



Legislative Assembly of Alberta

The 28th Legislature  
Third Session

Standing Committee  
on  
Resource Stewardship

Wednesday, December 10, 2014  
6:15 p.m.

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**Legislative Assembly of Alberta  
The 28th Legislature  
Third Session**

**Standing Committee on Resource Stewardship**

Goudreau, Hector G., Dunvegan-Central Peace-Notley (PC), Chair  
Hale, Jason W., Strathmore-Brooks (W), Deputy Chair

Allen, Mike, Fort McMurray-Wood Buffalo (PC)  
Anglin, Joe, Rimbey-Rocky Mountain House-Sundre (Ind)  
Bikman, Gary, Cardston-Taber-Warner (W)  
Blakeman, Laurie, Edmonton-Centre (AL)  
Brown, Dr. Neil, QC, Calgary-Mackay-Nose Hill (PC)  
Calahasen, Pearl, Lesser Slave Lake (PC)  
Cao, Wayne C.N., Calgary-Fort (PC)  
Casey, Ron, Banff-Cochrane (PC)  
Fraser, Rick, Calgary-South East (PC)  
Jeneroux, Matt, Edmonton-South West (PC)\*  
Johnson, Linda, Calgary-Glenmore (PC)  
Mason, Brian, Edmonton-Highlands-Norwood (ND)  
Xiao, David H., Edmonton-McClung (PC)  
Young, Steve, Edmonton-Riverview (PC)

\* substitution for Steve Young

**Also in Attendance**

Towle, Kerry, Innisfail-Sylvan Lake (PC)

**Support Staff**

W.J. David McNeil	Clerk
Robert H. Reynolds, QC	Law Clerk/Director of Interparliamentary Relations
Shannon Dean	Senior Parliamentary Counsel/ Director of House Services
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Stephanie LeBlanc	Legal Research Officer
Sarah Amato	Research Officer
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Jody Rempel	Committee Clerk
Karen Sawchuk	Committee Clerk
Christopher Tyrell	Committee Clerk
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Tracey Sales	Communications Consultant
Janet Schwegel	Managing Editor of <i>Alberta Hansard</i>

**Standing Committee on Resource Stewardship**

**Participant**

Ministry of Justice and Solicitor General  
Lee Cutforth, Property Rights Advocate



**6:15 p.m. Wednesday, December 10, 2014**

[Mr. Goudreau in the chair]

**The Chair:** Colleagues, if I can get your attention, we'll call the meeting to order.

I'd like to welcome all members and staff in attendance at tonight's meeting of the Standing Committee on Resource Stewardship. For the record my name is Hector Goudreau. I'm the MLA for Dunvegan-Central Peace-Notley, and I'm honoured to chair this committee.

I'd now like to ask every member that is joining the committee at the table to introduce themselves, and if you're a replacement for somebody else, indicate that as well as we go through the introductions. I'll start on my right.

**Mr. Hale:** Jason Hale, Strathmore-Brooks.

**Mr. Allen:** Good evening. Mike Allen, MLA for Fort McMurray-Wood Buffalo.

**Mr. Xiao:** Good evening. David Xiao, MLA for Edmonton-McClung.

**Ms Calahasen:** Pearl Calahasen, Lesser Slave Lake.

**Mr. Jeneroux:** Good evening. Matt Jeneroux, MLA for Edmonton-South West, substituting for Steve Young.

**Mr. Cao:** Wayne Cao, Calgary-Fort.

**Mrs. Towle:** Kerry Towle, MLA for Innisfail-Sylvan Lake.

**Ms L. Johnson:** Linda Johnson, Calgary-Glenmore.

**Mr. Casey:** Ron Casey, Banff-Cochrane.

**Mr. Cutforth:** Lee Cutforth, Property Rights Advocate.

**Mr. Anglin:** Joe Anglin, MLA for Rimbey-Rocky Mountain House-Sundre.

**Ms Dean:** Shannon Dean, Senior Parliamentary Counsel and director of House services.

**Ms Sorensen:** Rhonda Sorensen, manager of corporate communications and broadcast services.

**Dr. Amato:** Sarah Amato, research officer.

**Dr. Massolin:** Good evening. Philip Massolin, manager of research services.

**Dr. Brown:** Neil Brown, MLA for Calgary-Mackay-Nose Hill.

**Mr. Tyrell:** I'm Chris Tyrell, committee clerk.

**The Chair:** Thank you, and thank you for being here tonight.

Again I need to remind everybody that the microphone consoles are operated by *Hansard* staff, so you don't need to touch the buttons there. Keep your cellphones off the table, the iPhones or BlackBerrys, so we minimize interference with the audio. I'd remind everybody that the audio of committee proceedings is streamed live on the Internet, and it's recorded by *Hansard*.

The agenda was posted online, and I hope you've had a chance to view it and look it over. I need a member to move the adoption.

**Ms Calahasen:** I so move.

**The Chair:** Ms Calahasen moves. All in favour? Any objections? The motion is carried, then.

As well, the minutes from our last meeting were also posted on the internal committee website. I hope you've had a chance to have a look at the minutes of the last meeting, which was on November 26, 2014. Again, a mover if I could. Mr. Casey. All in favour? Opposed? Then it's carried. Thank you.

Mr. Bikman, if you could introduce yourself.

**Mr. Bikman:** Hi. I'm Gary Bikman from Cardston-Taber-Warner.

**The Chair:** Thank you.

We'll move to our business, then. We're fortunate to have joining us tonight Mr. Lee Cutforth, the Alberta Property Rights Advocate. Good evening and welcome, and thank you for joining the meeting tonight. I know that you've had to change your schedule to accommodate our meeting, and I want to show our appreciation for that. I understand that you'll be making a presentation of about 10 to 15 minutes to the committee.

