're not the agency responsible to rectify the problem, and they pass the buck. There are legacy issues due to lack of documentation or relaxed historical requirements. Many bankruptcy orders allow the receiver to shred all lease documents, which makes it almost impossible for landowners to go to the Surface Rights Board. In the end, even after reclamation there's a permanent setback around the wellhead and permanent access to the wellhead in case something goes wrong . . .

**The Chair:** Mr. Bennett, I apologize, but that is the end of our five minutes for your presentation.

We are now going to move into the 20 minutes of Q and A from our members. I will move on to our first question coming from MLA Nielsen. MLA Nielsen, please proceed.

**Mr. Nielsen:** Well, thank you, Mr. Chair, and thank you, Mr. Bennett, for your presentation. One of the things that I noticed: in your submission you point out that some of the cutting of red tape initiatives have caused further challenges for landowners. I know as the critic for red tape, you know, that we've seen some of those red tape bills that have come in that have taken away rights of landowners. I know also in your submission that you've given some examples of that, so I guess what I'm wondering is: what kind of engagement have you had from the associate minister for red tape? Has there been engagement on some of those things that you mentioned in your submission?

**Mr. Bennett:** The past minister for cutting red tape is a close personal friend, and he's the MLA of my riding where I live. I did have some discussions with him. A lot of our directors had discussions with him. We were concerned that industry was given a lot more voice in the discussion than landowners were and that the government's desire for economic development overrode landowner concerns. Due to the funding challenges that our government is facing, we can see why that's occurring, but it doesn't solve or resolve landowner concerns.

**The Chair:** A follow-up, Mr. Nielsen?

**Mr. Nielsen:** Yeah, a follow-up. I was wondering if maybe you might be able to point out one or two recommendations that you had made that – I don't know. Were they ignored? Were they, like you mentioned, just part of the consideration but you felt maybe were outweighed by other considerations?

**Mr. Bennett:** We went into the UCP southern Alberta caucus, and we made a big presentation that included everything that I've mentioned this morning. We described the problems that were occurring. We provided a lot of solutions. We explained what we'd like to see the government do and what we as an organization were doing, and we didn't hear back from them. We thought our concerns were totally ignored.

**The Chair:** Next I have on the list MLA Milliken. MLA Milliken, please go ahead.

**Mr. Milliken:** Thank you. I thought I was going to be after the next one, but that's perfectly fine with me. Thank you again, Mr. Bennett, for being here today. I'm going to refer a little bit to your letter of July 23 because it's a little bit more expansive than just the five minutes that, of course, you're allowed here. I'm going to probably focus a little bit, just as an example, on point 3 in there. You mentioned that because wind turbines are taller than they used to be, reducing the notification distance from 2,000 to 1,500 metres was a mistake, and in that letter I think the verbatim statement was, "It is absolutely ridiculous that anyone would think that the notification distance should have been reduced."

Apart from just the height of the wind turbines, to date do you know of any other reasons as to why the notification distance could potentially have been reduced? I personally don't, but I'm thinking that perhaps there may have been, like – I'm not sure – maybe no issues raised by landowners that were, say: 1,500 to 2,000 metres away might just simply be one example.

Another could be that governments, including ours, are putting significant more emphasis on renewable and clean technologies while still relying on those historic technologies from resource development that we have that are the base, but this has a way to potentially underscore the accepted sort of fact that Alberta is a global leader in ESG energy and resource development, meaning that obviously if you care about the environment and human rights and social safety nets and those, you know, who are perhaps marginalized or historically wronged, then investing in Alberta energy is actually a way to ensure that your energy is produced by not only the best province but obviously the best nation when it comes to environmental, social, and governance protections even when considered on a global stage, of course, because we're a global leader.

With that, would it make sense to perhaps make the application process for, in this example, wind turbines or perhaps other resource production a bit more streamlined if, as is the case, the obvious case, the net benefit potentially obviously offered is a net benefit to not only Albertans but also the world when it comes to GHG emissions and such?

**Mr. Bennett:** Okay. First off, there was landowner representation on that rule 007 review with AUC. Secondly, as will be pointed out by others, the AER and the AUC cannot be successfully challenged by landowners below the Court of Appeal level. Routinely, from our perspective, they ignore our concerns because they know we can't challenge them. Thirdly, there are lots of places in Alberta to put wind turbines. Particularly, there are a lot of Hutterite colonies that like these projects. They can be put in remote areas.

To give you an example right now, one wind farm company is proposing a large wind farm just outside the village of Lomond. A mile outside the boundaries of Lomond: 83 wind turbines the size of the Calgary Tower in between the village of Lomond and Lake McGregor estates, which is a few miles to the west, 200 resort community residents. There is no way that landowners will become less impacted by turbines that are now much taller, noisier, have potential health impacts, have potential property devaluation impacts. Nobody wants to live by these things.

I don't have a problem with wind power. I've signed up contracts with wind power. Don't put them by villages. Don't put them in the urban fringe. Don't put them where all these acreage owners are. Put them out in the boonies where there is transmission infrastructure and they won't impact anybody. I've dealt with lots of these projects where there's only one Hutterite colony. There's nobody within 10 miles of it. That's where they should be going. They shouldn't be going right where there are villages and communities and resort communities and tourism. That's why I would say that it was absolutely ridiculous to reduce that notification distance.

**The Chair:** Thank you.

A follow-up?

**Mr. Milliken:** No. Thank you very much for your comments.

**The Chair:** Next on the list I have MLA Sweet. Go ahead, MLA Sweet.

**Ms Sweet:** Thank you, Mr. Chair, and thank you, Mr. Bennett, for your presentation. I really would like us to focus on the Land and Property Rights Tribunal. I noted in your comments as well as your submission that, you know, obviously it's not working and that there's need for improvement. I think this is where I find we should be focusing our energy and our time: how do we make fairness within the rights of property owners in the understanding that there is an economic need throughout the rest of the province? I think that we constantly are seeing this tension where we do need to ensure that our economy is doing well and that we're supporting our tourism industry, our oil and gas industry, our agriculture industry, and they're in conflict. Can you walk me through sort of your recent experience with the new Land and Property Rights Tribunal and then where we need to be looking at how we support that and improve upon it? I recognize as well – and I'm sure we're going to hear this later today – the conflict with the AER and that review process and the tribunals and the appeal processes through that. Any thoughts that you have about how we can support landowners to be able to feel like they have a fair due process?

***10:40***

**Mr. Bennett:** Firstly, there's a large number of landowner lawyers in the province that simply are not going to represent landowners in front of the Surface Rights Board, Land and Property Rights Tribunal, the AUC, or the AER because the system has become so biased.

Secondly, my partner and I probably have over 1,000 applications in front of the Surface Rights Board. We're probably the single entity in the province that has the most applications in front of the Land and Property Rights Tribunal. I have applications that have been lost. We routinely get notices regarding other landowners, cheques and notice of payment sent to us from other landowners. Ours get sent to other landowners. We constantly have to check up. They make mistakes all the time. Now, part of that might be because of COVID precautions, working from home, but a lot of it is that they don't have sufficient staff. They don't have sufficient funding. I have a lot of respect for board members, but I think there are only

two full-time. The rest are part-time. They just don't have the resources.

The other problem is that when industry applies to these boards, they get preferential access. It's in the legislation. I might deal with something where industry requests it and you're having hearings in a couple of months, where my hearing, the same subject matter where the landowner is requesting it, is a year or two away. It's very biased. A lot of that is built into the legislation, but a lot of it is because they haven't been given sufficient resources to handle things properly. Merging them with another three or four boards is just going to exacerbate the problem.

**The Chair:** MLA Sweet, a follow-up?

**Ms Sweet:** Yeah, just real quick. I appreciate all of those comments, and I guess that's my thought. We just recently saw in one of the red tape reduction pieces of legislation where timelines are now being set to support industry in being able to get approvals. One of the recommendations that was made by myself to amend that was that landowners would also get that same timeline set for an appeal process. So if it was a three-month approval for a windmill or a wind turbine, then the landowner would also be able to have an appeal seen within the same three-month period. Would that be something that would make sense? Obviously, it wasn't accepted by the government at the time, but it doesn't mean we can't try again. I guess my question is: is that something that we need, to start making sure we have those timelines available for landowners as well? I recognize it's not in the legislation currently.

**Mr. Bennett:** Well, first of all, the Surface Rights Board or Land and Property Rights Tribunal isn't involved in any decision with renewable energy on wind and solar. Secondly, normally the legislation has an out-clause that it's three months, but if you can't make it, then you can extend it to a certain period of time. There simply is no way, with the number of applications coming in front of this board, that they would be able to meet those timelines without significantly increased staff and resources and a lot more board members.

**The Chair:** Next on the list for questions I have MLA Glasgo. Please go ahead.

**Ms Glasgo:** Hello. Thank you very much for being here today and for your thoughtful answers. Can I just get a time check on what's left on the questions, Chair?

**The Chair:** There are roughly eight and a half minutes remaining.

**Ms Glasgo:** Okay. Great. Thank you. Oh, there's a timer right there. I'm sorry. I'm new here.

I wanted to just start by saying thank you for your time again. You know, down in the south – I'm from Brooks-Medicine Hat – we've had a lot of property rights issues, especially with our shallow gas wells. As well, you talked about wind and solar. We have a lot of that going on down in the south, and I've heard from several landowners. I mean, this dates back to my nomination. Since 2018 I've been hearing from people about their concerns in regard to property rights. It's one of the biggest issues. In fact, one of the reasons why an entire conservative movement was formed here in Alberta was the debate over property rights, especially Bill 36, the former Bill 36. I'm young but not too young to remember those protests and all the very, very loud opposition to the Land Stewardship Act and what came with it.

What I find the most startling is how some governments have seemed to ignore the consultation process and have seemed to tread too heavily on relying on bureaucrats rather than talking to everyday, ordinary Albertans about what they think should be done with property rights and surface rights and the like. I was wondering if you could maybe give us – as a committee our job is obviously to find solutions. What I would like to hear from you is – and it's a pretty simple question, so take with it what you will – how do you think that we can better engage landowners, and how can we better engage those people who are using land and who are going to be doing it for generations to come, to preserve that for the future?

**Mr. Bennett:** Well, first off, you need to entrench the polluter-pay principle. Secondly, you need to provide responsible funding for the Orphan Well Association. Third, you need to deal with the Surface Rights Board backlog. You need to amend the Municipal Government Act to include renewables so landowners can't be responsible for unpaid taxes from wind and solar. You should make an orphan association for renewables.

Finally, the biggest thing, the biggest problem we face is that landowners are not organized in this province. We have a bunch of small surface rights associations, but we don't have funding for a large provincial organization. I look at the amount of funding that government has provided industry, especially the $2 billion recently just to reclaim wells. If landowners had a check-off on every well, like $100 on every check-off, if we had a source of funding, I guarantee you that a lot of these problems would not have occurred because we would have addressed them and challenged them and taken care of our own interests. That would be the single most beneficial thing to landowners in this province, for this government to support a provincial landowner association and provide them a check-off source of funding for every well licence that happens on our land, every pipeline permit, every power line, every wind and solar farm that goes on our land, and we'll deal with matters ourselves and resolve a bunch of these problems.

**The Chair:** Thank you.

A follow-up, MLA Glasgo?

**Ms Glasgo:** Yeah. I certainly appreciate that, and I know that the best decision-making is local decision-making, so the closest you can get to the source, the better. I guess what I would just close by saying is that I remember I think it was a year and a half ago that the Alberta Beef Producers were talking about instituting a check-off, and that, of course, had to be ratified by their membership. I would just say that whatever needs to happen needs to be given consent by the vast majority or at least a majority of landowners. I definitely can understand wanting some kind of activist – "activist" being the wrong word – some kind of advocacy group, and I do believe that centralizing those efforts could be effective, but I'm not quite sure that it's the government's role to be setting that up or whether that's something that needs to be done from the grassroots. I guess I would just say that if I were to encourage you, a group like that could be very helpful, and it would have been something that we could draw on for this committee.

I guess, finally, I just wanted to say thank you for what you've done, and thank you for the presentation that you've given.

