



Legislative Assembly of Alberta

The 30th Legislature
Second Session

Select Special
Committee on
Real Property Rights

Thursday, June 24, 2021
9 a.m.

Transcript No. 30-2-3

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

Select Special Committee on Real Property Rights

Sigurdson, R.J., Highwood (UC), Chair
Rutherford, Brad, Leduc-Beaumont (UC), Deputy Chair
Milliken, Nicholas, Calgary-Currie (UC), Acting Deputy Chair

Ganley, Kathleen T., Calgary-Mountain View (NDP)
Glasgo, Michaela L., Brooks-Medicine Hat (UC)
Goodridge, Laila, Fort McMurray-Lac La Biche (UC)
Hanson, David B., Bonnyville-Cold Lake-St. Paul (UC)
Nielsen, Christian E., Edmonton-Decore (NDP)
Orr, Ronald, Lacombe-Ponoka (UC)
Rowswell, Garth, Vermilion-Lloydminster-Wainwright (UC)
Schmidt, Marlin, Edmonton-Gold Bar (NDP)
Sweet, Heather, Edmonton-Manning (NDP)
van Dijken, Glenn, Athabasca-Barrhead-Westlock (UC)*

* substitution for Brad Rutherford

Support Staff

Shannon Dean, QC	Clerk
Teri Cherkewich	Law Clerk
Trafton Koenig	Senior Parliamentary Counsel
Vani Govindarajan	Legal Counsel
Philip Massolin	Clerk Assistant and Director of House Services
Michael Kulicki	Clerk of Committees and Research Services
Sarah Amato	Research Officer
Melanie Niemi-Bohun	Research Officer
Nancy Robert	Clerk of <i>Journals</i> and Research Officer
Warren Huffman	Committee Clerk
Jody Rempel	Committee Clerk
Aaron Roth	Committee Clerk
Rhonda Sorensen	Manager of Corporate Communications
Janet Laurie	Supervisor of Corporate Communications
Jeanette Dotimas	Communications Consultant
Michael Nguyen	Communications Consultant
Tracey Sales	Communications Consultant
Janet Schwegel	Director of Parliamentary Programs
Amanda LeBlanc	Deputy Editor of <i>Alberta Hansard</i>

Select Special Committee on Real Property Rights

Participants

Panel A	RP-24
Wade Clark, Assistant Deputy Minister, Energy Policy, Ministry of Energy	
John Conrad, Assistant Deputy Minister, Primary Agriculture, Ministry of Agriculture and Forestry	
Peter J. Dobbie, QC, Farmers' Advocate and Property Rights Advocate	
Kate Rich, Executive Director, Alberta Land Use Secretariat and Integrated Resource Management System Secretariat	
Panel B.....	RP-31
Tom Loo, Assistant Deputy Minister, Construction and Maintenance, Ministry of Transportation	
Gary Sandberg, Assistant Deputy Minister, Municipal Services, Ministry of Municipal Affairs	
Milo Steele, Property Manager, Ministry of Transportation	
Panel C.....	RP-35
Roger Grove, Acting Assistant Deputy Minister, Consumer, Registry and Strategic Services, Ministry of Service Alberta	
Kelly Hillier, Barrister and Solicitor, Legislative Reform, Ministry of Justice and Solicitor General	
Michael Lundquist, Assistant Deputy Minister, Consultation, Land and Policy, Ministry of Indigenous Relations	

9 a.m.

Thursday, June 24, 2021

[Mr. Sigurdson in the chair]

The Chair: Good morning, everyone. 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 this committee. I'd ask that 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. We will begin, starting to my right.

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

Mr. Orr: Ron Orr, MLA, Lacombe-Ponoka.

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

Ms Govindarajan: Vani Govindarajan, 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: Thank you.

Joining us online we have MLA van Dijken.

Mr. van Dijken: Good morning. Glenn van Dijken, MLA for Athabasca-Barrhead-Westlock.

The Chair: As well, we have MLA Ganley.

Ms Ganley: Kathleen Ganley, MLA for Calgary-Mountain View.

The Chair: MLA Glasgo.

Ms Glasgo: Good morning. Michaela Glasgo, MLA, Brooks-Medicine Hat.

The Chair: MLA Goodridge.

Ms Goodridge: Good morning. Laila Goodridge, MLA for Fort McMurray-Lac La Biche.

The Chair: MLA Hanson.

Mr. Hanson: Good morning. Dave Hanson, MLA for Bonnyville-Cold Lake-St. Paul.

The Chair: MLA Schmidt.

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

The Chair: As well, on videoconference we have MLA Sweet.

Ms Sweet: Good morning. Heather Sweet, MLA, Edmonton-Manning.

The Chair: We've just had another member join us in person here. I'll allow him to introduce himself.

Mr. Milliken: Hi, everybody. Nicholas Milliken, MLA, Calgary-Currie.

The Chair: For the record I will note the following substitutions for today: we have Glenn van Dijken for MLA Rutherford, and we have Nicholas Milliken to fill in as deputy chair for today.

A few housekeeping items to address before we turn to the business at hand. Pursuant to the February 22, 2021, memo from the hon. Speaker Cooper I would remind everyone of the committee room protocols, which encourage members to wear masks in committee rooms and while seated except when speaking, at which time they may choose not to wear a face covering. Based on the recommendations from the chief medical officer of health regarding physical distancing, attendees at today's meeting are reminded to leave the appropriate distance between themselves and other meeting participants.

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 the meetings can be accessed via the Legislative Assembly website.

Those participating by videoconference are asked to please turn on your camera while speaking and to mute your microphone when you are 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 to the chair. Please set your cellphones and other devices to silent for the duration of this meeting.

Item 2, 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? Mr. Orr. All those in favour of the agenda as submitted, please say aye. Those on videoconference? All those in person opposed to the agenda? And those on videoconference? Hearing none, that is carried.

Moving on to approval of the minutes, we have the draft minutes of our May 31, 2021, meeting. Are there any errors or omissions to note?

If not, would a member like to make a motion to approve the minutes?

Mr. Milliken: I'll make the motion.

The Chair: MLA Milliken. All those in person in favour of the minutes as submitted, please say aye. And on videoconference? All those opposed in person? And any opposed on videoconference? Hearing none, that motion is carried.

We will now move to agenda item 4, ministry technical briefings. We will now move on to hear technical briefings from the invited ministries. The presentations will be conducted in panels, with up to 10 minutes for each ministry to present, followed by combined Q and A periods based on allotting 10 minutes per ministry. The ministries provided briefing documents on their presentation for the members to review, which were made available on the committee's internal website. I would note for members that Ms Lisa Tchir, assistant deputy minister with Justice and Solicitor General, will attend all three panels to answer questions as her department touches on areas in each panel.

Panel A. Panel A consists of the following three ministries. For Energy, we have Mr. Wade Clark, assistant deputy minister, energy policy division. For Environment and Parks, we will have Ms Kate Rich, executive director of the land use and integrated resource management secretariats. For Agriculture and Forestry, we have Mr. John Conrad, assistant deputy minister, primary agriculture, and Mr. Peter Dobbie, Farmers' Advocate and Property Rights Advocate.

We will begin with the Ministry of Energy. Mr. Clark, thank you for agreeing to present today. You have 10 minutes for your presentation. Once you're ready to go, we will start the clock, and you can please proceed.

Thank you.

Panel A

Mr. Clark: Thank you, Chair, and, through you, greetings to committee members this morning. As you mentioned, I'm Wade Clark, the assistant deputy minister of the energy policy division in the Department of Energy. I'm pleased to present the Ministry of Energy's submissions to the Select Special Committee on Real Property Rights regarding the Responsible Energy Development Act.

Private property rights is a complex area of law in Alberta involving many statutes and regulations, spanning different ministries, and implemented by several different agencies and boards. The Alberta Bill of Rights recognizes and declares the rights and freedoms of Albertans and states that the law needs to operate in a way that protects them. It specifically states that Albertans are not to be deprived of the enjoyment of property without due process of law.

The Responsible Energy Development Act, or REDA, sets out the mandate, powers, duties, and functions of the Alberta Energy Regulator, or AER. This includes the authority to make rules regarding participation in regulatory processes and notices related to the development of upstream oil, gas, oil sands, and coal resources.

Part 2, divisions 1 through 3, under REDA and the associated sections under the Responsible Energy Development Act general regulation and the Alberta Energy Regulator rules of practice establish due processes that help to ensure property rights and other interests are considered in energy development regulatory processes. Division 1 of part 2 of REDA, encompassing sections 30 to 33 of the act, requires written applications for energy resource activities and requires public notice of an application.