**Mr. Cutforth:** It would be under eight minutes, sir.

**The Chair:** Okay. We would ask, then, that you focus on the recommendations that are in your 2012 and 2013 annual reports. Then we will open the floor to questions from the members. You know, we do have a time constraint at the other end. We have to go back to the House for a sitting later on tonight.

Again, welcome, and I'll turn the floor over to you. Feel free to begin when you're ready.

**Mr. Cutforth:** Okay. Thank you, Mr. Chair. To you and the deputy chair and all the members of the standing committee I want to say thank you for the invitation to appear before you to discuss my 2012 and 2013 annual reports.

I'll begin by briefly saying that when I began serving my three-year term as Property Rights Advocate in December 2012, my primary goal was to establish the integrity of this office so that it would be recognized as a nonpartisan, impartial resource for landowners both in terms of the information we provide and in serving as a credible public voice for landowner concerns. That is why so much of the annual reports before you are devoted to setting out principles of property rights and the principled operational values of this office.

Property rights are not about privilege or class or demographics or ideology. Rather, they are about respecting the property of every person regardless of individual circumstances. In essence, a healthy respect for property rights is one of the manifestations of the rule of law, and you cannot have one without the other. Property rights are complex. They are not just a rural issue. They're not just a big landowner issue. They also are important in urban and suburban neighbourhoods, towns, and acreages. Property rights are vitally important to all Albertans.

Under section 5 of the Property Rights Advocate Act I am mandated to file an annual report which summarizes the activities of the office for the previous calendar year. I am also empowered to make any recommendations relating to property rights that I deem appropriate. That annual report is filed with the Speaker of the Legislative Assembly. It does not get vetted by the Minister of Justice and Solicitor General, in whose ministry we are located administratively, or by the government in general. In the simplest sense the annual report represents one way to influence policy in law to try and make things better for Alberta landowners.

6:25

We do not represent individual landowners on specific files. Rather, it is the approach of representing the interests of all landowners in general by influencing reform of the government's laws, processes, or procedures related to property rights. In the long run I believe that the recommendations in the annual reports and the reforms in law and policy that can come from that are the most useful tools of the Property Rights Advocate office, at least in its current configuration.

The recommendations I've made in the 2013 annual report relate to concerns raised by landowners from across the province through the various calls the office has received throughout the year as well as at the speaking engagements where I have made presentations. In the two reports I have articulated a number of principles of property rights and recognized the deeply emotional element within the property rights discussion.

I have made six specific recommendations, and if I may, I would like to provide a brief summary of those recommendations. First, implementing beneficiary deeds as an estate planning tool, which will be of particular benefit to small landowners. Second, advising against privatization of the land titles office. Third, jumpstarting long-promised reviews of the Surface Rights Act and the Expropriation Act. Fourth, more immediately with the Surface Rights Act, raising the rates for right-of-entry fees under that act without waiting for the legislative review to complete. Fifth, slightly reducing the municipal powers of expropriation in cases where the only purpose of expropriation is to resell the land as lots. Finally, amending the Emergency Management Act to affirm a consistent respect for property owners even in a state of emergency and to clarify the line of authority required if homes do need to be entered during that state of emergency.

Implementing these recommendations will involve varying degrees of complexity. On the one extreme the simplest to implement would be the recommendation respecting land titles privatization. In that regard, the government simply would do nothing, at least with respect to the corporate structure and organization of the land titles office. On the other extreme would be a recommendation for a full public review of the Surface Rights Act and Expropriation Act and the consequential statutory revisions that would arise. I think that reviewing the Surface Rights Act has the potential to be particularly complex as it is not just about government-authorized taking but also about balancing competing interests between landowners, particularly in the case of surface owners and mineral owners.

In a similar vein of complexity, my one recommendation from the 2012 annual report for implementing beneficiary deeds would be a fairly involved legislative process although I suspect to a much lesser degree than the public consultations that would be required for a Surface Rights Act review.

Between these two extremes of complexity is implementing the recommendations for simple amendments I've proposed to the Surface Rights Act, the Municipal Government Act, and the Emergency Management Act since they involve changes that are very narrowly focused.

Property rights are complex, as I've mentioned, and they hold significant emotional elements. The specific recommendations in my annual reports are not meant to be comprehensive cures for all of the ailments that can be found or can be raised in the property rights debate. Rather, the recommendations are intended to be simple, clear proposals, bite-sized amendments, if you will, to support the property rights enjoyed by the average landowner in Alberta. My role as the Property Rights Advocate is to identify

some of those improvements and to bring them into the public discussion, to bring them to your attention as our legislators.

For the purposes of section 5 of the Property Rights Advocate Act the role of this committee becomes deciding if those recommendations are good ideas and whether you want to recommend to your colleagues that the appropriate legislative processes should be initiated to move these ideas into actions that result in beneficial reforms in property rights. Now, I hope to continue to play a role in that evaluation and implementation for property rights.

With that, I'll conclude my remarks and will be pleased to answer any questions you have about the reports or the recommendations.

**The Chair:** Thank you very much, Mr. Cutforth. I certainly appreciated the brevity of your comments.

I guess I'd be remiss – I just found out that congratulations are in order. You're celebrating the second anniversary today of your appointment as the advocate, so congratulations to you on that.

**Mr. Cutforth:** Thank you.

**The Chair:** Also, we were joined by Mr. Mason.

Mr. Mason, if you wanted to introduce yourself.

**Mr. Mason:** Yes. I know Mr. Cutforth.

Brian Mason, MLA for Edmonton-Highlands-Norwood.

**The Chair:** Thank you.

We'll open the floor to questions from members. If you just want to catch my attention, I'll start a speakers list. I would suggest that rather than going all over, we work on the basis of the recommendations as they've come through. Maybe we could start with the questions that relate to the 2012 report and the one recommendation. Once we've gone through those questions, we'll move on to the other recommendations. I think that's going to allow us maybe some order, and it's going to maybe make it easier for Mr. Cutforth to respond and as well for us to get one package.