**The Chair:** Next on the question list I have MLA Ganley. MLA Ganley, please proceed.

**Ms Ganley:** Yes. Thank you very much, and thank you for the presentation. It's been very enlightening. I think I'm a very practical human, so I think I've heard you say already that one of the big things that the province could do would be to support an association so that sort of both sides are equally represented. I think that's a good idea. The other thing I understand you to be saying is that

removal of the sort of fast-track reclamation certificate would be helpful, but you also mentioned that there's a lack of timelines for requiring abandonment and reclamation. What I'd like to ask you is what you think an appropriate timeline would be. Should this committee choose to recommend that there be timelines for reclamation, do you have sort of a recommendation as to what that might be?

**Mr. Bennett:** First, there are timelines that exist. They're just not being enforced. Any well that is suspended more than five years: something should happen to that. There's no reason for any well to be suspended for more than five years. Industry will say, "Well, we want to re-enter them," but they probably re-enter less than 5 per cent of all the wells in the province. Yeah. There should be some timelines. They have existed throughout history, and they've never been enforced. Then various governments change the rules, and then nothing is done. I deal with wells that have sat there for 40 years, and they say that almost every well in Alberta leaks to some degree.

**The Chair:** MLA Ganley, a follow-up?

***10:50***

**Ms Ganley:** Yes, I do. I think that's really helpful in terms of recommendations that the committee might make.

I just have one other question. It's sort of adjacent, though. I don't think you mentioned it directly. One of the things that we have heard is that one of the concerns is that, in terms of fair process, if the AER or the AUC makes a determination in terms of, like, who is directly and adversely impacted, that sort of flows through to the surface rights. You know, I get the reason for that, right? You can't have multiple different tribunals making different decisions on the same issue. It would throw the law into chaos. But my understanding is that the main concern there is that the determinations tend to sort of preferentially go in one direction, and people feel like it's not towards the landowners. I guess my question for you is: if you had recommendations to make around how to better sort of make those determinations, what would they be?

**Mr. Bennett:** That's the problem. The AUC, the AER are responsible to get a licence. They will impose conditions. They normally don't enforce them. Then you get to a Surface Rights Board right of entry order. They have to rubber-stamp the approval. They do put conditions on. They can enforce them. I think there's leeway in the law that they could take a more active role, but they won't. They don't have the resources to do it. They have no inclination to do that.

I know that one of the other presenters will say that you need to give the AUC, the AER the right of entry authority, but I hesitate over that because we can appeal Surface Rights Board decisions a lot easier than we can the AER and the AUC. So if you give it to them, then we're out of luck because they'll do whatever they want. They do it in the public interest, which isn't conducive to local concerns, where the Surface Rights Board looks more at the local land, the local concerns. The public interest is narrowed to that local area, so I would want to research that a little bit more and make some more comments later on before any action is taken in that area.

**Ms Ganley:** Thanks.

**The Chair:** Excellent. Thank you, Mr. Bennett. With only about seven seconds remaining in our 20-minute question and answer I would like to thank you again for your presentation and answering all these important questions and your continued advocacy on behalf of landowners and Albertans. As with the other presenters I extend the opportunity for you to remain within the meeting. I would just ask that you please turn off your microphone and your camera. Thank you once again.

**Mr. Bennett:** Thank you.

**The Chair:** Next up we have Mr. Graham Gilchrist. He will be presenting, of course, with the same format of five minutes. Please introduce yourself for the record, and we will start the timer as soon as you start speaking. Thank you for being here today, Mr. Graham Gilchrist.

**Graham Gilchrist**

**Mr. Gilchrist:** Mr. Chair, thank you very much this morning. My name is Graham Gilchrist. I'm a private agrologist, and I practise in the area of farm management regulatory takings. I'm also a landowner, both urban and rural, and I also proudly served Albertans as a part of the Farmers' Advocate office and the Property Rights Advocate office previous to being in practice.

Beginning my brief to answer your questions – and a more detailed discussion has been submitted to you, Mr. Chairman, as a committee – are the legal remedies there for the deprivation of the use of property adequate? My first answer would be no. The reason is that you as legislators keep changing the rules in favour of the takers. The promise of your land being returned whole – both the land and the cost to participate keeps shrinking. To be very clear, particularly with the AER and the AUC, the licence is the taking; all the rest of the system is there just to figure out how and how much it's going to cost.

The second question is: should there be a constitutionally protected case of property rights? Short answer would be yes. The reason is that landowners need protection from you as legislators to enshrine the right of full compensation when the Crown takes, and enshrining the obligation that the Crown or the public pay the full cost of the freight on their public good projects and that no cost should be the burden on the landowner should be in that constitutional protection. So whether that's a whole taking, expropriation, a partial taking like a surface lease, or a regulatory or stealth taking, those need to be there. That would range anywhere from publishing an LRT map in order to deal with a possible lower land value later on to a municipal waste-water commission, Mr. Rutherford, be it wanting cheap and free land, you know, for sewer pipe, a developer being forced to give up land for a bike trail, or a contractor screwing up a bridge and the city cutting off access to a business community.

Should adverse possession be abolished? You've certainly been given greater advice than by myself, but the short answer is yes. Then if there are outliers to deal with secure title, you know, you have various tribunals to sort out all those damages.

Is the expropriation adequate? I would give you an answer of no mainly because the municipalities need to face the full cost of their projects and then plan accordingly so you're not making municipal decisions where you don't have the full cost of what's going on. Long story short, stop shaving the silver off the shilling and deal with the fact that you have those full costs.

Any other matters before the committee? I think you as legislators on this committee need to look at the high point of view, 10,000 feet, because you're dealing with a thousand cuts across government dealing with the impact on property rights. You talked about red tape reductions, but you hadn't dealt with the 140 pieces of legislation that interfere with my land use and my business.

I've given you a whole series of recommendations, but there'll be a couple that I wish to highlight. One is that you talk about secure

title, yet you have the Crown saying it owns my slough. You don't have the ability to take those acres off my title.

I would suggest that the Orphan Well Association needs also to pay for the nonpayments ordered by the land tribunal because it shouldn't be the taxpayer that pays for that.

Close to my heart, dealing with reclamation fraud – I would be mindful and refer you to what happened in B.C. – and whether or not there is sufficient oversight by the professional bodies, engineers, and agrologists that deal with the reclamation process and whether or not any improvement should be made in the oversight to professionals as a result of the reclamation certificate fraud.

Lastly, near to my heart, give the carbon sink property rights back. The Legislature passed that it should be there, but a minister chose not to proclaim it. It's important because you've got four markets now trading across Canada and North America, and having that secure title means those markets function much better.

I close with a quote. You know, we have out there "thou shalt not steal," but that doesn't apply to a sovereign body. I would suggest that you trust in the Charter, and let the decisions flow after that.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Gilchrist.

Members will now have up to 20 minutes to ask questions. At this point in time I have nobody on the list as of yet for a question. I do see a hand raised. MLA Milliken, please go ahead.

**Mr. Milliken:** Thank you, Mr. Gilchrist. I actually really appreciated your submissions, as comprehensive as they were. I obviously read it intently, and then I kind of went through and was able to essentially figure out that I think there were about 34 recommendations. You kind of answered my question anyways because you were like – the ones that are near and dear to your heart, the four that you listed: secure title – you mentioned your slough; that could've been a hypothetical, but I totally get it from yours and other submissions – the OWA changes, reclamation fraud, and then I think it was to give carbon sink property rights back.

I was just actually wondering because – I've gone through all 34, and I wanted to ask you if there were ones which you thought that not only were they near and dear to your heart but which you may perhaps have identified as ones where the government of the day would be able to marginally, beneficially help in those regards. Not necessarily just the ones that are near and dear but are there ones that you truly, out of the 34 – or maybe you think the four can all be taken off so then just 30 or whatever. Which are the ones that you think that I personally, that Nick Milliken, should really be taking a good, strong look at?

**Mr. Gilchrist:** Well, I would say all my recommendations are important. The recommendation though that's probably not on this list, sir, is the fact that your review of property rights needs to be looking at 10,000 feet. In my brief you understand that if you line up all the surface leases across Alberta, you lose 2 million acres out of productive farmland. That's not including all the wells. That becomes a thousand cuts. I put in the brief certainly what happened in B.C. with the recent case with the Indian title. Your previous submissions by various civil servants said, "Well, it's not my responsibility," yet somebody at the end of the day has to determine whether or not you're doing it.

***11:00***

If there'd be one, Mr. Milliken, I would say to move the Property Rights Advocate into the office of either the Auditor General or the Ombudsman, because ultimately you want somebody to consistently remind you, as legislators, that you're not doing your job. Having that type of advocate underneath a minister or an ADM means he's got to toe the party line, you know, ultimately through the minister. If you have sage advice from those advocates outside the ministerial control and you're dealing directly with offices of the Legislature to give you sage advice, that would probably be the one that you really should take a hard look at. So those reports aren't ministerial pieces; they're actually coming from, essentially, an office of the Legislature.

**Mr. Milliken:** Thank you very much for that. I, for one, am the type of person where I like to definitely hear from all sides, and I want all sides to be able to give unreserved points of view in order for whatever, say this committee, so that this committee, as an example, can come to the best potential recommendations. I totally appreciate that, and forgive me. I didn't mean to imply that I wasn't looking at all 34 or anything like that. I definitely am, and I just wanted to give you the opportunity to maybe highlight a couple more. And you did, so thank you very much, sir.

**The Chair:** Next I have on the list for questions MLA Sweet. MLA Sweet, go ahead.

**Ms Sweet:** Thank you, Mr. Chair, and thank you for the presentation. I wanted to focus a little bit on one of the recommendations that you made in regard to practices that are happening in other jurisdictions. One of the recommendations that you have commented on was: making all surface leases and pipeline agreements public, as cited in Saskatchewan. Do you have data or information that you could share with us about how effective that's been in advocating for property rights? And does that, then, increase successful claims? Or what do you see as the benefit . . .

**Mr. Gilchrist:** Sorry, ma'am; you cut out.

**Ms Sweet:** Oh, I forgot to unmute. Let's try that again. In one of your recommendations you recommended making all surface leases and pipeline agreements public, and that was cited from the Saskatchewan example. I'm just wondering if you have any other jurisdictions, examples where that has been successful. Do you have data or information that you can share with us about how effective that's been? And then: does that help increase claims or successful claims for property owners? Or why do you see this as being a benefit, to make that information public?

**Mr. Gilchrist:** Ma'am, I don't practise in Saskatchewan, so I can't give you specific Saskatchewan examples. But I can give you one that I have currently on my file right now. You have a company that's gone bankrupt. The land agent didn't leave the landowner a signed copy, so he doesn't have his side of the file. The bankruptcy trustee is unable to locate the surface lease in their files, so as a result, in making an application to the tribunal for nonpayment of compensation, the only two copies of that surface lease don't exist. So how then do you show or does the landowner prove, number one, that there is a surface lease in order to satisfy the tribunal's requirement that he is eligible for nonpayment of compensation? It's not registered on title, so where would you find a copy?

**The Chair:** MLA Sweet, a follow-up?

**Ms Sweet:** Yeah. I find that, actually, really interesting. It's not registered on title. So for that agreement, then, there's no current mechanism that is holding that data? It doesn't sit under the Ministry of Energy; none of that information is being stored at this point?

**Mr. Gilchrist:** Nope. You've got the land agent company bankrupt, so its files are gone. You have the trustee. As I said, in this case it's

PetroGlobe: that surface lease doesn't exist. The only thing the landowner has is an unsigned, undated surface lease. So the official record backing up the sworn caveat on title doesn't exist. What it means, though, for clients: he spends time, effort, and money, and I spend time, effort, and money trying to track down sufficient evidence when making an application to the tribunal that this agreement actually exists through near documents rather than the smoking gun.

**Ms Sweet:** Thank you.

**The Chair:** Next I have on the question list MLA Rutherford. Please go ahead.

**Mr. Rutherford:** Thank you, Chair, and thank you, Mr. Gilchrist, for being with us today. I'm just trying to get your perspective on balancing a few competing interests. When we're looking at some of the earlier presentations, and as I read through your report, talking about regulatory taking and compensation for that, you also have an example midway through on cities expropriating land for revenue purposes or for other private-sector ventures as well. So I just want to get your take on your recommendation to abolish the ability of expropriating authority to exercise their abilities for business and revenue reasons coupled with the responsibility of the municipality to have land-use planning available to them and an expectation that eventually that land use could be changed by the municipality and wanting that to move forward at some point and sort of how you would see those two things tie together.