A foundational principle of Alberta's regulatory system, including that under REDA, is to ensure the proponent is responsible for completing all application requirements throughout the regulatory process. This includes notification, consultation requirements, and providing information. Similarly, it is the responsibility of any person who believes they may be directly and adversely affected by an application to file a statement of concern with the AER in response to the regulatory disclosures. These filings may lead to the AER deciding to conduct a hearing in proper cases as set out in division 2 of part 2 under section 34 of the act. The AER is the arbiter of who is directly and adversely affected. Division 2, encompassing sections 34 and 35, requires the AER in certain circumstances to conduct hearings on applications. It also requires the AER to provide public notice of its decision following a hearing, including to anyone who participated in the hearing, and to publish its written decision on reasons.

Division 3, sections 36 through 41, of REDA provides a right to a regulatory appeal to eligible persons for appealable decisions. This division sets out eligibility, notice, and participation requirements in regulatory appeals. The AER may dismiss an appeal if it is deemed to be without merit, if the applicant did not file a statement of concern, or if the AER considers that the appeal is not properly before it.

Under division 5 a decision of the AER is appealable to the Court of Appeal on questions of jurisdiction or on a question of law with the permission of the Court of Appeal. There is a privative clause in section 56 of REDA, signalling to the courts that the decisions of

the AER are final and binding, subject, of course, to available appeals and reconsiderations in the act.

That concludes my formal remarks, Chair, and I'm pleased to answer any questions following the presentations of my colleagues.

9:10

The Chair: Thank you, Mr. Clark, for your presentation. At this time we will continue to proceed with the presentations first, and after all three presentations are completed, we will move into the Q and A periods. I hope you will hang on, Mr. Clark. We just have a couple more to go.

We will now hear from Ms Rich with the Ministry of Environment and Parks. Thank you, Ms Rich, for being here today. You will get 10 minutes for your presentation, and please begin when you're ready.

Ms Rich: Thank you, Chair, and hello to all members of the committee. I am Kate Rich, the executive director of the Land Use Secretariat, and I am pleased to present the submission to this Committee on Real Property Rights regarding the Alberta Land Stewardship Act.

Please note that the Land Use Secretariat is currently housed organizationally within the Department of Environment and Parks. Although the secretariat is part of the Alberta public service, it is not part of a government department. The secretariat and the Stewardship Commissioner work independently of any department and are subject to the directives of the Stewardship Minister and the Lieutenant Governor in Council. The Stewardship Minister is designated as the minister responsible for the Alberta Land Stewardship Act, or ALSA. ALSA enables several of the strategies included in Alberta's land-use framework to be carried out.

For example, the act establishes the authority to create regions for the purpose of regional planning, where the framework identifies seven regions that cover the province. The act establishes the scope and limitations of regional plans and the process for their preparation and adoption. It establishes the roles and responsibilities of the Stewardship Minister, the Stewardship Commissioner, the Land Use Secretariat to oversee the development, implementation, evaluation, and review of regional plans. ALSA also establishes processes for additional ways for Albertans to request compensation, a review, or a variance in relation to an approved regional plan as well as processes for compliance and enforcement of regional plans.

Section 1 of ALSA reflects its purposes. The act was amended in 2011 to include a clear statement, which reads:

The Government must respect the property and other rights of individuals and must not infringe on those rights except with due process of law and to the extent necessary for the overall greater public interest.

ALSA provides a means by which the government can give direction and leadership in identifying economic, environmental and social objectives for the province; provides a means to plan for the future; provides for the co-ordination of decisions concerning land, species, human development, natural resources, and the environment; and enables sustainable development by taking account of and responding to cumulative effects.

Part 1, divisions 1 and 2, under ALSA relates to the making, amendment, and review of regional plans and their content. The act enables the Lieutenant Governor in Council to create regions for which a regional plan may be established, to establish regional plans, and to establish how those plans are made and amended. Before any proposed regional plan is submitted to the Lieutenant Governor in Council for consideration and prior to laying a plan before the Legislative Assembly, ALSA's section 5(a) requires the Stewardship Minister to ensure that regional plans or amendments

to them undergo appropriate public consultation. The findings of that consultation must also be provided to Executive Council. Approval of a regional plan or amendment to a regional plan is by the Lieutenant Governor in Council.

Division 2 of ALSA identifies the mandatory and the discretionary contents of a regional plan. A regional plan must contain a longer term, 50-year vision for the region and must “state one or more objectives.” ALSA enables a range of discretionary content to be included in a plan such as policies or thresholds to achieve regional objectives. It enables the ability to assign or delegate accountability for implementation activities, the ability to use authorities under other statutes, and the ability to create subregional or issue-specific plans.

Section 11 of ALSA provides additional engagement or notification requirements for statutory consent holders that may be affected, amended, or rescinded by a regional plan. It provides additional opportunities to propose ultimate means to achieve policy objectives, including within regulatory negotiation or compensation processes. As identified in the written submission on page 3, section 11 of ALSA also identifies limitations for a regional plan to affect, amend, or rescind development that has progressed to the point of installation of improvements at the time a regional plan comes into effect as allowed, permitted, or approved under part 17 of the Municipal Government Act.

Part 2, divisions 1 to 3, of ALSA relates to the nature and effect of regional plans and compliance declarations. Following Lieutenant Governor in Council approval and posting in the *Alberta Gazette*, a regional plan or amendment comes into effect. Regional plans are public policy and regulations under ALSA. They are legal instruments and binding on the Crown, decision-makers, local government bodies, and Albertans. ALSA enables regional plans to provide strategic direction to inform decision-makers, to create an implementation plan for the region’s priorities, and to incorporate regulatory details.

Section 15.1 provides a process for a title holder to request of the Stewardship Minister a variance from any restriction, limitation, or requirements regarding a land area or subsisting land use under a regional plan as it affects that title holder. To date three applications for variance have been received and approved for the lower Athabasca regional plan, two applications have been received for the South Saskatchewan regional plan, and both were referred to variance processes within appropriate statutes.

Part 2, division 2, enables the Stewardship Commissioner to apply to the court to remedy or rectify noncompliance with ALSA, its regulations, or an approved regional plan. As outlined on page 4 of our submission, section 19.2 of the act also provides provisions for anyone directly or adversely affected by a regional plan to request a review of an approved plan. To date five requests for review from indigenous communities were received for the lower Athabasca region, which were assessed in a combined review panel and resulting in a recommendation report.

Section 19 of the act ensures that regional plan decisions do not limit any existing right to compensation for private land or freehold mineral owners. Section 19.1 provides additional ways for owners to request compensation in relation to regional plan decisions that result in compensable taking. To date there has been one application for compensation, which was received after the 12-month period from the date of which the South Saskatchewan regional plan came into force, and that application did not meet the requirement of being a direct result of a regional plan.

To date ALSA and regional plans have mostly been employed to make Crown land-use decisions and manage communal effects on Crown land. ALSA and regional plans have not created situations, of which we are aware, where any land-use bylaw has been

overwritten nor where private property owners have suffered loss or damage as a direct result of a regional plan or ALSA.

ALSA does require local government bodies and decision-making bodies affected by a regional plan to review the regulatory instruments and to decide what, if any, new instruments or changes are required for compliance of the plan.

Part 3 of ALSA relates to stewardship tools. ALSA enables various stewardship tools, including conservation easements, conservation directives, conservation offsets, and transfer development scheme credits. They are outlined in your package, and I will speak to two.

Conservation easements are voluntary legal agreements between the landowner and qualified organization for the protection, conservation, or enhancement of the environment, natural, scenic, or aesthetic values for agricultural purposes. The landowner is the conservation easement donor, and the private landowner still owns the land. An easement is registered on land title, protects the land from certain development, and applies to future owners. It’s estimated that about 30 conservation easements are registered annually on privately owned lands.

Conservation directives enable permanent protection, conservation management, and enhancement of the environmental, natural, scenic, aesthetic, or agricultural values through a directive expressly declared in a regional plan. It also requires notification to title holders as well as describes the right to and processes for compensation for title holders whose estate or interest in land is subject to conservation directives. Landowners would retain ownership of their land, and the Land and Property Rights Tribunal would resolve any disputes at the landowner’s discretion. No conservation directives have been included in regional plans to date. ALSA also does improve conservation offsets and transfer development credits, which are described in the written submission.

Finally, part 4, also relates to regional planning processes and administration. It includes process guidance that may be identified by the Lieutenant Governor in Council such as the role of advisory councils, establishing terms of reference on public communication and consultation. It includes the roles and responsibilities of the Stewardship Commissioner and Land Use Secretariat. It includes the requirement to evaluate and review regional plans.