I would entertain questions on the first recommendation of the report from 2012.

**Mr. Anglin:** Could I disagree with you for one second? I only have one question, and it applies to his most recent report. I think both reports are connected. They're dealing with property rights and his recommendation.

**Dr. Brown:** Are you in a hurry to leave?

**Mr. Anglin:** No, I'm not in a hurry to leave. I just want to be efficient; that's all.

**The Chair:** We're going to get to that particular question, but, you know, I'm suggesting that we ask questions on the basis of how the recommendations are numbered. It was just to keep a sense of order here in that way.

**Mr. Anglin:** Good enough.

**The Chair:** Mr. Allen.

**Mr. Allen:** Well, thank you, Mr. Chair. Welcome, Mr. Cutforth, and thank you for coming tonight. I know that we have a very short period of time, so we'll keep these questions brief.

In the 2012 report you give a very strong preamble leading up to your recommendation. I'm just curious from a couple of perspectives, I guess. What led you to be drawn more to and reference the Montana model for the beneficiary deeds of estate? I

can appreciate it, particularly with smaller landowners and landholders, but are there any other models in Canada that have been adopted? I'm specifically referring more to tax implications – CRA, capital gains, that sort of thing – and whatever implications there are for Canadian estate rules. I mean, the U.S. and the states have very different taxation rules than we do here in Canada. If you could just comment on that.

**Mr. Cutforth:** Right. Well, what inspired me to the Montana model was personal experience. As a practitioner in Lethbridge we did have clients who owned property in Montana and certainly in estate situations. My experience in dealing with transferring that property to a surviving beneficiary with the Montana property was much simpler, quicker, cheaper, and very much in contrast to what we had to go through in Canada, in Alberta specifically, for probate.

Certainly, in a case that I experienced, you know, of a regular model, where we had an elderly widow whose only assets were a small house and a modest bank account and her only beneficiary was a son who himself was senior and retired, it made no sense, to my mind, to force them to go through the complexity and the cost of probate contrasted to what I saw in the Montana model just by my own experience. That's why I'd like to see something similar here, where basically you can make those kinds of testamentary dispositions as simply and as cheaply and as effectively as a surviving joint tenancy, which exists now. A surviving joint tenant can just file an affidavit and become the owner of the title. I'm not sure I see a great difference in that scenario and worrying about the tax implications for a beneficiary deed if it is implemented.

6:35

**Mr. Allen:** I guess that from your experience and your knowledge we would be able to do that as an Alberta legislative ruling as opposed to worrying about what the federal rules are.

**Mr. Cutforth:** Yeah, because the tax implications are separate and apart from conveyancing issues. Conveyancing is a provincial jurisdiction, and whichever way we as Albertans choose to conveyance our property is not going to have a bearing on the tax implications federally.

**Mr. Allen:** Good. Thank you very much.

**Mr. Bikman:** My question isn't going to follow the order that you've set out, but I do want a chance to ask it when we kind of go open mike.

**The Chair:** Can you remind me that you want it?

**Mr. Bikman:** You can count on it.

**The Chair:** That's right.

Dr. Brown.

**Dr. Brown:** Okay. Well, are there not other ways that we can accomplish the same thing under the present legal regime? For example, why couldn't you just transfer a life estate with all of the accrued benefits of, you know, earning income from the land, et cetera, et cetera, subject to a reversionary interest in the person to whom you're giving it?

**Mr. Cutforth:** My answer to that, Dr. Brown, is that it's much more difficult for the landowner to change his mind in the system we now have. It's more difficult to revert. The beneficiary deed is simply an easier process to go through for the landowner. It's

easier to change his mind and less complicated that way than trying to reverse those kinds of legal mechanisms.

**Dr. Brown:** In response to Mr. Allen, did I hear you correctly, that there was no implication, as far as you were concerned, with respect to capital gains?

**Mr. Cutforth:** Well, my point is that I didn't see that there would be a distinction between capital gains with respect to conveying by a beneficiary deed and conveying by the system we have now. There's still a disposition. Capital gains would still apply.

**Dr. Brown:** So it's still a deemed disposition?

**Mr. Cutforth:** That's my understanding, yes.

**Dr. Brown:** Thank you.

**The Chair:** Other questions or comments on that recommendation?

If not, we'll move to the first recommendation of the 2013 report, and that is the recommendation "that the Government retain the direct and full ownership and operation of the land registry system under its existing format." Any questions on that particular one?

If not, we'll move to recommendation 2.

**Mr. Mason:** Mr. Chairman, I just did have a question of procedure. Who is going to dispose of these recommendations, these recommendations to the government, to the committee? Do we accept them or just receive them for information? How do we proceed?

**The Chair:** For now we are questioning how the recommendations have come about and if we need further clarification. We were mandated by the Legislative Assembly to review the reports and then for us to prepare our report back to the Legislative Assembly. There was a motion put on the floor for us to do that.

I would suspect that part of our deliberations will be: do we accept these recommendations? Do we accept them with modifications? Do we leave them as is? That becomes the report that we need to get back to the Legislative Assembly.

Dr. Massolin might add.

**Dr. Massolin:** That's correct.

**The Chair:** Does that provide enough clarity, Mr. Mason?

**Mr. Mason:** Yes. Sure. We'll recommend on the recommendations.

**The Chair:** That's really where we're at.

**Mr. Mason:** And then the Legislative Assembly does what exactly?

**The Chair:** An example might be: we recommend that a particular ministry look into it further. We recommend that, you know, certain groups take further action on different things, those kinds of things. I would suspect that would become part of our final report.

**Mr. Mason:** Okay. Thank you.

**The Chair:** We're okay, then, with recommendation 1? Okay.

Recommendation 2, "that the Government direct the prompt commencement of a full public review of the Surface Rights Act and the Expropriation Act."