**Mr. Gilchrist:** You have to state in the expropriation action a set of principles. I think I would start there, sir. I have no qualms with a municipality wanting to put in a road or a school or some of those very, you know, easy-to-identify public good processes. Where I draw the line is – in this particular case it was a county not getting something developed quick enough, so they bought the land through expropriation and then turned around and sold it.

Another example would be the Fort McMurray fiasco, with expropriating land downtown, which is still undeveloped now, for the purposes of a super aquatic centre, and then it going sideways.

So the land-use planning is fair. It has to get done. But where you draw the line is: don't make me pay for that public good piece. If you want to put the trail in, in this case, you buy the land. If you want to deal with expropriation and then turn around and sell that small section to a telecommunication for a tower, don't do it on my dime. That's where I would draw the line, Mr. Rutherford.

In a case to the committee we had a presentation here last week, you know, municipal waste water wanting cheap access to put in their sewer line. I would say that they've got to pay the full freight, whether or not they expropriate it or go through a board, because what that does is then, ultimately, that cost doesn't get included into the system, and they're making decisions with not the whole story.

**The Chair:** MLA Rutherford, a follow-up?

**Mr. Rutherford:** No. No follow-up.

Thank you for that answer. It's a very good perspective. I appreciate it.

**The Chair:** At this point in time I have no other questions or speakers on the list. I will put it out one final time. I think that speaks to the great answers to the questions you have been given.

Thank you, Mr. Gilchrist, for your presentation and taking part in answering questions today for the committee. Once again, thank you for presenting today and being here with us.

**Mr. Gilchrist:** Thank you.

**The Chair:** At this point in time we are around the midway point of our meeting. I'm going to suggest that we take a quick 10-minute break. We will reconvene at 11:20, so at this point we will be taking a quick 10-minute break.

Thank you.

[The committee adjourned from 11:09 a.m. to 11:19 a.m.]

**The Chair:** Thank you, everyone. We will now reconvene this meeting and move on with our final stakeholder presentations. I do believe we have three remaining.

At this time our next presenter is from the Farmers' Advocate office. Mr. Peter Dobbie is the Farmers' Advocate and Property Rights Advocate for Alberta. Mr. Dobbie, you have five minutes. We will start your timer as soon as you begin to speak. Please go ahead with your presentation.

**Office of the Farmers' Advocate**

**Mr. Dobbie:** Thank you, Mr. Chairman and members of the committee. I hope I'm coming through clearly.

**The Chair:** You are.

**Mr. Dobbie:** Thank you. Thank you again for the invitation to present to this committee. You'll recall that I presented a report and information based on our report on June 22, 2021. I also followed up with respect to information requested by a committee member on some specifics on the Surface Rights Board backlog on section 36 compensation applications. That material was provided through the committee as well. I hope you received that.

I wanted to, first, just reinforce that I'm relying on the submission that I sent in June, and I'm going to cover five issues today rather than restate the points I raised in that report. I want to cover five things. The first would be my thoughts on the abolition of the doctrine of adverse possession; secondly, my comments on the general issue of notice and the scope of notice in applications in front of the Alberta Energy Regulator; third, I want to suggest a lens through which the committee may want to look at the issue of property rights in front of it, and that is the ancient legal maxim of where there is a right, there is a remedy; fourth, I want to speak to the expropriation principles of compensation that are set out in the Expropriation Act and the limits on the rule of the Property Rights Advocate office there; and, finally, just a reminder of some resources for the committee to consider, including one I previously mentioned and which I know you made note of, the 2014 Alberta Land Institute report.

Secondly, I want to formally get on the record that it would be useful for committee members to have a review of a Court of Appeal decision in a case called Love versus Flagstaff (County of) Subdivision and Development Appeal Board. That's found at 2002 ABCA 292 in CanLII. That's a decision of Chief Justice Fraser where she talks about the issue of property rights and how those are to be considered and what the law is in Alberta and speaks a great deal to the issue of predictability and consistency.

Third, I'd like to have the committee members, on the issue of the doctrine of adverse possession, consider reviewing a 2002 Alberta Law Reform Institute report called Something for Nothing: The Law of Adverse Possession in Alberta, 1992, CanLII document 185. I know that Sandra Petersson, executive director of the Alberta Law Reform Institute, spoke today. She's the author of that report. I actually used that paper as a guideline for bringing an application for adverse possession in a commercial property dispute. Sandra

wrote the rules for lawyers as to how to make a successful application, and that identifies her involvement in this issue going back to – I believe she was in law school at the time – '92.

On the issue of the abolition of the doctrine of adverse possession, I support and have reviewed the report of the Alberta Law Reform Institute, and I support the recommendations made in that report as Farmers' Advocate and also as Property Rights Advocate, and I also support the comments made with respect to the possible improvements to Bill 206 as they relate to the limitations issues. Information that we have received – and I've discovered it practising law and also as Farmers' Advocate and now Property Rights Advocate – is that the analyses made by the folks at the Alberta Law Reform Institute are sound, and I support their adoption either by a separate amendment or an amendment of the existing Bill 206 to deal with the issue of appropriate limitations so that the evils created by the applications that are possible now are dealt with fairly.

One issue that was raised in an earlier question was the issue of natural boundaries, and is that an issue for adverse possession? With respect, my experience is that it is not. The natural boundaries are limited in Alberta. There are a few titles that would say: all land in this area except for the area covered by the waters of lake X. There are a few titles that specifically deal with natural boundaries. In those cases there is an existing process that Alberta Environment has for determining whether the lakeshore has receded or not. In all the other cases most of us rely on the description in title as to the appropriate . . .

***11:25***

**The Chair:** I hesitate to interrupt, Mr. Dobbie, but that does conclude the five-minute presentation portion. I'm sure you'll have tons of time in the 20-minute Q and A to be able to expand on many of the points you've already made.

But I will move into the 20 minutes of Q and A. I have no one on the list right now, but I do see a hand being raised. MLA Glasgo, please go ahead.

**Ms Glasgo:** Thank you very much, Mr. Dobbie. I appreciate your presentation, and I know that you've presented to us before if I'm correct. I just wanted to say thank you for those submissions. I think that we all really wanted to hear from you today, so I'm glad that the motion was passed and everything worked out the way that it did.

When you talked with us a few months ago, you mentioned that most landowners have process-related concerns rather than fundamental, actual issues with property rights themselves. I know that as an MLA – I'm sure everybody can nod their head and say that they hear a lot about the process. You know, it doesn't matter what government agency you're dealing with; always process, process, process is the first thing you hear about. So I was wondering if you could provide some more detail on those process-related concerns in regard to this and perhaps what potential solutions you would have from your lived experience, your perspective.

**Mr. Dobbie:** Thank you for the question. That does tie in to my point on the issue of notice. An example for the committee to consider is the test used by the Alberta Energy Regulator and in some other legislation for notice to people of applications, and that test in the legislation that the Alberta Energy Regulator is governed by is called directly and adversely affected. But what landowners tell us there – and this is a process concern – is that they feel that that's an unfair test, that in landowners' views, by using this test, they are excluded in many cases from becoming aware of an application for oil and gas development that may affect them because there's a predetermination by the Alberta Energy Regulator or those working there as to who might be directly and adversely affected. In the landowners' views, that's a conclusion that has been reached that may not even allow them to get notice. The result of that test, the directly and adversely affected test, is that it becomes an onus on landowners to search and become aware of possible applications, so they view that as unfair.

In my view, a solution would be as follows: that the committee consider directing some details on the directly and adversely affected test and ask the following questions. The issue is notice: what is appropriate and fair notice? In my view as Farmers' Advocate and Property Rights Advocate, there would be three elements to include in there. A notice should be sufficient. It should be sufficient in scope. Who gets notice? It should be sufficient in information. Is the information provided in the notice to those who are getting notice sufficient for them to be able to respond to it and get information? Third, is it sufficient in time? If it's a very short time period within which a landowner has to respond, it's practically impossible for a landowner to seek outside information, advice, and direction in order to make a determination as to (a) whether there should be a response and (b) what the response should be. That's the first example.

The second example would be the process concerns that I raised earlier and Mr. Bennett spoke to. There is significant frustration with the delays associated with Surface Rights Board section 36 applications on two fronts, the first being that until very recently there was no notice that your application was actually received. There was no queuing system and a number given. I understand that that has improved. Secondly, landowners are expressing concern that the matters taken into account by some of the panel members extend beyond a determination as to whether or not an amount owing should be paid and include whether or not the amount owing is appropriate or not. Again, they're unable to have a fair hearing on that issue. In their view, section 36 should provide simply a financial compensation in the case of unpaid payments.

Those would be two examples, MLA. First, for the process to be fair, a landowner needs sufficient notice. Am I affected directly or adversely? That should not be something determined by a third party; that should be something that I should get. So, in my view, the extent of notice should be broader than it currently is. Those would be, again, some specific examples.

**The Chair:** MLA Glasgo, a follow-up?

Next on the list, MLA Sweet. MLA Sweet, go ahead.

**Ms Sweet:** Thank you, Mr. Chair, and thank you, Mr. Dobbie, for being here again. It's always a pleasure to listen to your expertise and your understanding of these many complex issues. I do actually want to keep focusing on the test for notice and the information that should be required to be provided. I agree with you that, from what I've heard from individuals across the province, of course, many of the concerns that end up being brought forward for review and appeal are due to the fact that people are not being provided with sufficient notice, so they're not able to respond appropriately.

We saw in the last piece of legislation, again, in relation to electricity that the timeline for approval was just recently changed, one of the last pieces of legislation for red tape reduction. At that same time – I mean, I've already put this on the record – we tried to amend that to ensure that if appropriate notice and approval was not provided, if an electricity corridor or something like that could be approved within three months, then obviously individuals should also have the same appeal timeline so that they're seen in front of the tribunal in an appropriate timeline. Can you speak a little bit to some of the changes that you're seeing within pieces of legislation

currently that are impacting the test for notice and if there should be things that we could be looking at to adjust under this review?

**Mr. Dobbie:** Thank you for the question. Without speaking to specific pieces of legislation, any legislation in Alberta that uses the test of directly and adversely affected has, in my view, to consider how that test is applied. One solution would be to have essentially a two-part test. I know that there's a desire to have efficient processing of ordinary applications in front of the Alberta Energy Regulator and the Surface Rights Board, but in my view there should be minimum geographic or land distances involved. So a solution to move towards fairness would be to ensure that, first of all, the landowner upon which the property or the development is proposed would get notice. That seems to happen automatically. Any adjacent landowner within, in my view, a geographic limit would be a second element that would provide some certainty. While that may mean that there are extra parties that are given notice, if I know as a landowner that I will get notice of any proposed oil and gas development within one mile – again, we're using quarter sections – for example, in a circle around there, then I know that I don't have to take further steps to research.

I would suggest that the directly and adversely affected test may consider adding a minimum standard of notification to adjacent landowners within a geographic distance. In my submission, that would go a long way to resolving the concerns about fairness and adequacy of notice and the onus upon whom it falls to research possible developments. Set a minimum standard as well as the directly adversely affected portion.

**The Chair:** MLA Sweet, a follow-up?

**Ms Sweet:** Yeah. Just real quick. In addition to that notice, there have been changes around how notice is now being required to be provided. Typically, up until recently, it used to have to be in print. Of course, we saw this with the irrigation canals. They would be required to provide notice of any changes to the irrigation network within a print material, so a local newspaper. All that notification would have to be done. The legislation has been changed now that it can be done online. I guess my question to you is: do you feel that that is appropriate notification? Would that be considered sufficient notice if it was an online ad or a Facebook ad or, you know, however online is now being interpreted versus the requirement for print?

**Mr. Dobbie:** The short answer is no. I would recommend that the sufficiency of information include the manner of transmission. What that will mean, I think, in the short to medium term is multiple modes that we add direct notice. If a landowner has somehow a registered cellphone or e-mail address, that would be sufficient, but if absent some information, there should be multiple modes. I respectfully submit that there should be written notice mailed to the landowner, because the address is on title if you're within a geographic distance, as well as the postings as well as the advertising. While that might result in some possible increased costs for notice in the short term, in my view it is a reasonable cost to pay.