Section 62 of ALSA provides provisions for any Albertan to provide a written complaint if a regional plan is not being complied with and for the Stewardship Commissioner and secretariat to investigate the complaint.

That concludes my remarks, Chair. I’m pleased to answer questions following the presentation.

9:20

The Chair: Thank you, Ms Rich, for your presentation.

We will now move on to the Ministry of Agriculture and Forestry. Next we have Mr. Conrad and Mr. Dobbie from the Ministry of Agriculture and Forestry. Thank you for being here. You may begin when you’re ready. You have 10 minutes for your presentation, and we’ll start the time when you’re ready to proceed.

Mr. Dobbie: Good morning, John. I saw you flash up there. Are you going to make the introductory comments, or shall I start?

Mr. Conrad: No, Peter. I was just going to inform the chair that you would be making the main presentation, so pardon the interruption. You get going.

Mr. Dobbie: Sure. Thank you.

Well, good morning. Thank you, Chair. As Alberta’s Farmers’ Advocate since 2012 and the Property Rights Advocate since January 2020, I am very excited to be with you today and to chat with you about the important issue of property rights in Alberta.

I'll be covering three topics. The first, my introductory comments, will set the context for property rights from the office of the Farmers' Advocate and Property Rights Advocate office perspective. I'll provide some resources and references for you to look at. Secondly, I'll talk about the role of the Farmers' Advocate office and the Property Rights Advocate office, and then, thirdly, I will talk about what our offices have observed and heard from landowners, farmers, and ranchers in relation to the important topic of property rights in Alberta.

I'd like to start by saying that this is a really important opportunity for you as MLAs to actively engage with Albertans on the issue of property rights and to have a conversation with Albertans about what is working and what can be improved. The committee work, as my office regularly hears, is what Albertans want their MLAs actually involved in, and it's just a great opportunity for you to do the work that I think many Albertans picture as one of the most important roles of MLAs: actively engaging in the process with Albertans of understanding how statutes, laws, regulations, and policies are affecting them, and what can be done to improve them. I'd really like to thank you for your participation in this important legislative committee.

So where do we start? I understand that later today in the presentation from Justice, you'll hear in detail about the historical, legal, common-law framework for property rights in Alberta, so I'll be limiting my comments on that topic, but we do need a common lexicon or understanding of what we're talking about, and I can advise the committee that the best resource that I can recommend to them and to Albertans to start from is the Alberta Land Institute's 2014 Guide to Property Rights in Alberta. It was written and prepared by professors Kaplinsky and David Percy at the U of A, and one of our current deputy ministers was actually seconded over to the Alberta Land Institute at that time. It is a great resource to help understand the whole context of property rights in Alberta.

From an overview perspective, I think you've already found that there is no specific statutory definition of real property rights, and in Alberta our understanding is informed by analysis of the common law. The 2014 Alberta Land Institute report provides a helpful definition as follows.

Landowners typically expect to: use and enjoy their property; develop the property as desired; exclude others from the property; and sell it to whomever they choose – all with minimal interference from the government or others.

While owning property involves a variety of rights, it also confers obligations and liabilities. The scope of these rights and obligations varies from one country to the next and even from one province to the next depending on how the law defines and protects these rights.

The common law recognizes that all Albertans have broad rights to own, use, and enjoy property. But such rights are not unlimited. For example, the law of nuisance prevents landowners from carrying out some activities that may be harmful to their neighbours. The government may also interfere with private property pursuant to legislation. For example, a municipality may pass zoning bylaws that restrict the use and development of land, and may even expropriate private property for public projects.

Again, my reference would be to commend to you an opportunity to read that report. It does help to inform our understanding of property rights in Alberta, and your constituents and landowners would find that useful as well.

Heading to the role of the Property Rights and Farmers' Advocate office, it's helpful again for you to understand the history. The Farmers' Advocate office was established in 1973 by order in council. The advocate is appointed and reports to the Minister of Agriculture and Forestry. You'll remember that back in 1973, Alberta really had just started engaging in a significant development of oil

and gas assets within the province, and it was felt at that time that farmers and ranchers needed an advocate to assist them in understanding the process of surface rights acquisition and use and an opportunity to have a direct engagement with the government through the minister of agriculture in relation to their concerns. So the government of that time chose to create the office of the Farmers' Advocate not through statute but by order in council.

For the past 48 years the Farmers' Advocate office has been a resource for Alberta's farmers and ranchers. Our work has extended beyond the original mandate to include information dissemination on arising topics, dispute resolution on a broad variety of rural issues, and we've created stronger linkages between farmers and ranchers and landowners and decision-makers. Today we continue to bring forward common issues to help ensure that the concerns and interests of rural Albertans are recognized and provide access for process advocacy – and I'll talk about that later on in concerns – and to help farmers and ranchers and landowners navigate government systems and programs.

For example, in 2017 a new issue arose in Alberta for the use and development of solar and other nonrenewable energy resources. There was no statutory framework for landowners to negotiate with developers on the development of lands for those purposes, so the Farmers' Advocate office created a landowners' guide for dealing with solar and wind installations to help them understand their rights and obligations. We saw a bit of a regulatory vacuum at that time and provided information so that Albertans could clearly understand their rights and obligations and what they have to consider. We continue to be actively involved in observing and monitoring the environment and then assisting farmers and ranchers and landowners with issues as they arise. Attached to the information and briefing is a flow chart that helps to outline what the Farmers' Advocate office works on.

The Property Rights Advocate is appointed by the Lieutenant Governor in Council and reports to the Legislative Assembly, with duties outlined in the Property Rights Advocate Act. I was appointed as Property Rights Advocate in January 2020. Historically, the office of the Property Rights Advocate was created in 2013, and I can advise that I had a very collegial and healthy working relationship with the Property Rights Advocates prior to my time working as the Property Rights Advocate and Farmers' Advocate in a dual capacity. We made sure in the past that we had a collegial working relationship, that we shared information, and that we didn't duplicate resources.

Albertans can contact the Property Rights Advocate office to voice their concerns about property rights. The Property Rights Advocate office brings those concerns to government ministries by way of an annual report as well as to elected officials in the interest of promoting fairness and equity in regard to property rights. Of course, government lawmakers make the decisions on what actions can and should be taken. The Property Rights Advocate office's role is mainly information gathering and reporting and does not have adjudicative functions except with respect to providing a written report on a specific expropriation issue should a request for a report be made. We do through our office provide information to landowners and also references to other resources that they can use.

The report that we provided also provides a summary of the Farmers' Advocate and property rights interactions in 2020 and 2021. The Farmers' Advocate office receives an average of about 10 new calls per working day. About 46 per cent of the 819 direct inquiries received in the past fiscal year were related to energy, utilities, and surface rights issues, and about another quarter related to rural disputes such as water drainage between adjacent landowners and municipalities.

9:30

The Farmers' Advocate also works on issues related to other aspects of our work, including the Farm Implement Act, Farm Implement Dealerships Act, nuisance complaints, the crop insurance appeals, water well restoration and replacement program, and general inquiries from farmers and ranchers with respect to their interaction with municipalities and the government at various levels.

In addition to the 819 direct inquiries made to our office, we had an additional 862 referrals from the agriculture information centre, which is a resource for farmers and ranchers to call in and seek direction. In 2021 the Property Rights Advocate office received an average . . .

The Chair: Mr. Dobbie, I hesitate to interrupt, but that is the 10 minutes for your presentation. If you would like to just have a brief statement for wrap-up, that would be fine. If you could just make it quick and short, please.

Mr. Dobbie: Thank you, Chair. I tend to get excited about these things.

The takeaway from what we hear from Albertans is generally this: as the Property Rights Advocate and Farmers' Advocate we hear very few complaints about substantive property rights problems. We do not hear Albertans complaining about a loss of any of the elements of owning property. What we do hear is a significant and ongoing concern about process problems. It is difficult, as you've already heard this morning, for all of us to understand the legislation, and farmers, ranchers, and other landowners have particular challenges in accessing and understanding the processes. What we are hearing from our office and what our reports provide are process advocacy concerns, and we'll be very interested to learn what the committee hears from Albertans in your consultation process.

Thank you. I do apologize for getting so excited.

The Chair: Well, we enjoy the excitement. It is a very important issue. Thank you, Mr. Dobbie, and, as well, thank you, Mr. Conrad.

The committee will now move on to its question-and-answer portion. The committee will have up to 30 minutes for members to ask questions of the above ministries that have presented. I will now open up the floor to questions from committee members. Sorry. We have a speakers list going here. Right now we have MLA Ganley. Please, MLA Ganley, go ahead.