**Mr. Anglin:** I knew that if I waited long enough, I'd get here. Thank you, Mr. Chair. My question actually pertains to this

recommendation and pretty much every recommendation thereafter. I just want to put that on the record so I won't repeat myself.

Thank you for appearing. Lee, we go back a ways, so what I want to ask you – and you can make it specific to this recommendation. Clearly, we're looking at your recommendation on the Surface Rights Act. I can't find any case whatsoever that had gone to surface rights where they've actually denied access for any property owner. There might be one out there. But what I'm going to ask you pertains not only to this act but pertains to the Land Stewardship Act, the carbon capture act, and many of the others that you brought forward, which are the Emergency Management Act and the Municipal Government Act.

You've talked to these groups. On page 10 of your 2013 report I would like you to talk about the three elements that you talk about under Fair Process. Does that sort of tie in all the pieces of legislation that make up all the issues surrounding property rights? I've always defined it as one word, process. In a variety of different ways what property owners need most is that fair process, that when something is taken away from them, it is taken in the public interest, that they can see that it's been taken for the public good, and that they've not been sort of made a martyr but that they've been compensated justly for what they've had to give up for the public good. If you could talk about those three elements and across all the legislation that we talked about and how we as a Legislature could make this fair process consistent in every act that we are considering these recommendations under.

**Mr. Cutforth:** Well, the three elements. I begin with public purpose because, as you will remember, Mr. Anglin, from the first time we met a year and a half ago, I flogged an American case, *Kelo* versus city of New London, just to illustrate the capacity to warp what public purpose means. I think that's an essential element for the legitimacy of any taking or encroachment process. The mechanics of it – notice, right to a hearing, right to appeal – are certainly important elements, too. Fair compensation is last and in many respects, to my mind, the least of it. I think that without the first two, even with fair compensation, that doesn't always give credibility or legitimacy to a taking process.

You had talked about whether these principles, the elements, could be protected just with the Surface Rights Act and the Expropriation Act. I think there are certainly other pieces of legislation that can be looked at. It's hard to do it all comprehensively. I think it's very much piecemeal. The Surface Rights Act, to me, is a start because it's complicated enough as it is by its own regime. But fair process, I think, is an essential element.

I know that when I was first appointed, I spoke with Professor Brown, who is now on the Court of Appeal, because he had done some writing on that issue. He spoke about the right to a hearing, the right to an appeal, and how he felt, for example, that in I believe it was the Responsible Energy Development Act of the day, the procedural rights should be in legislation, not regulations. I think that's a fair issue to look at. In that sense, the Surface Rights Act review by itself won't cover everything, but it's a start, and it covers a number of issues that people have come to me about.

You had asked about the carbon capture issue. I think, again, of an illustration where process can be an issue; for example, seismic testing. When a seismic company wants to come onto a person's land, if the seismic testing is for oil and gas exploration, it's one of the few areas where a landowner has the right to say no. But if it's for the purpose of testing for carbon capture and storage facilities, the landowner doesn't have the right to say no, and the seismic

company can apply for a right-of-entry order. That's a procedural disparity that could bear looking at.

6:45

**Mr. Anglin:** Just one follow-up. Would you agree with me, then, that if we approached each contested or questioned piece of legislation to satisfy the question of fair process, we would make headway in satisfying many of the concerns?

**Mr. Cutforth:** Well, it is a process, and I don't think fair process is a destination in that sense. I don't think you're going to be able to sit down and come up with a plan to fix everything in the space of a year.

**Mr. Anglin:** Oh, I'm not going down that road, but I mean just the idea, the importance of applying fair process every time we look at a piece of legislation that deals with the issue of property rights.

**Mr. Cutforth:** Absolutely. I think one of the points I tried to make in that section you referred to on fair process is that even beginning with the question of public purpose in takings is an important part to establish legitimacy because fair process ultimately goes to the legitimacy of the taking.

**Mr. Anglin:** Yes. Okay.

**Mr. Bikman:** Lee, you and I have had a number of opportunities to have fulsome conversations about the issues surrounding property rights, and I think that your two reports do a good job of kind of laying out the concerns that, particularly, rural Albertans have. I represent a rural riding, as you know. I appreciate that you've kind of clearly and concisely wrapped up what some of the issues and concerns are, whether it's the cultural sense, the attitude of small-town people losing control over their lives and not having much say in decisions which affect them, and things like that.

You make reference to the Alberta Land Stewardship Act, ALSA, as well, "as an object lesson in this relationship between the philosophy of government and property rights." A question, then: do you think that simply removing the offending clauses in Bill 36 such as no access to the courts – in other words, it bypasses expropriation, I've argued. Dr. Brown has argued that it doesn't, but we know how long he's been drinking the Kool-Aid, so that explains that perspective. Anyway, no compensation payable and that . . .

**Ms Calahasen:** Why is he so mean?

**Mr. Bikman:** I'm sorry. Did you take that seriously? Oh, you're an advocate on behalf of the downtrodden and the oppressed, of course.

The fact that those clauses in the bill actually trump the Expropriation Act, among other things: are those, in your mind, the most offensive clauses? We understand the need for organization and order for planning and so on, but those clauses seem to be the ones that are the most potentially frightening and upsetting to the rural people that some of us represent.

**Mr. Cutforth:** Well, I think there's a fair argument to be made about the procedural element, and it speaks to what Mr. Anglin was getting at, I think. I think that there are two elements. That's one of them. You can certainly make the argument. I think that with the right motivation you can say that the intention is to make a fair process if you remove certain clauses.