***11:35***

It's a cost that has to be borne by the proponent. It's better to get good notice than poor notice and fight the battle. An example that we all can think of is the RCMP notice that went out in the incident in the Maritimes, where they posted a warning on Facebook for people to be aware. Clearly, that wasn't sufficient. In my view, for now multiple modes of notice, including direct mailed notice to title-holders within geographical description, will go a long way to affirming the rights of landowners to proper notice.

**Ms Sweet:** Thank you.

**The Chair:** Excellent.

Next I have on the question list MLA Rowswell. Please go ahead.

**Mr. Rowswell:** I was just wondering if you get many complaints relative to the valuation during expropriation, and then if there's an argument, is the process effective at handling that?

**Mr. Dobbie:** Thank you. I can specifically answer that question. The Property Rights Advocate office has never, since its inception in 2013, received a formal complaint or even an informal one that I'm aware of about the valuation process. The Expropriation Act, RSA 2000, chapter E-13 sets out in sections 41 and 45, following the processes involved, that basically compensation is determined based on fair market value. What would a willing seller and a willing buyer pay for the property?

I also would recommend that the committee consider a review of section 45. It sets out some exclusions, some of which speak to the concerns raised by the a Rural Municipalities Association, so there's a specific exclusion in section 45 for increase or decrease in value associated with municipal land-use bylaws. Currently, my experience with the expropriation as a lawyer, as the Farmers' Advocate, and also the Property Rights Advocate is that that is a fair and robust piece of legislation. It specifically provides a great remedy for landowners affected by an expropriation process to seek and have their legal costs paid. It's very clear legislation that they get to choose their legal counsel. Those costs will be paid if an application is brought by the affected landowner to dispute the amount of compensation paid, so it becomes a fair fight. The landowner has to pay their lawyer, but on balance those lawyer costs will be paid to the landowner unless it's an application that is basically one without any merit. In any sort of fair dispute they're paid.

As I said, never has there been a complaint to the office of the Property Rights Advocate. I do note that section 4(5) of the Alberta Property Rights Advocate Act allows the Property Rights Advocate to issue a report in the event that there is a complaint about the process. That has never been done, and it does speak to the issue of the role of the Property Rights Advocate, the limits there.

Again, I would go back to my initial comments. My experience has been, MLAs and members, that on the important issue of property rights writ large, landowners really do want their MLAs that engaged directly in this issue just like you are today. So it would be, in my view, likely impractical to create a position of a Property Rights Advocate that would have a role that would take over the responsibility or the role of the MLAs in pushing these issues along. Again, big question as to where the issue should fall, but on compensation for expropriation it's been fair.

The big question raised by a number of presenters today is: should other issues, should possible future uses, should all of those things be included in compensation? What is a statutory consent, for example? That issue was raised. What's included? What isn't? Currently prospective uses are not included in compensation values, and I don't believe this committee is looking at legislation that would amend that. There certainly is a question. In my view, an example of a statutory consent would be a grazing lease or a farm development lease. If that's taken away, there's a way of coming up with compensation for that. So defining what statutory consents include would go a long way to clarifying what that would cover, but on compensation for expropriation process, in my view it seems fair, transparent, and a fair fight because the fees are covered for the landowner.

Thank you.

**The Chair:** Mr. Rowswell, a follow-up?

**Mr. Rowswell:** No. That's a great answer. Thank you.

**The Chair:** Excellent.

Next I have on the list MLA Ganley. Please go ahead.

**Ms Ganley:** Thank you, Mr. Chair, and thank you very much for your presentations. It's been very informative. I'm taking notes frantically here. I just have a question around – you said earlier in your presentation: where there's a right, there's a remedy. I think that is a pretty critically important legal maxim here. You talked about sufficiency of notice and scope when we're talking about people who are directly and adversely impacted. I have certainly heard a lot of concerns in previous roles and in this role regarding the fact that the AER or the AUC makes a determination, and then that determination flows through to the Surface Rights Board. That makes sense, right? You don't want two different decision-makers making a decision on the same subject that is different. That would create chaos. One of our previous presenters suggested that the remedies and appeals under the Surface Rights Act were in some way better and that they would prefer, potentially, for the determination to follow that. Maybe it wasn't a fully thought out position, but I'm just wondering whether you have any comments on that.

**Mr. Dobbie:** Sure. Thank you for the question. It is an important one. With respect to the Surface Rights Act itself, in my view its scope should be restricted the way it currently is in terms of the issue of setting compensation for a taking if an agreement can't be reached. The principles of compensation may be open to debate, but an important role for the Surface Rights Board would be to determine what is fair and adequate compensation to your aunt if an oil company wants to come on her property and use some of that for a lease for a development and she hasn't agreed. The principles set out in the act cover off a number of things, but basically there are two parts: loss of use – I can't use that land anymore, so there's a loss of income from it – and injurious affection, or adverse affect. What else happens as a result of it? That process is fair.

What seems to be unfair in the views of some landowners is that – I think it was mentioned by Mr. Bennett – it seems to be easier for operators to get a date at a hearing if they're disputing something than it is for landowners, so the suggestion that the timing issues are again tied into these legal maxims. Justice delayed is justice denied is also tied into where there's a right, there's a remedy. It doesn't help my aunt or your aunt if she can't get fair compensation up front so she can do some planning. Setting deadlines that cover both the operator and the landowner makes the system a fair fight.

I don't believe that the Surface Rights Board should be considering whether a development should proceed or not. It's a different scope of expertise than the Alberta Energy Regulator or the Alberta Utilities Commission. What they should be doing, though, is considering – again, the scope could be expanded to enforcing the payment terms under a compensation. Right now the remedies are limited for a landowner. If your aunt is not paid under section 36, she isn't paid her annual lease, well, there's a remedy under section 36. You can bring your application. The government will ultimately reimburse you. We hope. That needs to be done within time. There are limits on any lease signed before 2012 to enforce the terms of a lease. If your aunt does not have the weeds taken care of by the operator, her only remedy right now for a pre-2012 lease is to sue in Provincial Court or Court of Queen's Bench. Expanding the role of the Surface Rights Board to consider damage payments or unpaid amounts pursuant to schedules would be, again, a way of speeding up the process.

You will recall likely that the act that governs the Alberta Energy Regulator does allow for a private registry agreement that would allow a landowner to enforce the terms of a new lease, but the vast majority of leases in Alberta are old. The remedy of suing in Provincial Court or the Court of Queen's Bench is expensive and, you know, a challenge for landowners. It's a deterrent.

Again, the challenge that you have as MLAs is: how much money do we spend on creating new structures to administer fairness? This is something that – I don't know what it would cost to do that. I think adding workload to existing Surface Rights Board decision-makers will likely mean more time in dealing with all files, so more resources, money would have to be spent. That would be an example.

***11:45***

**The Chair:** Thank you, Mr. Dobbie. That does conclude our 20 minutes of Q and A. Once again I'd like to thank you for your presentation and being with us today to answer these very important questions. You as well as the other presenters are welcome to stay within the meeting as long as you turn your camera off and mute your microphone. Once again, thank you so much, Mr. Dobbie.

**Mr. Dobbie:** Thank you. I'm happy to come back if anybody doesn't show up.

**The Chair:** Next we have presenters from the Canadian Association of Petroleum Producers. With us we have Mr. Tim McMillan, president and CEO. As well, we have Mr. Richard Wong, manager of western Canada operations. Thank you both for joining us. You as well as our other presenters will have five minutes to make your presentation, after which we'll move to a 20-minute Q and A. We will start your five minutes as soon as you begin your presentation. Please proceed when you're ready.

**Canadian Association of Petroleum Producers**

**Mr. McMillan:** Great. Well, thank you, Mr. Chairman, and thank you to the committee members for hosting this important discussion about property rights. Maybe before I begin, I'll acknowledge that Richard Wong is with me, but the way we have it set up here to ensure that we are compliant with our COVID protocols, he won't be on camera. But if questions get more technical, he is happy to contribute.

Let me start off by saying that we obviously believe that property rights are fundamental to democracy, to economic development, to a stable society. I think we're blessed in Canada to have some well-established and robust property rights laws, and we need to continue to ensure that they're working efficiently. I think that that is part of the mandate that you are discussing today. We, as one of the property rights holders in Alberta, I think, have some fairly clear thoughts on this.

Maybe I would start off by saying that kind of in the discussion that has been taking place earlier today – and I've been able to take part or watch some of it – there seem to be issues between property rights holders and governments, both provincial and municipal, around expropriation or infringement from government to property rights holders and discussion around the fenceline issues between property rights holders and property rights holders. I would say that on both counts the oil and gas industry has areas of concern and opportunity. We most likely will make most of our comments about the fenceline issues between property rights holders and property rights holders.

We would support finding more efficient ways to exercise the property rights in Alberta. We think that there is opportunity to do that. Some have been expressed earlier. You know, just a couple of examples that I would raise are that in some situations, certain types

of wells, the engagement between the proponent and a surface rights holder could be as much as 13 engagements between the acquisition of the land and ultimately the execution. They would then get an additional three engagements from the AER, and that may be absolutely appropriate. But as we are looking at potential changes, I think we also have to look at: what is the highest value of engagement that we can ensure all property rights holders are getting?

Another area that we have looked at in the past is the ability to put in statements of concern. Obviously, if you are a property rights holder that is directly above the mineral right being developed, you would be able to and should be contributing. The way the current legislation is written allows others that may not be property rights holders in Alberta – they may not be citizens of Alberta but may feel that they have a role in the process to engage, and that may be reasonable. We have seen examples in the past where substantial individuals that are neither residents nor property rights holders in Alberta want to engage on projects that may water down the ability for those that are directly adjacent to that property to have the interest that they feel is important for them.

I think issues around the engagement and efficiency of the Surface Rights Board are something we certainly heard in your discussion. They're areas where we would be happy to discuss further. I would want to note that the liability management framework that was announced by the government here, just over a year ago, we think is very meaningful and, as it continues to be implemented, is going to improve upon the current model and some of the challenges and frustrations that we have and, I think, that other property rights owners have as well. But we'd be happy to engage in discussion on these topics with the committee.

Again, thank you for the opportunity to be a part of this discussion.

**The Chair:** Thank you for your presentation, Mr. McMillan and Mr. Wong.

The committee will now move on to a 20-minute block of questions. I'll open it up to the floor, and at this time first on the list I have MLA Sweet. Please go ahead.

**Ms Sweet:** Thank you, Mr. Chair, and thank you, Mr. McMillan, for the presentation. The first question that I actually have is: I'm wondering if you could just explain a little bit more about the proposed changes that you're concerned of with REDA under Bill 206. You've made part of your submission that some of your members have serious concerns about that, so I'm wondering what you believe those potential changes are and what those effects will have for your membership.

**Mr. McMillan:** Yeah. I think two things. Some of the items in that bill would be very duplicative, having both the AER and the proponent doing duplicative work. I talked about that in some situations the surface rights holder may be engaged up to 16 times on a single well. If that would duplicate, that engagement could go up to 26 times. You know, maybe that is appropriate, but more isn't always better. That is the REDA provisions in this bill.

But maybe a more general comment is that, you know, property rights are fundamental to an economy, to a society. A private member's bill, I think, is a great tool for legislators, but if this bill were to move forward, I think it would be important for the entire resources of the government to step behind it and ensure that the scrutiny from all different aspects of the government as a whole would contribute to the bill. So we'd probably encourage that Bill 206 be a starting point for our government to take this on directly.

**The Chair:** MLA Sweet, a follow-up?

**Ms Sweet:** Yes. Thank you for that. I noted in your submission that conservatively you were estimating that a single application could take at least four hours of a company's representative time to be able to complete a process and that on the basis of the AER receiving an average of 2,500 applications, that's about 10,000 hours for AER staff, which would have obviously substantial impacts for many of the different companies in your membership. I guess my question to you is: do you have a cost analysis of, like, how much you think it's going to actually impact your membership to have to do this process? And then on the flip side of that, an acknowledgement: if it's costing companies that amount of money, how much it could potentially be costing a landowner who would have to appeal that process.