Ms Ganley: Thank you very much, Mr. Chair. I really appreciate the enthusiasm coming from the Department of Agriculture and Forestry. I think this is an exciting issue as well, which is in part why I was so disappointed to see the submission from the Minister of Energy, which basically takes the position that the actions of the Ministry of Energy and the AER have no impact on property rights. I think that – I don't know – for any MLA who's dealt with constituents coming into their office, it's pretty clear that the process, as the ministry of agriculture outlined, under the Responsible Energy Development Act does have an impact on property rights.

I think what I'd like to ask the officials from the Ministry of Energy to sort of start out with – and just to frame this, like, you know, one of the things that property owners expect is to be able to exclude people or to be able to have an impact on what people do when they're on their land. I know there is a lot of frustration out there in terms of the impacts of energy development projects and how the land is accessed and the ability of individuals to sort of make representations on their own behalf. For the Ministry of Energy: is it actually your position that actions of the Ministry of Energy and actions of the AER under the Responsible Energy Development Act have no impact on property rights, and if that isn't

your position, why have you not provided a briefing on how that act impacts on property rights?

Mr. Clark: Through the chair, thank you for the question, Member Ganley. I believe what Minister Savage's submission said was that the REDA does not expressly deal with property rights. What REDA does is set out the processes by which energy resource activities must follow through application processes. For example, section 15 of REDA requires that the AER must consider the factors set out in regulation, including the interests of landowners, and then section 3 of the Responsible Energy Development Act general regulation sets out those factors – those are social, environmental, and economic factors – as well as the interests of landowners in there. As I mentioned in my remarks, the connection to property rights and the Alberta Bill of Rights and the right not to be deprived of the enjoyment of property rights without due process of law: what REDA does is set out that framework by which energy resource activities may be approved.

Of course, landowners on private lands may enter into lease agreements with oil and gas developers, failing which, of course, the Surface Rights Act, which I believe my colleagues will be presenting on later, does set out provisions for right-of-entry orders in the event that landowners and oil and gas companies can't reach an agreement or, as well, a process by which compensation may be determined if landowners and oil and gas companies can't reach an agreement.

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

Ms Ganley: Yeah. I guess the follow-up that I would have is that, you know, clearly this act has an impact on property rights. The submissions, both oral and written, don't really reference at all what we think we could do differently, so I guess I'll just ask that. What have you heard from landowners, and what do you think that you could do differently to better respect their rights?

Mr. Clark: Well, thank you for the question. As Mr. Dobbie's remarks pointed out, of course, landowners are keenly interested in making sure that processes work for them – that includes public notice of applications; it includes access to the processes – and we know that the AER is keenly interested in improving its processes. Of course, the AER website sets out contact information as well as alternative dispute resolution processes and those types of things that can assist landowners.

As far as, I guess, commenting on what could be done better, of course, in the department and the AER we are bound by the existing legislation, and I don't think I'd comment on what could be done or what could change. That's up to our elected officials and the legislation and what it sets out.

The Chair: Next on the speakers list we have MLA Milliken. Please proceed, MLA Milliken.

Mr. Milliken: Thank you, Mr. Chair. I'd like to start by just saying thank you, Mr. Clark, for attending today. This question is obviously going to be as well for you. I will just preface it with stating that it's going to be a little less combative than the last MLA, I think, the point of view on that one, anyways. I do again thank you for bringing this information to us. I think that it is actually very comprehensive, again contrary to the previous questioner.

This goes to within that realm of division 1 in the presentation. It states, "Similarly, it is the responsibility of any person who may be directly [or] adversely affected by an application to file a statement of concern with the AER." So I guess my question, at least my first question, would kind of go towards: does this inevitably or have you found through your experience – has this led to scenarios where

it seems like almost not necessarily individuals are the ones that are bringing forward the statements of concern but perhaps more sort of well-funded entities? Have you found that perhaps it's a scenario where, when there's the possibility of somebody maybe bringing forward statements of concern, the people who are bringing forth these statements of concern are these almost, like, I guess – well-funded entities is the best way I can put it. This is a question that I'm putting forward just sort of on the fly. Or do you find that it's just regular Albertans, regular individuals who are bringing forth these issues?

9:40

Mr. Clark: Thank you for the question. I don't have sort of a quantitative analysis of all of the statements of concern that have been filed over the years. Certainly, the intent behind statements of concern: at first instance, if an Albertan believes or a person believes that they may be directly and adversely affected by an application, they may file a statement of concern, and then what division 1 of part 2 of the act says is that once the AER receives a statement of concern, it must decide whether or not to hold a hearing. If it decides to hold a hearing, then the AER is the arbiter of who may be directly and adversely affected in order to provide standing in those hearings, subject to other provisions in the regulation.

I think, to get at the point of your question, the short answer is that further analysis would be needed on the quantitative aspects of the question. The submission speaks to the responsibility of persons who believe they may be directly and adversely affected to file a statement of concern, and that's important to ensuring that the AER has all of the perspectives before it when making its decisions both as to process as well as the merits of any given application.

The Chair: A follow-up?

Mr. Milliken: Yeah. Thank you very much. I get that you don't have all the quantitative data in front of you that may be able to answer that question. I guess, then, just to kind of push it a little further, at the risk of again having sort of a similar answer: do you have any knowledge with regard to how many of these statements of concern, then, that are brought forward are considered to be by the AER either – I guess frivolous would be the statement. If they're frivolous, is there any recourse for AER with regard to costs, I guess, that might have been incurred getting to that point?

Then also just, I guess, as a tertiary aspect, are there any aspects to these that you've found that – I guess my question is: what gives somebody standing? When you brought up the standing issue, that was something that I had marked in some of the documents that you guys have been gracious enough to provide us previously.

Mr. Clark: Yeah. Thank you for the question. I don't have the information directly in front of me as far as the quantitative aspects of that, but I can say that the AER is master of its own process. In the event that it finds that a person may not be directly and adversely affected, they can deny standing at a hearing or in a regulatory appeal.

In addition, AER does have discretion as to cost awards within a regulatory proceeding, and the AER would go through its normal considerations with regard to any cost awards, including if they feel that a party has brought actions forward that were vexatious or were unnecessary.

The Chair: Thank you.

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

Ms Sweet: Well, thank you very much, and good morning. My question is actually for the office of the Farmers' Advocate and

Property Rights Advocate. In your presentation – and thank you for your presentation – you had mentioned that about 46 per cent of calls that you receive are energy, utility, or surface rights related, mostly related to compensation, rental reductions, and surface leases. I guess my question for you is: can you maybe give some additional details on what the majority of challenges are that you're hearing from property rights owners, and are there specific hurdles that we should be looking at that would be able to support landowners in overcoming some of these barriers?

Mr. Dobbie: Thank you, MLA Sweet, and thank you, Mr. Chair, for the opportunity to chat again. It's not surprising that we do hear a lot of calls from landowners about rental reductions, rental payments, and problems with operations because of the dramatic changes in the fiscal environment that oil and gas operators have had since about 2015. With respect to those calls I can summarize them as follows.

The first is that landowners – farmers and ranchers farm every year. They seed, they spray, they harvest, they raise their cattle. It's only generationally, if that, once every 20 years, that they'll run into a surface rights issue, a new lease, a problem. This has all been new for them. The first thing that happened is that landowners weren't sure what their options were, so we at our offices worked to provide clear direction as to what they can do. We've also provided templates and forms. We're doing our job. Many MLAs' offices probably get contacts on: we have this issue; what do we do? We're able to provide direct advice on how to access the system. On a file level we help individuals deal with that.

At the macro level we've also worked to try to improve the system. For example, originally the Surface Rights Board would deal with approximately 400 files per year relating to nonpayment of surface leases. That has at least quintupled. There was a significant lag in the Surface Rights Board's ability to process those files, and the frustration that landowners had was that they didn't even know if their application was received. I'm pleased to report that the Surface Rights Board has been able, through funding improvements in that area over the years, to at least get notices back, an acknowledgement to your aunt who has put her application in that her application has been received. The frustration that landowners originally would raise with us was: I've sent my form in; how long should I wait to hear back? It was a lack of acknowledgement. That part, I'm pleased to report, has been fixed.

There is still some frustration with the length of time it takes landowners to receive compensation if they aren't paid. Secondly, they also are frustrated with the process. It seems to them distasteful that as a landowner they are being paid through the government for nonpaid surface lease payments or otherwise, and they don't want that. What they want is the operators to work effectively. I can advise that they do understand that it's been a cash-flow problem. Again, they are concerned about the process. That's one part of it.