Now, on the other hand, you can say: well, it would never happen here. But I think the fear that I hear from many landowners – it's not that they've faced loss under ALSA, the Land Stewardship Act, now; it's that they fear that perhaps some future government with less benevolent intentions might be able to misuse those provisions. I think that's, from what I discern in talking to people, where some of the concerns come from. I think that part of the mistrust, again just based on my conversations with folks out there, is with the accountability. With the centralization of the planning process you don't have the same accountability that you do with local or even regional councils, so I think that affects maybe the trust that some people may have in it.

**Mr. Bikman:** And those fears, given the study of history over time, would suggest that something that gives government a power that it promises it's not going to use doesn't restrict or prohibit that power from being used by someone less benevolent or with ulterior motives.

**The Chair:** If I may interrupt a little bit, please keep your comments to the recommendations . . .

**Mr. Bikman:** They are.

**The Chair:** . . . you know, as close as possible to comments on that.

**Mr. Bikman:** All right. Are you suggesting that I deviated, or were you afraid I was going to go . . .

**The Chair:** No. We're starting to get away from what we're wanting to do here tonight.

**Mr. Bikman:** This is why I came. This is what I wanted to do, but I'll be quiet.

**The Chair:** Mr. Cutforth, if you've got some quick comments.

**Mr. Cutforth:** I don't have any follow-up, Mr. Chair.

**The Chair:** Thank you.  
Mr. Mason.

**Mr. Mason:** Thanks very much, Mr. Chairman. Mr. Cutforth, I wanted to ask about the recommendation that we have a full public review of the Surface Rights Act and the Expropriation Act. I guess I'm concerned that that's a very, very big and broad sort of recommendation. I wanted to go back to the points that you've made in this section of your report. You have six bullet points on pages 14 and 15. Now, you say that the concerns reported to your office include the following claims. Are these bullet points things that you have verified, that are legitimate, or are you just reporting on the claims that you have heard?

**Mr. Cutforth:** We're reporting on the claims that we've heard. We haven't directly investigated any of them.

**Mr. Mason:** You haven't evaluated these?

**Mr. Cutforth:** No. We based it on what people tell us. We take it at face value, and that's what's reported here.

**Mr. Mason:** All right. Then the entry fee recommendation, the next one, 2013.03, is related, though, to the last bullet point on page 15, the entry fee, is it not?

**Mr. Cutforth:** Correct.

**Mr. Mason:** So there is one recommendation that flows out of those concerns that have been raised.

**Mr. Cutforth:** An immediate one that wouldn't require necessarily a review to address.

**Mr. Mason:** Now, I guess what I would prefer is if there were some very specific things in the Surface Rights Act and the Expropriation Act that needed to be evaluated that you or your office could help us with before we open the door to something as broad and sweeping as a full public review. I'm not sure if the case has been made for that or where that would take us or whether or not the effort and energy that went into that would actually be focused enough to get us clear results and move us forward. That's my concern with that recommendation.

**Mr. Cutforth:** Right. You know, that's not unreasonable, that concern. To be quite honest, I wouldn't say that a comprehensive review has universal support even among landowners. I've come across one or two, quite frankly, that are afraid of a review because they fear they'll end up worse off than they already are. I'm not sure that's a reason not to review it, but that's the way it is.

I based the preceding recommendation for review on a couple of things. One is that from the time I was appointed, I had heard that it was the government's intention to review those acts in any event, and the time frame kept getting kicked down the road, and it never happened. Yet a number of the recurring issues that were listed in those bullet points kept coming up, and really it seemed, to my mind, that the only way to deal with them given the complexity of the surface rights regime was to deal with it in a review because one area will affect another area and so on. So dealing with these would be a good way, to my mind, to address some of the recurring problems because it is part of a complex system and would hopefully anticipate unintended consequences.

**Mr. Mason:** Okay. I guess I would prefer, if you feel that a review is needed, that you help us narrow the scope and provide some focus to the review. Otherwise, I am not sure what we are going to get out of it. That's my comment. Thank you, Mr. Cutforth.

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

6:55

**Mr. Casey:** Again, sort of a general question, nothing specific to this one recommendation. I better sneak in before the chair gets me.

My question was: your comments that you have in your report, do they apply only to freehold lands, only to titled land, or do they apply to leaseholders that occupy government land? You talked about landowners and the rights of landowners to be compensated. Are you considering unleased – so is leased land included in your comments or not included in your comments?

**Mr. Cutforth:** Not included.

**Mr. Casey:** They're not included?

**Mr. Cutforth:** No. My position is that interests and rights of leaseholders are dealt with in the terms of the lease, and that's where you look for their rights and remedies.

**Mr. Casey:** Okay. Sometimes they get confused.

**Mr. Cutforth:** Yeah. It's a difficult one. I think sometimes leaseholders get the idea that because it's been in the family a hundred years, there is de facto ownership, but in terms of legally enforceable rights it still goes back to what's in the lease agreement.

**Mr. Casey:** Okay. Well, thank you. I just wanted to be clear in my own mind as we move through this.

Thank you, Mr. Chair.

**The Chair:** Mrs. Towle, followed by Dr. Brown.

**Mrs. Towle:** Thank you. Mr. Cutforth, I appreciate you being here. I have two actual questions for you. When you said, "Full public review of the Surface Rights Act and the Expropriation Act," is the reason that you didn't get more specific – were you withheld from getting more specific, or you just felt that it was so complicated that the whole thing had to be reviewed?

**Mr. Cutforth:** No, it wasn't for any external reason. It was my personal belief that the issues were complicated enough and interrelated enough that the only way to properly deal with them and deal with unanticipated consequences was to do a comprehensive review.

**Mrs. Towle:** My second question to you. What I hear a lot in my riding is about when the operator signs the lease and then the operator goes bankrupt – and I see that's one of your bullet points – and then the Surface Rights Board is not guaranteeing those payments to the landowner, which is causing significant hardship to some of our landowners. What you're saying here is that the statutory revisions – that's why the Surface Rights Board can't enforce the payments or can't have the province guarantee those payments. What revisions do you need to see?