**Mr. McMillan:** Great question. The time that's currently being spent is the cost that our members today are shouldering, and they should. That's part of their job. The current bill that is being considered would then have that same work being duplicated by the AER, so those costs would be borne by the AER. I think that the third stakeholder is the surface rights holder that today is doing meaningful work to ensure that the interaction between the other rights holders – if that work then gets doubled at the surface rights holder level, the inefficiency is borne by the AER and the surface rights holder. The one that is probably the least affected by that change is the oil and gas industry itself. It's the other two parties that would both have the increased burden, not us, but we'd be supportive of an efficient system because we think that serves all property rights holders best.

***11:55***

**The Chair:** At this time I don't have any other – oh. Actually, I just see a hand raised. MLA Milliken, go ahead.

**Mr. Milliken:** Thank you. Thank you very much, Mr. McMillan, for being here today and for your presentation. I just wanted – I've got a couple of things based on some of the notes that I have from previously reviewing, but one of the things you brought up that I didn't have in my notes originally had to do with your concerns regarding statements of concern for kind of non-Albertans, non property right holders, nonresidents. I was just wondering if you could give me, just to shed a little light on this, a couple of examples of maybe specifics of what you're referring to there.

**Mr. McMillan:** You know, I might use the example, actually, of how a system can be used in ways it wasn't intended to, and I'll use the example outside of Alberta just for explanation, that during some of the Canadian Energy Regulator hearings on pipelines there would be substantial activist campaigns in California that would bombard the Canadian system, not an attempt to improve the project or to ensure that those that were in the local communities or adjacent to that project were getting an outcome that was most favourable for them. It was to disrupt the project, and it ultimately pushed out those that were most closely connected to it. We saw that on Northern Gateway. We saw that on some other national projects as well. I think that there is a risk for Albertans. If we don't ensure that those that are most directly affected have the direct and the priority in this engagement – and the way the legislation is currently written, it is very open for those that may not have that direct link to the project, the area, or even the province.

**The Chair:** A follow-up?

**Mr. Milliken:** Yeah. Kind of growing off of that – and forgive me. All I have is my notes from when I previously – I actually don't have the submission in front of me. For some reason I just can't

seem to – it's here somewhere. I note that the first part is kind of a quote from it, I believe, where it says – and this could have also been a note to myself –

> please note that CAPP has focused [their] submission on the proposed Bill 206, Property Rights Statutes Amendment Act, 2020 (Bill 206) amendments to the Responsible Energy Development Act . . .

that we refer to as REDA here,

> . . . as this aspect of Bill 206 is of significant concern to our members.

What are the main points of worry or interest in the interplay of those acts to potential ideas that you would like to see potentially come forward in the bill? To put it most bluntly, like, and most open-ended, what would you like to see in the bill?

**Mr. McMillan:** I think that the pieces directly related to REDA that are in the private member's bill are largely duplicative of work that's already encompassed in REDA, and to have that work being done twice in two separate bills, we think, is inefficient for the system and wouldn't be in favour of either of the other interested parties, being the AER or the surface rights holder, as well.

**The Chair:** A follow-up?

**Mr. Milliken:** Perfect. Yeah. I've heard and I remember from the duplicatory kind of aspects of your submissions – are there any aspects, though, of the additions to REDA that you don't see as a duplication? Are there parts that – like, you've said, I think, that you went from 16 to 26 touchpoints. That's only an addition of 10, so it's not necessarily 32. All I'm just trying to say is that it's not – we've referred to it as, like, just: got it over here, and we're doing it again over here. But it doesn't seem like that's quite true. Just putting you on the spot on that: are there parts of it that maybe we should keep?

**Mr. McMillan:** Sure. My example is that some wells and not all wells – every different project would have a different number of touchpoints that would be required, and ideally the more impactful or challenging a project is, the more touchpoints there would be. You know, on some there would be 13 engagements from the proponent to the surface rights holder and an additional three from the AER. If that were duplicated, that the AER had to do 13 that were the same as the 13 done by the proponent, I can see a surface rights holder being tired of the same questions, the same process twice. Then there would be the additional three things that in the current REDA the AER is required to do. So that goes to 26 when they duplicate; plus three is 29 engagements. Every well is going to be different based on that.

Maybe I'm not answering your question in its entirety. Are there things in REDA – I think our feeling is that all of the pieces of this bill that are duplicative of REDA would be best served just leaving that legislation as is in REDA.

**The Chair:** Next I have on the list MLA Ganley. MLA Ganley, go ahead.

**Ms Ganley:** Thank you very much, Mr. Chair, and thank you for your presentation. I just wanted to touch on a couple of issues. One is that I think we talked about – you had said that it was about four and a half hours to do those sort of potential 13 to 16 contacts. If you have a rough costing on that, that would I think be helpful to the committee.

Also, I think that when we're talking about how this system works or how changes could be made, there's a certain value to certainty, if that makes sense – right? – knowing that the process is complete when the process is complete. I guess what I'd like to know is sort of what your position is with respect to, especially when we're talking about not the application proper but kind of more so on the back end – one of the concerns we'd heard was that it takes a long time sometimes for people to declare wells to be inactive, and they had suggested, like, that five years is enough. I'm just wondering: what do you think of that? I guess that is my question.

**Mr. McMillan:** I guess, to the first question, the costing piece, we could engage with our members and see if they have a costing of what that would be, and if they're comfortable with us sharing it, we would pass it on to the committee. Maybe a question as this work develops from your committee would be to the AER, who would then be picking up those additional requirements. Their costing may be different than industry's, so I just wouldn't want to – though the time it would take would likely be the same, I don't know if that would be the same cost for them.

As far as the ability for mineral rights holders to have assets that go inactive for periods of time, I would say that there are a lot of – every well or facility has different lifespans, different technologies that come along. You know, we have seen over and over again in Alberta where a technology is used and there has been production, royalties, jobs and benefits, payments to surface rights holders. Ultimately the economics go out as the water cut comes up and the production goes down, only to find five years later that screw pumps come out, that we go from the pumpjack in the heavy oil area around Lloydminster to screw pumps, and it revolutionizes the whole area. They retrofit thousands of wells with the new technology, and they get, really, a second life.

We've seen this in other places with water floods. When primary production is done, once in a large area it's all done, they may then go in with a water flood or a carbon dioxide flood and get further reserve development out of it. You know, I think that ensuring that we wouldn't be sterilizing the incremental production of these assets would be something we'd be very sensitive to ensure that we were watching.

***12:05***

**The Chair:** MLA Ganley, just in fairness, in the previous set of questions in error I gave two follow-ups. I will give you the same opportunity. Please proceed with your first follow-up.

**Ms Ganley:** Sure. I guess my question, then, is, just because this does seem to be a big issue for people because they feel like there are these wells on their land for, you know, 20 years that aren't being reclaimed: do you think that there is sort of a maximum time cap on that in terms of – just because for these individuals it's a long time, right? It could be the course of generations. They may want to use the land for something else. Yeah. Do you think that there's a reasonable time limit to impose?

**Mr. McMillan:** You know, I think that the liability management framework and the changes that were announced and are currently being implemented certainly go a long way to addressing and finding what's the right solution for all property rights holders. That isn't fully implemented at this point, and I think some of the concern we're hearing is from many years in the past. I would say that there has been a path of continuous improvement on the liability management file in Alberta, and I think a substantive step was taken last year with the announcements that were made and the implementation that's currently happening.

**The Chair:** MLA Ganley for your final follow-up.

**Ms Ganley:** You know what? I actually think that's enough. Thank you very much.

**Mr. McMillan:** Thank you.

**The Chair:** Excellent. Next on the questions list I have MLA Sweet. Please go ahead.

**Ms Sweet:** Thank you again, Mr. Chair. I want to go back to looking at a fairer process. I appreciate that, you know, you have repeatedly said that you appreciate that we need to be able to work through and find the solutions when there is a disagreement between the stakeholders. Part of that recommendation is that you think that maybe the AER, the current government, and stakeholders should come together and find some ways to create those solutions. Does CAPP at this point have ideas around how to make the resolution process work more effectively as we hear that this is obviously becoming more of an issue for property rights owners?

**Mr. McMillan:** Yeah. Again, this is the barrier between different property rights owners. I think, you know, most of what we heard this morning – I think that the Property Rights Advocate, that spoke just before us, identified that it is largely a process challenge and ensuring that things are happening in a timely fashion is key, that we in Alberta have come through some challenging times in the last few years. I don't know this for certain, and maybe I should, but there has been a bit of a backlog in some of the process at the Surface Rights Board, so finding a more efficient model there. Again, I think the liability management framework will probably clear some of the challenges that had built up over time as it gets rolled out.

The one area in which we would have some substantial concerns would be that if anyone was advocating that property rights be taken away from surface rights holders or mineral rights holders and reallocated to the other, the sanctity of property rights serves both of the property rights holders and just ensuring that where they meet, people are treated fairly and in accordance with the rights that were granted when the homestead was given or when the resource developer purchased those rights from the government, who ultimately holds most of the mineral rights in Alberta.

**The Chair:** MLA Sweet, a follow-up?

**Ms Sweet:** Yeah. I think, again, for me, it's like: how do we prevent the conflict before we get into the conflict? My question is whether or not the membership has discussed: how do we be more proactive? I mean, I appreciate that in your submission you've talked about making public awareness and ensuring that with AER and your membership there is a better awareness for, you know, the existing processes. I guess my question is: as we're going through this process, would there be willingness to maybe just take on some of that leadership already, and then that way it doesn't even have to be done in regulation and legislation? It'd just be like, "Oh, we've heard this; maybe we should," and go from there.

**Mr. McMillan:** Yeah. MLA Sweet, you make a great point. I think in the best case scenario, we won't need to utilize the Surface Rights Board. It is when the process doesn't work that we require agencies like that to be an arbiter and to find a solution. I can tell you that the members I represent work very hard to ensure that the parties that they're working with are feeling that they are being treated fairly and that the relationship is beneficial to both. I would say that in 90-plus per cent of the cases that is a strong relationship that benefits both parties and is acknowledged as such. I think it's something we will continue to strive to, to lighten the burden of any legislative body that has to arbitrate this just by doing good business practices. Your question is very well taken.

**Ms Sweet:** Thank you.

**The Chair:** With 45 seconds left I have MLA Rutherford. Go ahead.

**Mr. Rutherford:** I will be very quick, hopefully. In your submission you talk about advancing any refinements to the process under current legislation with the AER. If you could just go over what you mean by that or what you hope to see that would make the process more efficient. I'm just being quick because there are now 25 seconds left.

**Mr. McMillan:** Sure. It's largely what I spoke to earlier, that there are areas today where we think that there may be people that put themselves forward as directly and adversely affected that both the surface rights holder and the mineral rights holder may think are not as directly affected as landholders, surface rights holders. That would be one example, just narrowing it down to those that are very specifically engaged in that area.

**The Chair:** I hesitate to interrupt, Mr. McMillan, but that is the conclusion of the 20-minute Q and A. I'd first like to thank both yourself and Mr. Richard Wong for being here today to present to the committee and answer questions. As always, it's appreciative to have your input on this very important subject matter, so once again, thank you.

**Mr. McMillan:** Thank you, Mr. Chair. Thank you, committee.

**The Chair:** Our final presenter today is Mr. Mark Dorin. I understand, Mr. Dorin, that you have a slide show as well to go with your presentation. The committee clerk will display that for the members. You have five minutes for your presentation. Please introduce yourself for the record, and your time will start when you start with your presentation.

Thank you.

**Mark Dorin**

**Mr. Dorin:** Mr. Chair, thank you for this rare opportunity to speak to the matter of real property rights. My name is Mark Dorin, and for my entire adult life I've been involved in oil and gas production, mostly overseas. However, for the last 20 years my focus has been increasingly on what we call surface rights in Alberta. Several of these rights have been ignored or abused, in my view, and this must change. Real property abuse is worse as to urban lands as compared to rural lands in Alberta. Surface rights are certainly not solely a rural issue. These abuses form the main basis for the written submission I filed with this committee at the end of July.