We do hear, I guess, about concerns of: what can they do if the weeds aren't sprayed and otherwise? This hasn't happened historically, so we're working with them. We are able to provide them clear answers on that, but they generally don't know what's been going on.

Getting acknowledgement back when there is a problem is vital. Anywhere that that doesn't occur will lead to frustration and problems. As this committee looks at things, that would be one topic of concern to follow up: make sure that landowners get acknowledgement of their information requests promptly.

Secondly, we do hear concerns on an individual file basis about access to notice. The Department of Energy has talked about REDA, the Responsible Energy Development Act, and notice to people who are adversely and directly affected. At the margin the

challenge is this: how does the regulator define, first of all, who should receive notice? There is a bit of a vague process as to determining what adjacent landowners receive notice. There isn't a statutory, regulatory definition of if you're within a certain number of acres. There's a subjective test, to start with, as to who might be adversely and directly affected and then who should get notice. Then others can if they become aware; they can put an application in.

I would suggest that this committee take a hard look at two parts of the directly and adversely affected test. One is: is there a good basis for the operator or the adjudicator or the regulator to determine who is directly and adversely affected? Is that adequate and fair? Secondly, what form of notice should be given? In my view as Property Rights and Farmers' Advocate I have heard from Albertans that they want sufficiency of notice. Sufficiency would have three aspects. Sufficiency of scope: who gets notice? Sufficiency of information: what is provided? And then sufficiency of time to respond: as a newcomer to this issue I need sufficient time to get the resources to advise me. The sufficiency of notice as well as the directly and adversely affected test, I think, are important matters for you as a committee to seek information back from landowners on. I know that they're quite interested in that.

In general the process works well. It's always at the margin, when it's affecting, you know, somewhere close by you but you're outside. Your aunt is just outside of the notice provision. Can we do better there? Perhaps. What does that look like? I'm not sure yet.

9:50

The Chair: Thank you.

MLA Sweet, a follow-up.

Ms Sweet: Yeah. I'll just be really quick because I recognize we've only got a few more minutes, and there are probably some other questions. Just wondering if you happen to know right now how many outstanding applications there are that landowners, farmers, and ranchers are waiting to hear back from, and where they're at within the process for review.

Mr. Dobbie: Okay. If we're talking about section 36 applications under the Surface Rights Act, which is an application for compensation, I do not have the specific numbers in front of me but will get that information. I can generally advise that the backlog amounts to about 2,000 files that are in process, and the Surface Rights Board has a mandate to look at each application fairly, but the process is working. The challenge is the backlog, and I can certainly undertake to provide and will provide a written follow-up to the committee.

Ms Sweet: Thank you so much.

The Chair: Thank you.

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

Mr. Rowswell: Thank you. Yeah, that was kind of along the lines that I was looking at as well with the Farmers' Advocate. From a property rights perspective, then, what you're saying is that property rights are properly recognized, and it's just the process that creates a problem, and the delays within it are part of the problem. I'm just trying to understand what changes – it doesn't sound like there are any changes that would be recommended from the actual property rights issue.

Mr. Dobbie: Thank you, and again thank you, Mr. Chair, for the chance to answer that question. The short answer is: that is correct. In my office we do not have specific recommendations for this

committee at this time on substantive property rights. What we do hear from Albertans, from landowners are concerns about two areas. The process: am I being treated fairly in relation to recovery, for example, of unpaid surface leases? Time is important to them and information. "Am I being treated fairly if I have to wait two years? Can that process be improved?" So the process questions we hear a lot about, again, because landowners only encounter this rarely, and this has been new for the province of Alberta since 2015.

We do not hear, for example, substantive complaints about people's rights being taken away. For example, since 2013 section 4 of the Property Rights Advocate Act allows the Property Rights Advocate, when requested, to submit a report to an expropriation authority to assist a complainant in the process. There has never been a single application to the Property Rights Advocate office for such a report. In my view, having practised law for 23 years before I got this great job and my observations of what I've seen, this is the result of the existing expropriation systems in Alberta being robust. The landowners have clear rights in expropriation processes. There's a clear hearing. They are provided with sufficient resources to engage experts and legal counsel, and the process itself is clear, and they don't need advocate's assistance. The existing expropriation process is well understood, legislation is clear, and the process is fair because landowners have access to resources and recovery of cost.

That is a good model, in my view, of something that works for landowners. When a property right is affected, they are receiving compensation, and they are receiving sufficient notice, support, and reimbursement for cost to allow them to access the system fairly. We do not hear concerns about the loss of property rights. What we have heard over the years, particularly from the Surface Rights Federation, is the possible loss of rights.

What it would be helpful for this committee to consider is: is the legislation that's before you worded in such a manner as to be clear in each case that property rights may not be impaired without due process? If that is unclear, then that's an area that could be improved, but we certainly do not hear at all about unfair deprivation of actual property rights. There's frustration, of course, with the system. People don't like their municipalities rezoning, but, again, this is the world we live in. Yes, it is process: "Am I getting reasonable notice? Can I have a fair fight with the operator?"

The Chair: Thank you.

Just before we move to a follow-up, I'll just notify the committee that we have roughly about seven minutes left, so if you could just keep your questions and answers short. We still have a few people to get to on the list.

MLA Rowswell, do you have a follow-up?

Mr. Rowswell: No. I think I'll carry on to the next questioner.

The Chair: The next speaker we have on the list is Mr. Nielsen. Please go ahead.

Mr. Nielsen: Well, thank you, Mr. Chair. One of the things I want to bring attention to here, because I've seen a bit of a lack in all the pre-submissions, is around Bill 206, that the committee, of course, is considering. I'm thinking that this question will go towards the folks from Environment and Parks. You know, again, we didn't see much material on that provided. One of the key issues of the bill is statutory consent and giving Albertans the ability to go to court should a decision not be in their favour and they feel that there is a need to proceed further. As we know, court processes can take a bit of time. Is it possible to give us an assessment of how this could affect timelines with land-use planning?

The Chair: I believe that question was directed to Environment and Parks if they are still on.

Ms Rich: Thank you for the question. Specifically regarding Bill 206, I don't think that the department and the department officials are in a position to answer direct questions on that, about that proposed legislation but, rather, pivot to what is enabled in ALSA. As I've outlined, ALSA includes a lot of provisions related to public consultation and transparency in development of the regional plan or any amendment to it, and the Stewardship Minister must ensure that that appropriate consultation has actually occurred and file the proposed regional plan with the Legislative Assembly before any decisions are made.

Section 11 provides additional consultation requirements specific for statutory consent holders that may be affected, amended, or rescinded by a regional plan. It provides additional opportunities to propose alternative means to achieve the policy objective, including in the negotiation process and the compensation process. Similarly, it's the responsibility of any person who might be directly or adversely affected by an application to file a statement of concern, but in this case these additional provisions are provided specifically in the regional plan for that purpose.

I think that I will leave it there.

The Chair: Thank you, Ms Rich.

Mr. Nielsen, do you have a follow-up?

Mr. Nielsen: Yeah. I do have a follow-up, and maybe I'll open it up wider to the entire panel. I mean, you know, we do have to consider Bill 206 here. Like I said, I'll highlight that words "statutory consent" because I think that that may figure prominently here. I mean, I do realize that the legislation, obviously, hasn't been proclaimed, but should it be proclaimed and pass through all readings, this could have a significant impact. So maybe around the land-use planning: is there anything that could, I guess, affect cost? For an example, a coal licence, for instance, being removed. Would this increase the amount of money a licence holder could get around that?

The Chair: I will leave it to either Mr. Clark, Ms Rich, or Mr. Dobbie to address this question, but is there somebody specific, Mr. Nielsen, that you would like to possibly answer that, just to focus that?

Mr. Nielsen: You know, I guess if Environment and Parks feels that they don't have an answer, then open it up to the rest of the panel. Maybe they potentially have some information. As I said, there is a big lack of information throughout all the pre-submissions around Bill 206, and I think that we have to see how this potentially could impact things.

The Chair: Ms Rich, is that something that you could answer, possibly, for MLA Nielsen?

10:00

Ms Rich: Yeah. Again I think I'll repeat that any questions on Bill 206 are probably not best addressed by the Land Use Secretariat but, rather, the legislative drafters in that case. I'll leave it to my other colleague.

The Chair: Thank you, Ms Rich.

We've got about two and a half minutes left here. Next on the speakers list we have MLA Orr. Please go ahead, Mr. Orr.