**Mr. Cutforth:** Well, it's the position of the Surface Rights Board that – and I think you're specifying section 36 payments, in a perceived conflict with the Bankruptcy and Insolvency Act. The Surface Rights Board has taken the position that when there is a bankruptcy, they will not make section 36 payment orders because they believe that is a preference of a creditor that conflicts with the Bankruptcy and Insolvency Act, and therefore they won't do it. My personal view is that that's not correct reasoning, but they disagree with me, and it's their jurisdiction. So failing my being able to convince them to revise their logic, the only option is to change the legislation so that we clarify the nature of section 36 payments and move it out of the realm of the preferential payments, that the Surface Rights Board thinks they are.

**Mrs. Towle:** Thank you.

**Dr. Brown:** Mr. Cutforth, with respect to those six recommendations – I share some of the concerns that Mr. Mason has expressed about a full-blown public review of the Surface Rights Act and the Expropriation Act. Those can be lengthy and extremely involved, and they take a lot of time, a lot of resources, a lot of money. I much prefer to see specific recommendations, you know, moved upon.

I wonder if you could tell us: with respect to those six particular bullets that you put in your report there, you know, how widespread are those concerns? In how many instances, for example, would you have been advised where a right of entry order had been made before good-faith negotiations had been undertaken? How many times would there be a failure to follow the rules with respect to timely delivery of signed contracts and

whatnot? I mean, I'd like to get an idea of how widespread these particular concerns are.

**Mr. Cutforth:** Right. It's sporadic. You know, I can't say that it happens every month.

**Dr. Brown:** Is it fair to say that it's anecdotal?

**Mr. Cutforth:** To a certain extent. You know, I'm reporting what comes in. It's not like there are regularly five calls a month that deal with that issue. I think that's what you're getting at, sir. It's anecdotal in the sense that that is what gets reported to our office. It is not consistent in terms of our reports that come in on a monthly basis.

**The Chair:** Other questions or comments on recommendation 2?

No. We'll move on then to number 3, and that's where your recommendation is that the initial rate for the calculation of entry fees be set at no less than \$1,200 per acre.

**Mr. Casey:** I'm just curious. Why not \$1,500? Why not \$1,000? Where did the \$1,200 come from? Normally something like this would recommend that an appropriate fee be brought forward. You're very specific. I'm just curious.

**Mr. Cutforth:** Right. To a certain extent it's arbitrary. You know, it could be \$1,000; it could be \$1,500. That just seemed a bit of an arbitrary number based on relative land values, from back in the day when that section was first enacted to what they are now. It's also a recognition, I think, of a growing appreciation of the long-term consequences of some of these resource developments on landowners, that aren't always reflected or weren't always considered at that time either, I don't think.

**Mr. Casey:** Excuse me, Mr. Chair. Just one more.

**The Chair:** Yes. Go ahead.

**Mr. Casey:** So \$1,200 per acre on 1,000 acres?

**Mr. Cutforth:** No. I believe that it's based on a maximum of a 10-acre parcel for well sites, for example.

**Mr. Casey:** I guess that's obvious, what they had done here. So are you recommending that that still remain, that the 10 acres be used?

**Mr. Cutforth:** I'm not recommending any changes to that. The only recommendation I'm making is about the rate of compensation going from \$500 to \$1,200.

**Mr. Casey:** Yeah. And the way I currently read it is that it's \$5,000 or \$500.

**Mr. Cutforth:** Right. That's based on the 10 acres.

**Mr. Casey:** Yes. With no cap.

**Mr. Cutforth:** Well, I think that you could, you know, have a corresponding cap of 10 times \$1,200 an acre, just as it is now 10 times \$500.

**Mr. Casey:** Okay. But you're not making a recommendation as to whether it's a 10-acre calculation or a 20 or a 15.

**Mr. Cutforth:** No, I'm not.

**Mr. Casey:** Okay. Thank you.

**The Chair:** Mr. Cutforth, when was the \$500-an-acre rate established?

**Mr. Cutforth:** I'm sorry. I don't recall.

**Mr. Anglin:** It was back in the '80s.

**Mr. Cutforth:** Yeah. It was quite a while ago.

**The Chair:** Yeah. Thank you.  
Mr. Allen.

**Mr. Allen:** Thank you, Mr. Chair. You made a comment earlier on another recommendation about, you know, things that were stuck in regulation that should be in legislation, and in this case you've, I think, most appropriately said that this is something that should be in regulation so that it is adaptable. But do you have an actual model for what this would – I mean, are we talking about setting the access rate based on the value of the land or the value of the resource or the value of the minerals? Is there something that we could have as an example for future reference, if it was in regulation and, as the market changes, if the value goes up or it goes down, rather than just saying in regulation that, you know, every three years it'll increase by 3 per cent or 5 per cent?

**Mr. Cutforth:** You mean rather than relying on the wisdom of cabinet.

**Mr. Allen:** I have no comment on that other than to suggest that if we're putting it in regulation, like you said in the previous question – is this just an arbitrary number that was picked out, or is there some kind of formula that we can rely on that would be best practice across Canada for other provinces doing the same sort of thing?

**Mr. Cutforth:** I think that the most verifiable standard on that would be looking at land values themselves because I think that is the simplest and most easily verified for whoever is making that assessment.

**Mr. Allen:** But, I mean, there again: if you had 10 acres of land down in Brooks that's valued at – I have no idea what it's worth down there.

**Mr. Hale:** It's climbing. It depends if it's irrigated or native grass or farmland.

**The Chair:** It's \$2,000 versus \$10,000.

**Mr. Allen:** So \$2,000 an acre. And up in Wood-Buffer right now developed land is about \$2 million an acre. So it would be the same amount per acre across the province?