The committee's mandate, as I understand it, is to consider five questions that arise from or are associated with proposed Bill 206. My written submission is focused on only some of these questions. I prepared a PowerPoint presentation, which you're looking at now, to help to summarize and highlight the main features of my written submission. To begin summarizing my written submission, I agree that section 31 of the Responsible Energy Development Act, which is the main home or enabling statute of the Alberta Energy Regulator, or AER, should be amended as proposed by Bill 206. Notice by way of the AER's website, which is the common means, is insufficient. Notably, I did not take positions on three aspects of the mandate of this committee related to Bill 206, which are the proposed amendment to the land stewardship act, abolishment of

the law of adverse possession, and whether the Expropriation Act processes are adequate.

Next slide, please. The main focus of my solutions-based written submission is on three of the mandate questions, which are summarized in this slide. The first question relates to the adequacy of remedies available to the owners of real property who are deprived of use of their property. My summarized submissions are that, with some exceptions, the remedies available at law – and that's to say the written law in Alberta – are more or less adequate, but the real problem is lack of law enforcement, particularly at the Alberta Energy Regulator, which also doesn't accept applications from landowners for remedies that are contemplated by law. This is the body, the Alberta Energy Regulator, that makes most of the decisions to deprive Alberta landowners of use of portions of their properties for upstream oil and gas purposes.

***12:15***

The second question relates to expansion of real property rights and whether individual rights should be constitutionally protected. The main aspects of my written submission point out that the right to be safe on one's land, especially outside the area that's been granted to an operator for an energy purpose, is already protected by the Constitution. But this right is abused. Insufficient land area, insufficient taking are the nature of operations. Particularly those that involve tanks or gas are definitely insufficient all across Alberta. We have terrible safety problems out there that are being absolutely ignored.

Third, I raised matters, in my humble view, that relate to the completeness of the committee's review, your mandate for review. Sorry. Next slide. Specifically, I proposed changes to the completeness of the review and some law changes. I want to do two slides – this is one of them – and I want to emphasize two points really quickly. The first one is that the vast majority of Albertans have no confidence in the Alberta Energy Regulator. The coal committee that was recently struck found that the percentage was 85 per cent of Albertans. I've provided some statistics in this slide related to the fact that the regulator conducts almost no hearings, even when the landowner files a statement of concern and shows that his or her rights are directly and adversely affected. In many years no hearings whatsoever are conducted related to oil and gas applications or decisions to be made. The participatory rights of landowners are badly abused at the regulator, as I point out in my written submissions. Next slide, please.

The next point I want to emphasize is that, as per an illustration provided at page 5 of my written submission, there are three classifications of property rights in Alberta. These are real property, which we're discussing here; personal property; and unique interests in property. I want to point out that in my submission most of the interests in property acquired by oil and gas or power line operators, et cetera, are in the others category. These are unique statutory interests in property. If we treat them like personal property or under normal real estate law, it's easy to go sideways. Next slide, please.

**The Chair:** Mr. Dorin, I hesitate to interrupt, but that is the conclusion of the five minutes for presentation, at which we must move into the 20 minutes of Q and A.

At this time I will open up the floor for questions. I see MLA Nielsen. MLA Nielsen, please go ahead.

**Mr. Nielsen:** Well, thank you, Mr. Chair, and thank you, Mr. Dorin, for coming to present and talk to the committee. I'm not too sure how much of the entire meeting you've had a chance to listen in to, but I know we have over the course of the morning heard concerns around some of the red tape reduction initiatives by the government having negative impacts on landowners in terms of working with industry and the AER, recent changes around timelines and things like that. So I'm just kind of wondering if you have observed any kinds of trends with regard to these changes, or anything that you've observed that the committee should know about.

**Mr. Dorin:** Yes. Well, I did review all the so-called red tape reduction changes that impacted the Oil and Gas Conservation Act, the Pipeline Act in terms of providing right of entry to land that didn't exist before, mostly for remediation or land-reclamation purposes. It does change things. The main thing it changed, in my opinion, was trespassing by the Orphan Well Association, so that's positive.

But, you know, the biggest problem here with timelines, in my view, was addressed by the wisdom of our regulators, our legislative bodies in the past. We sort of decided in Alberta to stay away from regulated timelines. I'm talking about land reclamation here, and for practical reasons, because it's pretty impossible to predict how long it might take to reclaim land or, in particular, to remediate land where a spill has occurred, and the trade-off for that is ongoing annual compensation. So, in my view, annual compensation should increase as the use of land, as the useful life of the activity on the land, reduces, especially with wells and facilities. I think this is sort of the approach that's been taken in Alberta, and because we treat annual compensation as rent, this is improper. I think that there should be sufficient property taxes and payments to the landowner to incent the operator to get off the land. This is the statutory scheme as envisioned, and we're overlooking that.

By the way, not all landowners get annual or ongoing compensation. It's assumed that they do. My family doesn't get it. It's been 45 years of absolute abuse, absolute lack of safety on the land because of that lack of annual compensation.

You know, we have bodies such as the AER, the AUC, and the Land and Property Rights Tribunal for a reason, and that reason is to deal with the unique, individual circumstances on each parcel of land. We're not doing that. We're generalizing. That's the problem here. We need these tribunals for a reason, but we have to have the hearings, and we're just not getting them.

**The Chair:** A follow-up?

**Mr. Nielsen:** Yeah. Thanks, Mr. Chair. I'm just wondering if you've had the opportunity to engage with the red tape reduction ministry about some of these changes, and what type of feedback have you heard with those?

**Mr. Dorin:** No, there's been no opportunity to engage. The only engagement I've personally done is, you know, just to talk about what happened with the CAPP representative just before me: liability management. I participated in six days of liability management presentations and government meetings in 2017, and literally nothing has been done on liability management. Nothing has changed. These new changes that are supposed to be coming are probably worse in our view as landowners. So, you know, there's no engagement with landowners. It's absolutely minimal.

We started a group called the Polluter Pay Federation, specifically to address some of these issues. There's just no engagement with us at all. They just talk about, you know, notice given to landowners and repeated engagement with landowners. You know, there are two different kinds of oil companies in this province, the responsible ones and the irresponsible ones. The responsible ones do engage, but there are lots that don't engage at all, ever.

**The Chair:** Next I have on the list MLA Milliken. Please go ahead.

**Mr. Milliken:** Thank you. Thank you, Mr. Dorin. In your submission in section II you note that legal remedies and relief are not necessarily inadequate. It's more that it seems to be a lack of access to the remedies that may or may not be available. Would you be able to give a bit of an overview of what sort of access issues landowners that you're hearing from on the ground are facing?

**Mr. Dorin:** Well, the most important thing is to understand that, you know, which body is supposed to make which decisions, and there's a lot of confusion about that in Alberta. So the first step in the process is for either the Alberta Energy Regulator or the Alberta Utilities Commission to make a decision, and that's usually to issue the licence. If landowners' rights are directly and adversely affected, that's usually recognized at the Alberta Utilities Commission, but it is rarely recognized at the Alberta Energy Regulator.

As I said in my presentation, for example, in the last calendar year reported by the AER, they conducted exactly zero hearings for oil and gas. Now, I can assure you that I filed lots of statements of concern for the surface owner, who's overtop of the mineral owner, and those concerns were rejected. Then we filed for the regulatory appeal, that we're entitled to ask for when your participatory rights are not observed and licences issued, and the regulatory appeal request was rejected as well.

One of the things I mentioned is that we need to have the Alberta Energy Regulator doing something called reconsiderations. They just don't do them, and they should be doing them because some things go beyond the time for regulatory appeal.

***12:25***

So we're basically barred from hearings at the Alberta Energy Regulator as landowners, and then when it goes to the Surface Rights Board, they say: well, you've already had your say at the Alberta Energy Regulator, you know, so we're not going to have a hearing on the same issues here. In lots of cases there is no hearing at either body, yet there is a right of entry order and someone has forced their way on to your land, and you don't get a hearing at either body. I've even got one case right now where there's no pipeline licence, yet they've got a right of entry order, and we're still trying to get that reviewed; over a year later we're waiting for decisions.

Mr. Bennett talked about waiting a year or two for decisions. I've got some that I've been waiting nine years for, nine years for decisions of the Land and Property Rights Tribunal. It's incredibly bad out here in the real world.

**The Chair:** A follow-up?

**Mr. Milliken:** Yeah. Just going to some of the submissions that you put forward, I have a background in law or whatever, that kind of stuff, so access to justice is obviously something that has been top of mind for me for years and years and years. You mention that your thoughts are that there needs to be a reform at the regulator in significant ways, that is urgently required. That's, like, verbatim. I guess on one hand: what ways? Then, also, if you could kind of tie this into just a quick answer. You said that you've gotten some rejections. I was wondering if they came also with reasons for the rejection.

**Mr. Dorin:** Sometimes they did come with reasons for the rejection, but more often – in my personal case I'm involved in proceeding 411 right now, which is a reclamation certificate, regulatory appeal, on my own family land, and it came out in thousands of pages of documents that were released by the AER staff, at the order of the AER hearing commissioners, that I've been handled, specially handled, for years at the Alberta Energy Regulator. How can I represent my family? How can I represent my clients? This is documented. This is documented.

The key is to allow the idle AER hearing commissioners to make these decisions. That's the oversight that's supposed to occur. No hearings are going on except for in coal mines lately; let these AER hearing commissioners, who have published some pretty good decisions, in my view, actually deal with matters. The hearing commissioners are just sitting idle. That's the key. Let's have the hearings that are contemplated by law. Let's have the reviews of the potentially flawed decisions that are contemplated by law. This is why I say that the laws provide for these remedies, but we're not getting access to these remedies. And, as a result, our real property rights, our property values, our safety, our rights to compensation are all being abused.

**Mr. Milliken:** Just a . . .

**The Chair:** You've had one follow-up.

**Mr. Milliken:** Sorry. Okay.

**The Chair:** Next on the list I have MLA Ganley. MLA Ganley, go ahead.

**Ms Ganley:** Thank you, Mr. Chair, and thank you, Mr. Dorin, for your presentation. I just wanted to touch back on a couple of things that you mentioned. Your primary concern seems to be, basically, that people feel that they are not given a hearing at the AER, that their rights exist in the letter of the law but in practical application those rights don't exist. Two of the things that you said that really tweaked my interest were that the laws that exist aren't enforced, and I understand that to be around sort of timelines and reclamation, but you also said that they refused to consider certain remedies that are allowed by law. I'm just wondering if you could expand on those things. I think, I mean, that should be a huge concern for every member of the committee, if there are remedies in law which are practically inaccessible to individuals.

**Mr. Dorin:** Yes. Well, there seems to be in the rank and file at the Alberta Energy Regulator, not including hearing commissioners, this attitude that the Land and Property Rights Tribunal or the former Surface Rights Board is for landowners and the AER is for oil companies. Well, nothing could be further from the truth. We should be able to apply for things like stop orders, licence transfers when the licence is being held by the wrong party on our lands. I've reported sour gas floating across the Anthony Henday freeway in Edmonton on numerous occasions, and it's real. The AER inspectors come out, and they say: "Oh, yeah; there's gas all over the place." They shut the operations down. "You bad boys and girls, don't ever do that again." Then the next day I'm out there getting shut down again. This goes on for years and years and years in the middle of a city. In the middle of a city. We've got high-voltage power lines overtop of tank batteries in the middle of Edmonton: absolutely, totally illegal. The AER knows about it. The Minister of Infrastructure knows about it. The AUC knows about it, on and on and on. They all point their finger around to the other group, and nobody does anything about it. This is a real problem.

This is why I suggest that right of entry orders be taken away from the tribunal, as suggested in 1981 by a similar committee to this one, and be given to the Alberta Energy Regulator, simply because at least they will know now what their actual decision-making responsibilities are, because right now they don't do what the Surface Rights Board says that they're supposed to be doing at the AER. I think there are some good people at the AER, and they're really concerned about public safety – I've dealt with lots

of them – until they try to fix anything, and then they're just muzzled, and so are people like me.