Mr. Orr: Yeah. Thank you. Lots of questions could be asked. I'll start with the Alberta Land Stewardship Act. I guess my broader

sort of query – and it maybe doesn't even fit under the mandate of the secretariat. My understanding is that there only two of seven regions that actually have a functioning land stewardship operating. That leaves vast swaths of the province not underneath the Land Stewardship Act, if that's my understanding. I guess I feel like there's a big void there in terms of the rest of the province that's not yet included in the Land Stewardship Act. What should we be hearing about them in terms of property rights and the administration and management of them?

The Chair: The question is directed to whom, Mr. Orr?

Mr. Orr: To land stewardship, the secretariat for it.

The Chair: Excellent.

Please go ahead.

Ms Rich: Thank you for the question. Again, the Alberta Land Stewardship Act is an enabling act to enable the development of regional plans. Correctly stated, two of the land-use framework seven regions have established regional plans in place. It is an enabling feature. There are other planning features. There are other provisions related to property rights. I think my colleague did mention that in his remarks, that it is a complex area of law through various statutes, so those do apply in regions with and without regional plans as well. I think I'll leave it there, recognizing the time.

The Chair: Thank you.

Mr. Orr, you have about 35 seconds if you have a question.

Mr. Orr: I'll just add that I think as a committee it would be worth us taking a little bit of time to think about those other statutes and those other areas that don't fit under the land-use management plans because that's a big chunk of the province, and we've addressed two of the seven regions that do here. I think we need to take some thought for that.

I was going to ask some questions about the other earlier discussion as well, but I think we're out of time, so I'll leave it at that.

The Chair: Thank you, Mr. Orr.

That has concluded, actually, with just seconds left here, our time for questions with Panel A. I'd first like to thank Mr. Clark, Ms Rich, Mr. Conrad, and Mr. Dobbie for their presentations and taking part in the committee process. To the presenters: you may remain on the call, but please keep your video and microphones turned off.

Our next presentation by Panel B is scheduled for 10:15. Until that time this committee will take a quick break, and we'll reconvene at, as I mentioned, 10:15.

Thank you.

[The committee adjourned from 10:03 a.m. to 10:15 a.m.]

The Chair: Thank you to everyone in attendance. It is now 10:15, and we will reconvene the meeting.

We now have Panel B. Our second panel consists of the ministries of Transportation and Municipal Affairs. From Transportation we have Mr. Tom Loo, who is the assistant deputy minister of construction and maintenance division. As well, we have Mr. Milo Steele, property manager. From Municipal Affairs we have Mr. Gary Sandberg, who is the assistant deputy minister of the municipal services division.

First up for presentation we have Transportation. Mr. Loo and Mr. Steele, you have up to 10 minutes for your presentation. Please begin when you're ready.

Panel B

Mr. Loo: Thank you, Mr. Chair. We provided some information through our written technical submission. I would just like to take a few minutes to walk through that document that was previously submitted to the committee.

As you are likely aware, Alberta Transportation does engage in property acquisition for highway projects that are outlined in our current construction program or in the provincial capital plan. Alberta Transportation also delivers capital construction work for water management infrastructure, and this is done on behalf of Alberta Environment. These water management projects may also involve the purchase of required lands. From time to time the department does receive requests to purchase land that is affected by future roadway or intersection improvements, and typically Alberta Transportation will generally not purchase these lands until the project is in the near term or on the capital plan.

First and foremost, our desire is to acquire land through a negotiated transaction with the landowner, and in these negotiations compensation to the landowner is outlined in the Expropriation Act. We are guided by the principles that are outlined in the act, and these are found in sections 41 to 58. I'll just briefly go through these compensation principles as outlined in our technical submission. First and foremost, it includes the market value of the land. We also take into consideration damages attributed to the disturbance as a result of the proposed construction activities, the value to the owner of any element of specific economic advantage to the owner arising out of or incidental to the owner's occupation of land to the extent that no other provision is made for its inclusion, and also damages for injurious affection.

We also include compensation for disturbance on owner-occupied residences. It's reflected and acknowledged that in situations where we're affecting their home, additional compensation may be required. We also look at business loss resulting from the relocation of their business if it's affected by the land purchase and then specific instructions for compensation on special-use structures such as churches or schools. In addition to these elements I've mentioned, we address reasonable owner expenses – and these are included – such as legal, consultant, and appraisal fees. These are all reimbursed at the time of purchase.

There are situations where the landowners are prepared to sell the land to the department but would disagree with the compensation offered. The Expropriation Act provides for a voluntary form of expropriation where the landowner is entitled to compensation and reasonable costs. This is determined at a later time through a formal hearing with the Land Compensation Board, and that's an independent body.

There are situations where the landowner disagrees with the province's need for the land or even disagrees with the proposed project and refuses to sell voluntarily. When no other options exist, the land is acquired using the process identified in the Expropriation Act. The act includes the following: it allows the owner the right to challenge the need for the land; it requires the government to pay before taking possession. Again, if the owner does not agree on the compensation, they have the ability to have the Land Compensation Board determine compensation, and then, if the taking is by the province, they also have the option to take it to the Court of Queen's Bench.

Again, the government is required to reimburse the owner for reasonable costs, and typically landowners pay their costs associated with the expropriation and are reimbursed at the end of the Land Compensation Board hearing. However, in some complex cases the Land Compensation Board has awarded interim costs based on the application by the landowner.

The department does look far out into the future and does what we call functional planning, and we also on a regular, day-to-day basis do development control. Firstly, with respect to functional planning studies we look at the medium- and long-term planning for the provincial highway network, and these functional planning studies provide us with a framework for future expansion or revisions to the provincial highway network and also assist and inform municipalities for their planning and development needs. Once these planning studies are completed and approved, restrictions may be placed on development of lands that may be required in the future for expansion of the highway network. Landowners are compensated when the land is acquired for the project, whether that acquisition is voluntary or by expropriation.

With respect to development control, permits and approvals are required from Alberta Transportation within what is defined as the development control zone, and this limits or restricts the development or construction of activities in these zones by the landowner. The development control zone is defined as the distance of 300 metres from the edge of the highway right-of-way and within an 800-metre radius of the inner section of a provincial highway and other highway or public roadways. Approvals or denials of development applications by Alberta Transportation do take into account the approved functional planning studies so far as the development on lands is restricted or limited.

With that, Mr. Chair, that concludes my opening presentation. Thank you.

The Chair: Thank you, Mr. Loo.

Mr. Steele, do you have anything for presentation at this time?

Mr. Steele: No, I do not.

The Chair: Well, thank you to both you, Mr. Loo, and Mr. Steele.

Of course, we have another 10-minute presentation, and then we'll be moving to the Q and A period. Next we have Mr. Sandberg from Municipal Affairs. Mr. Sandberg, please proceed when you are ready. You have 10 minutes for your presentation.

Mr. Sandberg: Thank you, Mr. Chair, and thank you to committee members for the invitation to share information with you this morning. As the chair had noted, my name is Gary Sandberg. I'm the assistant deputy minister for municipal services with Alberta Municipal Affairs, and I'm pleased to be able to speak to you today in support of our ministry's written submission, which I understand you received earlier.

This morning I'm going to focus my comments on the legislated authorities given to Alberta municipalities through legislation administered by Municipal Affairs that are most likely to be relevant to property rights. The Municipal Government Act, or as we call it the MGA, is the legislation that governs all municipalities in Alberta and provides them with their authority to take actions and make decisions on behalf of their communities. There are three specific aspects of municipal activity that we believe are most likely to be relevant to issues of property rights.

The first one is expropriation. Like the provincial government, municipalities have the authority to expropriate land where it's required for a municipal purpose. There's a bit of detail set out in our written submission, but I'm not going to dive into this unless there are questions on it because, basically, if a municipality opts for expropriation, it must follow the provisions and processes laid out in the Expropriation Act. In that light, I would defer any questions about the Expropriation Act to my colleagues in Justice and Solicitor General.

The second main aspect of municipal activities that are relevant to property rights is related to what we call reserve land. The

Municipal Government Act authorizes municipalities to require landowners to transfer certain amounts of land to the municipality for public purposes as part of the land subdivision process. These requirements are intended to ensure that as a new community is developed, that community has the infrastructure and the public spaces that are needed to thrive.

10:25

As part of the subdivision process, up to 30 per cent of developable land may be taken for roads and utilities to ensure that the subdivision is serviced and can be accessed. The subdivision authority may not take any more than the land that is absolutely needed even if that is less than 30 per cent, but 30 per cent is the maximum. In addition, the subdivision authority can require up to 10 per cent of developable land to be transferred to the municipality for public recreation purposes and/or school purposes. This ensures that land is available in that new community for public park space and/or a school if a school is required. The subdivision authority can take cash instead of land, based on a market value appraisal, but any cash taken must be used to purchase land for park and school sites.