**Mr. Cutforth:** As it is now, yes.

**Mr. Allen:** Okay. It's just kind of a grey area for me as to, if you do put it into regulation, how you manage that for future growth.

**Mr. Cutforth:** Right.

**The Chair:** Thank you.  
Ms Johnson.

**Ms L. Johnson:** Mr. Allen asked my question. Thank you.

**The Chair:** Thank you.  
Other comments or questions on recommendation 3?

If not, we'll move to 4: "That the Legislature amend the [MGA] to delete section 14(2)(d), and remove from the municipal powers of expropriation the purpose of selling land as building sites."

Comments or questions?

7:05

**Mr. Hale:** Mr. Chair, I have a question. Excuse my voice there Mr. Cutforth. Hopefully, you can understand me.

So is there a specific reason – is this happening quite often? Is this something, too – and I know that there have been instances where the province has also done that. So is this something that you just, I guess, have a lot of examples of, or is it just kind of a one-off, and you're trying to stop it before it happens?

**Mr. Cutforth:** Well, it is twofold. I mean part of it goes back to my phobia over the Kelo decision, which is analogous to this, but it does happen here in Alberta. I have had, I believe, two cases, certainly, actual instances where a town has moved to expropriate land that a private individual was subdividing, developing, selling on their own behalf. There was no discernible public purpose in it other than the municipality wanting to resell it themselves. So it is based on something actual, again, not frequent, but to my mind it's more the magnitude of the issue than the frequency of it happening that's important.

**Mr. Hale:** Okay. Thank you.

**The Chair:** I would like to hear your comments about the smaller municipalities where they cannot attract a developer and sometimes might need housing developments. They are the developer, but they need to expropriate land for that to happen; otherwise, their community cannot grow. In a lot of rural Alberta it's the small towns that actually end up being the developer.

**Mr. Cutforth:** Well, I guess, Mr. Chair, I'd ask the question: why do they need to expropriate? Why can't they just buy it like any other developer would? I think that's the issue. It's not that I'm saying that towns should not be allowed to develop, just that they shouldn't have the power of expropriation when they're trying to accumulate the land to develop because that does create market imbalances.

**The Chair:** Thank you.

**Ms Calahasen:** On the question of the expropriation of land by municipalities, is there a lot of that going on, or have you sort of heard from a number of people dealing with this from a municipal perspective?

**Mr. Cutforth:** Well, expropriations are more common. I mean, certainly, in Lethbridge, where I'm from, I don't know that expropriations are a large concern, because for the most part they're dealt with by negotiation between the city and the landowner. Even with the expropriations that happen, generally it's for a fairly clear public purpose. Again, I don't think that there's much of an issue when it's for a public purpose. I think that the concern comes when it's really just to resell the land, as a private developer would. I'd mentioned those two cases that have come up.

**Ms Calahasen:** Yeah. I saw that, but those are the only two cases that exist as of the time you've been appointed?

**Mr. Cutforth:** Well, the only two I've been made aware of.

**Ms Calahasen:** Okay. There could be possibly more is what you're saying.

**Mr. Cutforth:** I'm not aware of that.

**Ms Calahasen:** Okay. Thank you.

**The Chair:** Mr. Allen, followed by Mr. Bikman.

**Mr. Allen:** Thank you. I guess the only concern I have with this, Mr. Cutforth, as someone who's recently gone through an expropriation – and I have some intimate experience with it now. We had an entire block that was expropriated and quite a number of commercial buildings, and I chose to negotiate through it, and the other owners on the block chose to be objectors to the expropriation process, which is long and drawn out. To just remove something or to make it something that's a flat example for the entire province troubles me because, as the chair just mentioned, there are some rural areas – it's different in every area. How do you balance the difference between the rights of the property owner and the public good?

I've also witnessed areas where we've had people that have specifically held on to land and timed it out for more of a land speculation purpose when there was no other land available, and it's had serious impacts on marketability for the rest of the community.

So if we have a community that has – I mean, we were at a point where Wood Buffalo had a shortage of 2 million square feet of commercial space and approximately 27 per cent of commercial businesses for what the demand was for that region, so any opportunity there was to get land was significant for the community. How do you balance that in a simple statement for legislation across the entire province? How do you balance the difference between the rights of the landowner and the rights of the public good? Because my understanding is that's what . . .

**The Chair:** If I could interrupt, time is moving on, so make sure that our comments are shortened, and we'll expect short answers. Thank you.

**Mr. Cutforth:** I think it depends, Mr. Allen. It comes down to how you define the public good. I guess I still have a philosophical problem with defining the public good in a way that is a de facto private land development. You know, I guess I remain unconvinced that commercial development like that is a proper ground or a proper public reason to take away someone's property. Maybe you can somehow construe the public good in a different way, but I haven't been able to do it yet.

**The Chair:** Mr. Bikman, followed by Mr. Mason and then Mr. Anglin.

**Mr. Bikman:** Thank you. You live in Lethbridge, you've practiced law in Lethbridge, and you know that the city of Lethbridge is one of the competitors in the marketplace for the sale of land. The city of Lethbridge is in competition with the private developers, and there have been instances that I know of personally where private developers have been denied permission to develop their lands. The city is kind of holding it, banking it, you know: we want to buy that some day; we want to do something different with it. Isn't this an attempt to prevent an abuse of that? You're regulating. You're deciding who gets permits, but you also want to buy the land so you can sell it yourself as a city.

**Mr. Cutforth:** I wouldn't say that it's directly dealing with that because the city could still do the things that you're describing if they bought the land on the open market. So I don't think that what I'm recommending would solve that issue.