As I said, I've been specially treated at the AER. Any complaint I make on behalf of landowners and some serious public safety concerns are given to what's called stakeholder engagement, and they mute me. They mute me. I can prove it now. These documents just came out in AER proceeding 411, which is a review of an improperly issued reclamation certificate. You know, I think landowners have brought these issues up a lot. They didn't have the documentary proof to prove it. We now have it. We now have it.

Public safety is paramount in oil and gas, and we have a huge lack of it. Tanks all over Alberta: 96 per cent of tank installations are regulatory noncompliant – 96 per cent – and these landowners are farming next to them, no idea of the risks they're exposed to because they're not oil and gas people. It's CAPP and EPAC and their members and particularly the professional engineers that work for those companies. That's their responsibility: public safety, number one. Ethics in oil and gas engineers has gone out the window long ago in this province. We have some serious public safety problems here. Yeah.

**The Chair:** MLA Ganley, a follow-up?

**Ms Ganley:** Yeah. I mean, those are some concerning issues.

I'm going to focus a little, if that's okay, on specifically sort of what's before this committee, kind of more so the AER process. Basically, what I understand you to be saying – and I'll just let you tell me if this is right because I think this is something the committee can address – is essentially that, you know, you have sort of right of entry orders that are supposed to go to the Surface Rights Board, but the Surface Rights Board says: no; the AER has already made the determination; that's not really our business. The AER doesn't think it's their business because it's in the legislation for the Surface Rights Board, so you wind up with a whole class of disputes and a whole class of problems where the landowner literally is without recourse.

**Mr. Dorin:** That's pretty accurate. I mean, the real problem there is something called the rule against collateral attack. The rule is that, you know, if one body has made a decision, right, wrong, or upside down, it's binding on the other body. But operators regularly go to the Surface Rights Board and say: the decision has been made over at the AER. That may or may not be the case. There are lots of activities that are licence exempt. One of them is tanks. I also have a case where the pipeline licence was revoked. If you don't have a pipeline licence, you're not allowed to go over to what's now the Land and Property Rights Tribunal and ask for a right of entry order, but that happens anyway because they just get so used to the proceedings and doing them the same way all the time.

As I've said, the reason we have these boards and tribunals is to deal with special circumstances. If someone pipes up and says, "Look, the situation is different than normal; this is urban lands, for example, or something that's very, very out of the norm," that's when both bodies should be perking up their ears and listening and saying: "Jeez, we better pay attention here. This is a unique circumstance. If we just do this how we do it on everyday farmland, somebody's rights are going to be abused." More importantly, someone could die, like, in Edmonton, where public safety is absolutely lacking on the main freeway of the city, and nothing gets done about it. Why? I can tell you why. It's because it's been going on so long and it's so bad that everybody is embarrassed to fix it. We'd rather let people die than have a little embarrassment. It's unforgivable. Let's fix it.

***12:35***

Let's admit – you know, let me be the first to say that the Alberta Energy Regulator has a very tough, broad, difficult mandate. They have a really difficult job. Errors are expected, but we have to be able to have these decisions reviewed because errors are expected. That's why we have appeal courts. That's why we have all types of review provisions in REDA, but they're all ignored. They're just ignored. Just let hearing commissioners do their jobs. We've got interference here. It's not happening. Give landowners the hearings they ask for. Let's resolve these things through proper hearings so that these decisions are actually appealable to the appeal court so we can get these disputes resolved across the province. Right now they're just festering. They're just festering out there, and they're not being resolved. As industry gets broker and broker, and more and more operators refuse to pay landowners, it's going to fester, and it's going to boil over. It's already doing so. There are lots of landowners that are considering revolts, and we can't have that. We need to have the rule of law.

**The Chair:** Next on the question list I have MLA Milliken. MLA Milliken, go ahead.

**Mr. Milliken:** Thank you very much. I just want to get back to the concept of access to justice and things of that nature just because, again, it's pretty important. You mentioned that you take many applications to the AER, and then when you get what seems like, from what you said today, significant rejections, some with actual written decisions, et cetera, you potentially look at the Land and Property Rights Tribunal. It sounds like it was mentioned by another member of this committee that things may be circular, where there's a bit of a chicken-and-egg problem. Is there a reason, then, just why you start at the AER and then after that perhaps kind of focus in on the Land and Property Rights Tribunal in sequence?

**Mr. Dorin:** The simpler way to do it here is that the courts have more or less ruled, and operators argue all the time at the tribunal or at the Surface Rights Board that the tribunal, even though it has the power, the exclusive power to issue right of entry orders, is essentially just a compensation tribunal, that the Alberta Energy Regulator or the Alberta Utilities Commission effectively makes decisions that a right of entry order must issue. That's what the courts have ruled over and over in Alberta, but the Alberta Energy Regulator doesn't know that or doesn't get that.

When you take that case law and you say, "Hey, I'm here; you transfer a licence for me because – guess what? – nobody is paying me, and if the licence was held by the proper party, I could get paid; I wouldn't have to go get into the long queue that Daryl Bennett mentioned over at the Surface Rights Board," the AER says, "Well, we don't accept applications from landowners." Well, of course, you do. It's right in REDA. You accept applications for an approval. An approval can be approval of a remedy requested. An approval isn't just pipeline licences. If there's sour gas all over our land, hey, we're entitled to look for an environmental protection order or a stop order. We certainly don't deserve to have our applications for our own safety thrown in the garbage at the AER, which happens regularly now, or handled by a field inspector. Then we have to file a freedom of information request just to try to get the decision.

**The Chair:** Mr. Dorin, I hesitate to interrupt, but that is the conclusion of the 20-minute period for the question and answer. I'd like to thank you, Mr. Dorin, for your presentation and being here today with the committee.

**Mr. Dorin:** Thank you. It goes fast. My pleasure.

**The Chair:** This concludes the committee's stakeholder presentations today. I would once again like to thank all of the presenters who have joined us today for your contributions to the committee's review. All of this is very helpful information in determining as we move forward.

At this point I am going to be moving directly on to agenda item 5(a), about our public meetings: we have a review of the meeting schedule and update on preparations. LAO staff have been making preparations to hold the committee's public meetings in the locations set out in the motion passed at our last meeting. Based on my direction, a draft schedule for these meetings has been developed to hold these meetings later this month. However, in light of changing health guidelines and provincial restrictions, I believe it may be prudent for this committee to review these public meetings once again and possibly consider postponement, but I will leave that to the committee for discussion.

At this time I will open this up to the committee for questions or comments about the meeting schedule. MLA Sweet, please go ahead.

**Ms Sweet:** Thank you, Mr. Chair. A good morning so far, and hopefully this will be quick and amicable as much as possible. Just in regard to the community consultations, I think, to be clear, that it's very important that we hear from Albertans and that we're able to develop a strategy that makes sure that individuals who are being impacted by surface rights and these processes that we've been spending the morning talking about have an opportunity to share their thoughts with the committee.

In saying that, I think that we can all acknowledge that we are once again in uncharted territory with COVID and with the increase in case counts that continuously keeps happening every day. I think at this point, given that we're not able to have vaccine passports where people are able to demonstrate whether or not they're going to be able to be in-person and we're not able to ensure that everybody in a community space is safe, I would be asking the will of the committee to look at some form of virtual meeting so that we can ensure that Albertans' voices are still being heard but that we're doing it as safely as we possibly can. I also want to recognize, though, that we're looking at visiting areas in rural Alberta that may not necessarily have access to rural broadband the same way and be able to do online consultations.

So I would like to recommend – and I appreciate that we do not have a motion on the floor, and given the current standing orders I would need unanimous consent from the committee to do this – that we have a motion put on the floor that this be referred to the subcommittee to have further consultation to come up with a COVID plan, I guess would be the best word, so that we can ensure that Albertans' voices are still being heard but there's a mechanism to do that. I would like, with unanimous consent of the committee, to put that motion on the floor.

**The Chair:** It only requires majority consent at this time to put a motion on the floor. At this time are you requesting from the committee a vote to be able to put a motion? That is your intent at this time, correct?

**Ms Sweet:** Yes, please.

**The Chair:** At this time I will ask the question and make sure I have this worded correctly. In order to put this motion on the floor – sorry. I apologize. Those in favour of putting a motion on the floor for consideration on public meetings, in person all those in favour, say aye. Sorry. I apologize. One sec; I have a question from MLA Rutherford.

**Mr. Rutherford:** I just want to clarify, Chair. Do we need the motion first?

**The Chair:** Correct. Before we proceed.

**Mr. Rutherford:** Before we proceed. I do have something written, MLA Sweet, if that helps, but, I mean, if you want to take a crack at it, please feel free.

**Ms Sweet:** Oh, if we have consensus across both parties, I would be more than willing to look at what you have written down.

**The Chair:** Excellent. At this time let's see if we can get to that point. I will ask the question once again. In person all those in favour of

> allowing the motion to be presented,

say aye. In person opposed, say nay. Online those in favour, say aye. Online those opposed, say nay. Hearing none,

> that is carried unanimously.

We will now proceed to discussions about a possible motion relating to public meetings.

**Mr. Rutherford:** I'm assuming – just to double-check, MLA Sweet, you want me to take the first shot at this? I didn't want to . . .

**Ms Sweet:** Go ahead, Mr. Rutherford.

**Mr. Rutherford:** Thank you. Okay. I would move that

> the Select Special Committee on Real Property Rights (a) rescind the committee's approval of the motion agreed to on August 9, 2021, with respect to the format and locations of public meetings and (b) refer the matter of the format and locations of public meetings to the subcommittee on committee business to make recommendations to the committee given current public health restrictions.

**The Chair:** Very simple. I will now put it out to the floor for any additional discussion on this motion. MLA Milliken.

**Mr. Milliken:** Yeah. I would just chime in and say that I think that this is prudent. I mean, it's important to remember that across Canada we're dealing with increasing case counts. Therefore, I expect that similar legislative committees across Canada are having to implement or deal with the same issues.

I just, you know, think that this committee has done a lot of great work today and a lot of great work in the past, and it's managed to do so with a lot of joint work from all sides.

***12:45***

I just want to reiterate that I think that this motion could lead us towards being able to, within the parameters of increasing cases across all of Canada, probably have the best opportunity to do the best amount of work that this committee has been tasked to do, and I don't think that it's really a situation. I'm not trying to politicize it or anything like that, and I'm sure you on the other side won't as well. I think that the goal here is to make sure that the mandate of this committee is as effectively done as possible. With that, I would recommend that all members vote in favour of this.

**The Chair:** MLA Nielsen, go ahead.

**Mr. Nielsen:** Yeah. Thanks, Mr. Chair. Yeah. We probably need to hash out some good protocols so that Albertans are safe and they're able to participate. You know, as MLA Sweet said, taking into account Internet challenges that exist in rural, we absolutely don't want to have anybody not able to participate about that. I think the

subcommittee will be able to hash out those ideas to come back to the committee for approval.

**The Chair:** Excellent. I'm starting to hear some consensus on this motion, so I will put it out one final time for any additional comments.

Seeing and hearing none, all those in person in favour of the motion moved by Mr. Rutherford, say aye. In person opposed, say nay. Online those in favour, say aye. Online those opposed, say nay. Hearing none,

that motion is carried.

At this point in time, under 5(a) is there any further business from committee members?

Hearing none, moving on to 5(b), American sign language interpretation. The committee has received cost estimates for the ASL interpretation for these public meetings, which have been made available to members on the committee's internal website. I will now open the floor for discussion on this item to the committee.

**Ms Glasgo:** Mr. Chair, if the committee is so inclined, it would seem that we should delay this discussion until we can have further discussions on the in-person aspects of meetings. It doesn't really make sense to be – like, it's kind of putting the cart before the horse.

**The Chair:** Is there any further discussion on this particular item?

**Mr. Nielsen:** Just, I guess, a question of clarification: are you maybe suggesting kicking that to the subcommittee, too, or we're just not going to talk about it?

**The Chair:** Sorry. Say again, Mr. Nielsen.

**Mr. Nielsen:** Sorry. I was just looking for clarification on whether MLA Glasgo was suggesting also maybe moving that discussion to the subcommittee or whether we just hold it off in its entirety.