The subdivision authority can also require that certain lands that are not suitable for development be transferred to the municipality as environmental reserve or be subject to an environmental easement on title. These are properties such as ravines and gullies, unstable slopes, areas that are prone to flooding, et cetera.

Then the third major municipal activity that can have impacts on property rights is the municipal land-use planning process. Under the Municipal Government Act municipalities have the authority and the responsibility to manage land use and development within their borders. To support orderly development, municipalities are legislatively required to complete certain plans such as municipal development plans and certain bylaws such as land-use bylaws, and these plans and bylaws set out the allowable uses for particular properties or properties in a particular area of the municipality. Municipalities can also establish requirements for new developments, including a requirement that a development permit must be obtained from the municipality, and set out any conditions relating to that development. These municipal decisions can obviously have an impact on an individual's property rights by placing limits on what a landowner can do with their property.

That being said, decisions about what someone can do on their property can also have an impact on the neighbouring landowners and their ability to enjoy their property, so the Municipal Government Act is purposefully written to recognize that land-use planning and development control is, at its heart, a balancing of individual property rights. As an example, municipal zoning is intended to ensure compatible land uses for neighbouring properties such as not allowing a large industrial plant to be located within a residential neighbourhood.

The legislation also includes a number of safeguards to ensure that municipal decisions are reasonable and transparent and generally reflect community expectations. For example, municipal statutory plans and land-use bylaws are subject to public engagement requirements, including public notification; notification to other parties that might be affected such as neighbouring municipalities, school boards, and First Nations; and a requirement for public hearings before a final decision is made. Municipal statutory plans and bylaws must also be approved at a public council meeting, and all municipal land-use plans and planning policies must be made publicly available.

The legislation also sets out timelines for municipal decisions on subdivisions and development permits to ensure a timely decision for the landowner or developer.

Finally, the Municipal Government Act sets out an appeal process for municipal decisions on subdivision applications, development permit applications, and most statutory plans. The appeal process is available both to the proponent of a particular application and to affected neighbouring landowners. Depending on the nature of the issue at the appeal, it will be heard either by a locally established subdivision and development appeal board or by the provincial Land and Property Rights Tribunal. Both types of boards follow a prescribed process to ensure adherence to principles of natural justice and administrative fairness.

Lastly, I would note that last year Municipal Affairs reviewed the planning and development sections of the Municipal Government Act with key stakeholders, including municipal associations and development groups. This resulted in a number of specific amendments to the MGA last fall, through Bill 48, to streamline decision-making processes and provide greater clarity and consistency for developers, but overall the review indicated that the land-use and development provisions within the MGA are generally regarded as striking a reasonable balance.

Mr. Chair, with that, that's a quick summary of the key ways in which we think municipalities are intersecting with property rights under the legislation we administer. Thank you again for the opportunity to share this information. If there are questions, I'd do my best to answer them.

The Chair: Thank you, Mr. Sandberg, for your presentation.

The committee will now move to questions from the members. We have 20 minutes for committee members to ask questions to the above ministries. I'll now open it up to the floor. I do have a list going. I have first MLA Milliken. Please go ahead.

Mr. Milliken: Thank you, Mr. Chair. This question goes to Mr. Loo, I believe, with regard to Transportation. Correct me if I'm wrong. I'm never afraid to ask a question that I don't know the answer to because that's the whole purpose of asking it. With regard to the development control zone, it mentions here this 300-metre and 800-metre limitation on landowners with regard to what they can do with their pieces of property. Now, I guess my first question is: within that 300- and 800-metre area is that land in that area, around the transportation corridor, the highway in this case, owned by the government or expropriated from landowners and then, therefore, owned by the government within that development control zone?

Mr. Loo: Thank you for the question, sir. The situation is that the government would not own that land currently. We would have this defined development control zone, as you outlined, 300 metres from the edge of right-of-way or within an 800-metre radius of that intersection. This is land that's owned by the private landowner, and the situation is that if a landowner wanted to do some kind of development or construction on their land within that control zone, they would need to apply and receive a permit from the department to proceed with that development. There are situations where the type of development might be fine and approval is granted with no issues. However, if it was something large or substantial, a structure, that's where we get into some situations where we would look at the future plans for that highway network, and that may impact whether or not that application is approved.

Mr. Milliken: Okay. May I?

The Chair: Yeah. Thank you. Please go ahead with a follow-up.

Mr. Milliken: Inherently, what we're seeing in that development control zone area is landowners who've had their use and enjoyment of their property constrained – I think that's a fair assessment – or

potentially constrained because they wouldn't be able to, obviously, do everything that they potentially could have done if they were 301 or 801 metres away from the highway. So do we compensate those landowners for the reduced use and enjoyment of their property?

Mr. Loo: Thank you for that, sir. We do not provide compensation for that restriction.

Mr. Milliken: Okay.

The Chair: Thank you.

Next I have on the list MLA Schmidt, who has just joined us in person. Can you please introduce yourself and then proceed with your question? Thank you.

Mr. Schmidt: Thank you. Marlin Schmidt, MLA for Edmonton-Gold Bar.

My first question is to Transportation as well. We've heard from members today about concerns around landowners having the use of their property constricted and those kinds of things. I'm wondering if the assistant deputy minister can talk to us about the highway maintenance yards and gravel pits that Transportation owns and operates that have contamination, other kinds of impacts on neighbouring landowners that impair their abilities to enjoy their property.

Mr. Loo: Thank you for that, sir. You are correct. Alberta Transportation, through our highway maintenance contractors, has a number of yards and shops to allow us to complete highway maintenance and operations on the provincial highway network. We have environmental conditions that are applied to each of those contractors to mitigate or prevent contamination, particularly from salts, into adjacent lands. However, it is acknowledged that there are a number of locations throughout the province where we have had contamination of adjacent lands. We have identified those as environmental liabilities, and there are efforts under way to prioritize those and provide mitigative measures to eliminate or contain that contamination.

10:35

The Chair: Thank you.

A follow-up?

Mr. Schmidt: Yeah. Thank you for that. I mean, my office gets a number of complaints related to environmental contamination allegedly caused by transportation, those kinds of things. Does the Transportation ministry keep records, and, I guess, can you provide that to the committee? How many sites are there that have contaminated private property in this province? How many complaints are filed on an annual basis or in total? What are the processes that landowners have to go through to get these issues dealt with, receive compensation, have their land cleaned up, those kinds of things? This is a serious issue. Also, if the assistant deputy minister can comment: which pieces of legislation or policies does the Transportation ministry have to follow or adhere to to deal with these issues?

Mr. Loo: Thank you for that. With respect to the first part of the question, yes, we can follow up to gather that requested information and formalize that and submit it to the committee.

Now, with respect to acts or regulations, our contracts include conditions and requirements that are specified by Alberta environment and also by the federal government in terms of restrictions, environmental conditions restrictions, in that regard. One of the things that you may be aware of: the federal government instituted some changes a number of years ago with respect to line paint, and

that was just a situation that we're required nation-wide to remove volatile organic compounds, VOCs, that were present in line paint. We do follow all the environmental restrictions or requirements both federally and provincially.

The Chair: Thank you.

Next we have on the list MLA Hanson. MLA Hanson, please proceed.

Mr. Hanson: Thank you, Chair. My question, again, is to Mr. Loo, and it's regarding basically the same question that MLA Milliken was kind of on. I represent rural Alberta communities that are subject to that 800 metres from the centre line of a provincial highway, which, in a lot of cases, affects the entire town. I'll use St. Paul as an example.

I've had a number of issues where I've had to get permits rushed through the process for simply wanting to change the sign on the face of a building, and they were told that, you know, it could be a four-month to eight-month wait to get it processed. I've got people that are wanting to put up a garden shed five blocks off main street that have to get a permit from Transportation.

Is there some way that we can change that to make it a box that gets checked off at the municipal level, you know, if they're not encroaching on the highway or changing access off the highway, that the municipality can just check off a box, that they don't have to go through the Transportation permit system? It just seems a little bit – in most of my communities if you take up from the centre line of the highway that goes through the centre of the community, it virtually covers the entire town. Bonnyville is the same way, Cold Lake, St. Paul, Two Hills. You name it. Lac La Biche is the same way. They all have major highways going through them, and it just seems a little bit redundant. I wonder how many staff it takes in the department to rubber-stamp these permits that really have no effect on the highways.

Thank you.