**Mr. Bikman:** Okay.

**The Chair:** Mr. Mason.

**Mr. Mason:** Thanks very much, Mr. Chairman. Well, in my time on Edmonton city council we had a chance to deal with this indirectly in a couple of ways. In one area the city didn't expropriate land, but what it did was that it decided that it was going to take an older mixed-use area that had some private homes and some commercial, and they were going to turn it into an industrial area. They put in all the heavy-duty sewers and all of the utilities suitable for that. Then, of course, they added that onto people's water bills, onto their utility bills and were trying to drive people out by essentially charging them costs that they couldn't afford. There was one particular widow that I tried to help in this matter and get those bills forgiven, but it would have been a lot better if the city had been able to simply expropriate the land. You're saying that they do have that right, but the city, for one reason or another, at that time chose not to do it, and they went this other way, and it was very unfair.

I guess the concern that I have, really, is that if the city is trying to assemble land and some property owner sees the city coming along and has really big pockets – I guess the question is: how do you arrive at a fair value if the city doesn't have the right to expropriate? I mean, a single holdout can sterilize a whole development, right? So how do you deal with that?

**Mr. Cutforth:** I guess it depends upon the reason for the expropriation. Again, this isn't meant to interfere with a legitimate public purpose, however that might be framed, and if it's urban redevelopment, you know, maybe that can be brought into it. I think that my point in this recommendation is to deal with the cases that I did have reported to me where there was no such public purpose in any form. It was just to resell the land, perhaps at a faster rate than the rightful owner was willing to do it. It wasn't even to change the purpose of the land in those cases. It was to just resell it for the same purpose that the rightful owner was trying to sell it for.

**Mr. Mason:** So we would have to be very, very careful, then, in narrowing this. If we change the legislation as you're proposing, it could have unintended consequences. You could significantly reduce a municipality . . .

**The Chair:** Colleagues, if I may interrupt here, we're getting very, very close to an adjournment time.

**Mr. Mason:** Okay.

**The Chair:** I'm going to ask one thing. Read or identify your questions. If, Mr. Cutforth, you could over the next couple of days send your responses in writing to us, would that work?

Mr. Anglin, if you could ask questions, then we'll quickly move on to the other recommendation and do that.

7:15

**Mr. Anglin:** Just to be clear, we're not proposing anything to stop a municipality from expropriating property for the public good; what we're really looking at by removing this one section is to stop a municipality from expropriating private land for another

private profit purpose, which, to me, is absolutely unfair. That's why I agree that this should be removed.

Thank you.

**The Chair:** Good. Recommendation 5, then: are there some questions there about the amendment of the Emergency Management Act "to clarify and affirm the consistent respect for and deference to private property rights"? Any questions on that particular one?

**Ms Calahasen:** I was looking at page 18 of your information. You were talking about what the RCMP did under the Emergency Management Act, and then you list a number of things. Could you tell me whether or not the list that you have put in there in bullets on page 19 – was this the order that they were done in in terms of the forced entry, then taking of the firearms, then thinking about the actions taken in good faith and making sure persons in distress were there, or are those just bullets for our sake?

**Mr. Cutforth:** I'm sorry; I'm not sure that I follow your question, ma'am.

**Ms Calahasen:** Okay. On page 19 you have bullets talking about what happened while the flood occurred.

**Mr. Cutforth:** Okay. Yes.

**Ms Calahasen:** Then you said that they looked at section 19 of the Emergency Management Act, and then they took possession of improperly stored firearms, and at no time was there – things of that nature. So my question is: are these bullets based on the way that it was carried out, or are these just bullets that you are identifying as concerns?

**The Chair:** We'll just read those into the record, so we'll expect a response as we go on.

**Mr. Cutforth:** I'll just say quickly that that first set of bullets is really taken from the letter the RCMP wrote to me reporting their own actions.

**The Chair:** Okay. Other questions? I feel that I'm having to rush the discussion, and we are getting into some very interesting comments. Mr. Cao.

**Mr. Cao:** Thank you, Mr. Chairman. I would love to ask you a question regarding comparing the situation in our province relative to the other provinces, how they deal with the subject matter of property rights and the situation that you just mentioned, you just finally taking over and doing that. So if you can have that . . .

**Mr. Cutforth:** I think that's a swamp that will really take us beyond the reports before us.

**Mr. Cao:** Right.

**Mr. Cutforth:** There is some work out there that compares – I think it's the Frontier policy institute that has done a study comparing the provinces. I have a bit of a problem with their methodology, but that's about the only real study I know of that deals with each province across.

**The Chair:** Mr. Cutforth and Mr. Cao, I think our research people could do some digging into that and get some more information if we deem it necessary.

**Mr. Cao:** Sure. Thank you.

**The Chair:** Well, once again, thank you for your presentation and taking the time to be with us tonight and to answer all of our questions. We certainly appreciate that. Certainly, you're free to leave if you wish. As a committee we'll discuss where we're going to go from here. So thank you very much.

**Mr. Cutforth:** Sure. Certainly. Thank you, Mr. Chairman. I do want to affirm my availability whether through written questions or otherwise.

**The Chair:** There may be a need for a teleconference somewhere down the line. Thank you.

**Ms L. Johnson:** Mr. Chair, same time next week?

**The Chair:** I would suggest that we would look at another meeting next week some time to see which way we're going to go with all of this and maybe make some recommendations as to what we've heard and what the recommendations are on the report. I would suggest a similar time frame for next week.

**Mr. Mason:** We won't be here.

**The Chair:** You're not going to be very far away. Edmonton is . . .

**Mr. Mason:** No; I'll be here. I'll be here, but the rest of you have to go back to your constituencies.

**The Chair:** I think there are expectations that some of us will be here. We will be here, and teleconferencing opportunities are always available as well. But we'll try to set up a meeting for next week.

I need a motion for adjournment.

**Ms L. Johnson:** Yes.

**The Chair:** Ms Johnson. All in favour? Opposed? Thank you. Thank you again for your participation.

[The committee adjourned at 7:20 p.m.]