**The Chair:** I will leave that to MLA Glasgo to comment on.

**Ms Glasgo:** Methinks there might be a motion from the floor on this specific issue. No? No. I guess maybe not. But, yes, that would be something that I would be suggesting. In my view, it seems we have very limited time – it looks like 10 minutes left in this meeting – and it would seem to make more sense that we pass this on, that we just delay it in good faith till the next meeting and then, when we have more information about in-person meetings, talk about it then.

**The Chair:** MLA Nielsen, does that answer your questions?

**Mr. Nielsen:** Yeah. It's sounding like – I don't know. I'll have to look to the clerk. Do we need to do a deferral motion to the next meeting?

**The Chair:** No. There's not. This would be a carried over item of business only.

Is there anything further on 5(b)?

Then that item will be carried.

**Ms Ganley:** Sorry, Mr. Chair.

**The Chair:** My apologies. MLA Ganley, go ahead.

**Ms Ganley:** My chat isn't working, so I have to use the hand-up function.

**The Chair:** All good, all good. Please proceed.

**Ms Ganley:** Something about updates.

I just wanted to say that I'm not – I mean, I'm fine with it. I'm not instinctively opposed to pushing this out, but I kind of feel like it doesn't really matter whether the meetings are online or whether the meetings are in person. I think that saying that we should have the ability for people to participate regardless of what their abilities are is, in my view, direction that the committee can give now, and I think suggesting that there is ASL interpretation in whatever format ultimately comes up is fine. But if we're going to send this, I would like to make sure that it goes to the subcommittee because I just don't want to lose this issue. That's all.

**The Chair:** Sorry. I will get right to you, MLA Milliken.

Just to be clear to MLA Ganley, this will not be lost. This will be a carried over item of business under 5(b) and will remain and be carried to the next meeting. Hopefully, that will satisfy your, you know, comments about the fact that you want to make sure that this does get dealt with. Is that more of a clarification for you, MLA Ganley?

**Ms Ganley:** Yes. Sorry. I guess that has to be on the record. Thumbs up isn't enough.

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

Are there any further comments on 5(b) then?

Seeing and hearing none, moving on to 5(c), meetings with First Nations and Métis settlements. As prescribed in the motion passed at our July 8 meeting, LAO staff have reached out to various First Nations and Métis settlements in Alberta to inquire about their interest in hosting the committee in a public forum regarding the committee's mandate. Four groups initially had replied with interest, and after we had set public meetings and a bit of guidelines on when we were looking at doing the public engagements, we then reached out again with only one returning any interest for that public engagement, which was the Fort McKay Métis Nation. They had proposed the first week of October, but understandably we do have some extenuating circumstances, as previously discussed.

At this time I will open the floor to a discussion about how the committee might want to proceed with this particular issue given the previous decision to move considerations of public meetings down to the subcommittee. I see MLA Rowswell. Go ahead.

**Mr. Rowswell:** Yeah. I'm just thinking that this might be a good thing to take on to the subcommittee as well, so I'd like to propose that

we get approval to make a motion.

**The Chair:** Excellent. We can move on. Is there any further discussion?

Seeing and hearing none, I will put it to the floor. As we need to get a majority vote to have this motion considered, all those in person in favour of allowing a motion to be proposed on this section, say aye. All those in person that are opposed, say nay. Those online in favour, say aye. All those online opposed, say nay. Hearing none,

that motion is carried.

We can proceed to allowing a motion to be proposed to the floor. Is there anyone that has – I apologize. One sec. I do believe the clerk does have something that might look something like what you were looking for. Please, Mr. Rowswell, can you read out what is on the screen, and if it is kind of what you were looking for, let us know.

**Mr. Rowswell:** Yeah. I think that covers it.

**The Chair:** Can you just please read it into the record quickly, MLA Rowswell?

**Mr. Rowswell:** Moved that

> the Select Special Committee on Real Property Rights refer the matter of holding public meetings with First Nations and Métis settlements that have expressed interest in meeting with the committee to the subcommittee on committee business to make recommendations to the committee.

**The Chair:** Excellent. Thank you, Mr. Rowswell.

Is there any further discussion on this item?

Hearing and seeing none, those in favour of this motion in person, say aye. Those opposed to this motion in person, say nay. Those online in favour of the motion proposed by Mr. Rowswell, say aye. Those online opposed, say nay.

Seeing and hearing none,

> that motion is carried.

Is there any further discussion on any item in 5?

Hearing none, moving on to agenda item 6, research services, 6(a), summary of stakeholder and public written submissions and oral presentations. As is common for these types of reviews, the committee may want to request that research services prepare written summaries of the stakeholder and public written submissions and oral presentations. Do members have any discussion on this area?

Seeing and hearing none – sorry. MLA Rutherford.

**Mr. Rutherford:** Chair, to make a recommendation, do we need a motion, or do we just ask for a summary? What are we looking for?

**The Chair:** I will defer to the clerk. Please go ahead.

***12:55***

**Mr. Huffman:** Thank you, Mr. Chair. I do have some wording on a potential motion in regard to that summary document. I can put it up on the screen and see if that would look good.

**Mr. Milliken:** I move that

> the Select Special Committee on Real Property Rights direct research services to prepare written summaries of the oral presentations made by stakeholders and members of the public, written submissions received from stakeholders, and public written submissions received by the committee's deadline.

I think that that does encompass what I was intending on moving.

**The Chair:** Excellent. Thank you, MLA Milliken.

Is there any further discussion on this motion?

Seeing and hearing none, those in person in favour of the motion moved by MLA Milliken, say aye. Those in person opposed, say nay. Those online in favour, say aye. Those online opposed, say nay. Thank you.

> That motion is carried.

Moving on to item (b), issues and proposals document. Another research item that members may want to request from research services is an issues and proposals document. It is a document that sets out the major issues and proposals made by the members of the public and stakeholders in their written submissions and oral presentations made to the committee during its review. This document may be helpful during the committee's deliberation phase as it helps to organize the feedback the committee has received according to the major issues that have been identified.

At this point in time I'll open it again to the floor for any comments or possible motions from members. We do have a motion that the committee may want to consider. I'll allow the clerk to put that up on the screen. As this is a standard format of every committee, anybody that wishes to move this motion – I'll please get the clerk to put it up on the screen first and open it back up to the floor.

**Mr. Milliken:** Yeah. I move that

> the Select Special Committee on Real Property Rights direct research services to prepare a summary document of the issues and proposals related to the committee's mandate identified in the stakeholder and public written submissions and oral presentations.

**The Chair:** Is there any further discussion on this particular item?

Seeing and hearing none, as read by Mr. Milliken, those in person in favour of the motion proposed, say aye. Those in person opposed, say nay. Those online in favour, say aye. Those online opposed, say nay. Hearing none,

> that motion is carried.

At this point in time we have a couple of very brief items to finalize this meeting as what is listed on the agenda, but as we are at 1 o'clock right now, I would need unanimous consent to extend time to be able to continue on with this meeting. I will ask one question and one question only:

> are there any persons opposed to proceeding and extending time to allow us to complete the final agenda items?

If you're opposed, please say nay.

Seeing and hearing none,

> we will extend.

We are now on (c), other research requests. Finally, are there any other research items that the committee would want to request from the LAO research services at this time before we have our deliberations later in November? MLA Rutherford.

**Mr. Rutherford:** Yes. I do have one motion, Chair. I don't know if the LAO already has this particular one. I move that

> the Select Special Committee on Real Property Rights direct the LAO to compile a crossjurisdictional analysis on expropriation legislation across Canada.

I think the motion is fairly straightforward, and I hope for your support.

**The Chair:** Thank you, MLA Rutherford.

I will open up that motion for discussion to the committee. I see MLA Nielsen. Please go ahead.

**Mr. Nielsen:** Yeah. Thanks, Mr. Chair. It's always good to know what's going on in other jurisdictions. It helps us to kind of inform where things could be working, where they're not working. You know, it's never a bad thing to have a lack of information, so I'm happy to support it.

**The Chair:** Excellent. Are there any further comments on the motion moved by Mr. Rutherford? MLA Ganley, I see your hand popping up and going down. Do you have any further comments?

**Ms Ganley:** Not on this motion, no. Thank you, Mr. Chair.

**The Chair:** Thank you, MLA Ganley.

Anyone else?

Seeing and hearing none, moved by Mr. Rutherford the motion on the screen. All those in person in favour, say aye. All those in person opposed, say nay. All those online in favour, say aye. All those online opposed, say nay. Seeing and hearing none,

> that item is carried.

Are there any further items for section 6 by committee members?

**Mr. Milliken:** I think that there might be a motion if we can get it up on the – I'd be perfectly happy and prepared to move that

> the Select Special Committee on Real Property Rights direct the LAO to compile a crossjurisdictional analysis on compensation regimes for expropriation and regulatory takings across Canada.

I think that it's also a pretty self-explanatory one, and I think that as long as we can get it – I personally would just hope and ask that everybody support this one.

**The Chair:** Excellent. Thank you, MLA Milliken.

Is there any further discussion on this motion? I see MLA Nielsen raising his hand.

**Mr. Nielsen:** Yeah. Thanks, Mr. Chair. Happy to support. Again, the more information the better, and it'll help the committee make recommendations to the Legislature when its work is done.

**The Chair:** Excellent. Is there any further discussion on the motion proposed by MLA Milliken?

Seeing and hearing none, all those in person in favour of the motion as it is worded on the screen, say aye. All those in person opposed, say nay. All those online in favour, say aye. All those online opposed, say nay. Hearing none,

> that motion is carried.

Before moving on, in dealing with 6(c), is there anything further?

Seeing and hearing none, we are moving on to agenda item 7.

**Ms Ganley:** Oh. Sorry, Mr. Chair. I just wasn't quite able to get the hand raised up.

**The Chair:** No worries, MLA Ganley. We understand you're having problems with your chat feature, so please go ahead.

**Ms Ganley:** Yeah. I just had sort of a question with respect to research, and maybe this is for you, Mr. Chair. I apologize. It's just that there's a little bit of awkwardness with the way the sort of motion and then submotion happen, where we're not sort of aware that an issue is going to be dealt with on a particular day. Then we see motions coming from the government side, but of course at that point the time for motions has passed on our side.

I'm just wondering if there's going to be a further opportunity, because I think the crossjurisdictionals we have asked for are fine although, certainly, what I heard from the Farmers' Advocate and other folks was that, I mean, the real issue isn't expropriation or compensation for expropriation; the real issue sort of more so surrounds the AER processes that are before us. You know, whether it's appropriate now to ask for unanimous consent to sort of draft a motion off the cuff or whether it's appropriate to discuss it at a further time, I think it's worth getting a crossjurisdictional on those because those are the issues, I think, that have been identified by a lot of people. I think it might inform our analysis to know what's done in other jurisdictions with respect to this sort of conflict in terms of the supporting of sort of – how to put it? – the abbreviating of rights of people to their land because of certain developments on their land, whether or not it might be good to sort of understand what that process looks like in other areas.

I'm happy to wait to a further time and propose such a motion if it wouldn't be out of order, or I'm happy to try and draft off the cuff, but that's probably harder.

***1:05***

**The Chair:** MLA, just to assure you, the clerk has informed me that they love doing research. No. What I'm trying to say here is that, yes, definitely there are going to be opportunities in the future for you to be able to bring additional items for research. We definitely want to make sure the committee gets as much before it prior to deliberations, so you will have the opportunity in this section to be able to address or bring a motion to research services to be able to collect that information for you. Does that answer your question, MLA?

**Ms Ganley:** It absolutely does. In that case I won't try to write it right now because that can result in odd consequences. Thank you very much, Mr. Chair.

**The Chair:** Perfect. Thank you, MLA Ganley.

At this point we will move on to agenda item 7, other business. To the committee members: is there anything else under other business from the committee members?

Seeing and hearing none, moving on to agenda item 8, date of the next meeting. The next meeting will be at the call of the chair.

Agenda item 9, adjournment. If there is nothing else for the committee's consideration, I'll call for a motion to adjourn. I see MLA Yao. Moved by MLA Yao that the meeting be adjourned. All those in person in favour, say aye. All those in person opposed, say nay. All those online in favour, say aye. All those online opposed, say nay. Thank you. That motion is carried.

Thank you, everyone. Please remember to clean up your drinks and items before leaving. This meeting is adjourned.

[The committee adjourned at 1:07 p.m.]

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