Mr. Loo: Thank you for that question, sir. A very good question, and I'm happy to advise that we are moving forward with some proposed changes on how we are addressing these permits and approvals as part of the development control process. We have a pilot project that's currently under way, which we've invited all of the municipalities throughout the province to participate in, where we're creating what is called a highway vicinity management agreement, and it addresses exactly the elements you just mentioned. We are working with municipalities to identify their short-, medium-, and longer term plans, and we're also identifying those elements which, as you described, are routine, mundane, straightforward and, basically, providing advanced approval for those types of elements within certain areas, where we're basically eliminating the need for individual or specific applications for those types of routine things that you had just mentioned, whether it's a sign or a shed, of that nature.

This is all being driven by the red tape reduction initiative, and I'm happy to advise that that pilot project has commenced and is under way. We have a number of municipalities that are participating and working with us to develop those plans in order to eliminate some of these, basically, routine types of approvals and applications.

Mr. Hanson: Thank you, Mr. Loo. That is really good to hear. I've been poking them for a while on this one, so it's good to see some progress.

Thank you.

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

Mr. Hanson: No. That's good. I just wanted to thank Mr. Loo for the work on that. I know that it's been an ongoing issue, and I'm glad to see some progress.

The Chair: Thank you.

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

Mr. Orr: Thank you. If I might just make a comment on the previous conversation, and then I'll move on. I know that in my riding some developers have been denied permits along the freeway, the QE II, the rationale being that they will distract drivers and create accidents. My question to the department is: do you have any evidence, any stats on signs along the freeway actually creating any accidents? I think that it's a pretty weak argument. I mean, we deny business owners the right to advance their business. We don't compensate them. It's a regulatory taking, which is what our committee is all about, and I think that it needs to be addressed as well.

Anyway, I'll move on from that. I'll go to the Municipal Affairs piece. My question here is quite a bit broader. My concern is that land rights without access to land are kind of a moot point. Here in Alberta over the last I think about 30 years we've doubled our population, so twice as many people looking for the opportunity to have land. At the same time we have large numbers of acres expropriated, reserved, bought up by environmental groups, and taken out of the inventory. There's a very limited amount of private land available in this province versus Crown land. I don't think that that number has really changed in the last 30 years.

My question, from the committee's point of view, is: is there any way you can give us some indication of sort of the total number of acres available to private ownership over the last 30 years? Has that changed? How many acres have actually been taken out of that inventory through expropriation? How many acres have been set aside to reserves, environmental reserves and even the private ones? How much is left for young families? I raise it because it's a huge issue in my riding, where young families want to start farms and, quite frankly, there's no land for them. You can't farm without some land. I think that it's a huge issue for Alberta, that we have a hugely growing population, a reduced amount of land available, and no solution to that. I just would appreciate some comments from Municipal Affairs, if there's any way that we can get some of that data.

Thank you.

Mr. Sandberg: Thank you, Mr. Chair, and thanks for the question. I will admit that I do not have that data. Municipal Affairs does not track land that is expropriated, either by the Crown or by municipalities, and we do not have data on how much land has been taken for municipal reserve purposes. We can look into the possibility of collecting it, but we absolutely do not have it at this time.

The Chair: Thank you.

A follow-up?

Mr. Orr: Yeah. Anything you could provide us might be helpful. I would appreciate that, but I'll leave it at that.

Thank you.

The Chair: Thank you.

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

Mr. Rowswell: Thank you. Yeah. It has to do with Municipal Affairs. If there is rezoning that happens, how is that – like, if you

get rezoned to a lesser value, does the property owner have an opportunity to get compensated for that?

10:45

Mr. Sandberg: Thank you for the question. The short answer is no. The MGA is actually quite specific that municipalities are not generally liable to provide compensation for land-use planning decisions. The rationale for that, I assume, because this has been in legislation for certainly a lot longer than I have been around, is that, one, it's a very public process, so a rezoning would have to go through a public process that includes the ability for the affected property owner to be heard and to appeal. Then the second rationale would be that, presumably, that rezoning was done for a community purpose. Again, the short answer is no; there is not a requirement for compensation.

The Chair: A follow-up?

Mr. Rowswell: No.

The Chair: Thank you.

Next I have on the list MLA Schmidt. MLA Schmidt, please proceed.

Mr. Schmidt: Thank you very much. Now, this question is for the assistant deputy minister of Municipal Affairs. I understand the department has the responsibility for the new Land and Property Rights Tribunal, which is the amalgamation of a number of different quasi-judicial boards. Can the assistant deputy minister tell us: what pieces of legislation does this board make decisions on, and what is the current backlog of cases before the Land and Property Rights Tribunal?

Mr. Sandberg: Mr. Chair, thank you. I will admit that I do not have that information at my fingertips. The board is actually an arm's-length entity from the department. However, I will undertake to get the answer to the question for the member.

The Chair: A follow-up?

Mr. Schmidt: Yes. If we're on a data-gathering exercise, then I would also appreciate an understanding of not just the backlog but what the average time is for landowners to apply for and have a hearing before the Land and Property Rights Tribunal and an estimate of how much compensation to landowners is outstanding or needs to be decided upon. Those two additional pieces of information: I would appreciate those.

Mr. Sandberg: Thank you, Mr. Chair. I will undertake to get the information available.

The Chair: Thank you.

Next I have on the list MLA Glenn van Dijken. Please go ahead.

Mr. van Dijken: Good. Thank you, Chair. This is for Alberta Transportation. I'm a rural MLA, and I deal with a lot of issues regarding property impacts from highways. Our discussion this morning was largely about land acquisition and transfer of land for highway development, but we see that the MGA protects property owners that may be inadvertently affected by development. I guess my question is: is there adequate protection for neighbouring landowners that are impacted negatively through highway development? Their land may be impacted even if there's no land acquisition required from them.

Mr. Loo: Thank you for the question. I think I'll defer that to Milo Steele, our property manager, to answer.

Mr. Steele: There are no specific provisions that provide for compensation for landowners where we're not acquiring property. Certainly, our office does receive incoming phone calls from owners, and we try and address each situation on an individual basis if there is some impact from the highway,

The Chair: Thank you.

MLA van Dijken, do you have a follow-up?

Mr. van Dijken: Yeah. I guess the question then is – we have a process for individuals that are receiving compensation for expropriation and that type of thing. But if Alberta Transportation and a neighbouring landowner that is being negatively affected by development cannot come to some type of an agreement on how to remedy the negative impacts, where do the landowners go for a decision to try and get some kind of an agreement, going forward, that would allow them a third-party review of what has taken place?

Mr. Steele: Well, we can address those items that are covered by legislation, but outside of items covered by legislation, there is no direction to tribunals for those types of situations.

The Chair: Sorry. I hesitate to interrupt, but, Mr. Steele, our time for Q and A has expired. If you could quickly wrap up that one question, I'll provide you a little bit of time just to answer the question to the MLA.

Mr. Steele: Yes. As I said, there are no specifics in legislation that provide for landowners that are not directly impacted by our acquisition. That becomes a matter of them contacting the department, and we certainly will endeavour to work with them.

The Chair: That has concluded our time for questions with the ministries in panel B. I would like to thank Mr. Loo, Mr. Steele, and Mr. Sandberg for presenting to the committee today. You may remain on the call, but please keep your video and microphones turned off.

Our next panel, Panel C, is scheduled to present at 11:10, so at this time this committee will take a break and reconvene at that time. Thank you.

[The committee adjourned from 10:51 a.m. to 11:10 a.m.]

The Chair: Thank you to those in attendance. It is now 11:10, and we will reconvene this committee meeting.

The committee will now hear from panel C, which has Justice and Solicitor General, Indigenous Relations, and Service Alberta. One note for the committee is that Service Alberta will be providing support to Justice and Solicitor General and will not be making a presentation.

For Justice and Solicitor General we have Ms Kelly Hillier, barrister and solicitor, and Ms Lisa Tchir, assistant deputy minister, legal services division. For Indigenous Relations we have Mr. Michael Lundquist, assistant deputy minister, consultation, land, and policy, and from Service Alberta we have Mr. Roger Grove, the acting assistant deputy minister, consumer, registry, and strategic services.

We'll begin with Ms Hillier and Ms Tchir from the Ministry of Justice and Solicitor General. You have up to 10 minutes to provide your presentation. Please begin when you are ready.

Panel C

Ms Hillier: Good morning. As you heard, I'm Kelly Hillier. I'm a lawyer with the Justice and Solicitor General legal team. The main focus of my current job is legislation development, and I also have a background in property law. I will be discussing adverse

possession and, in particular, Bill 206, the Alberta Bill of Rights, the Law of Property Act, the Land Titles Act, and the Limitations Act as they all relate to adverse possession. I will also discuss the Expropriation Act.

Property rights can be divided so that many people may hold rights to the same property. For example, one piece of land can have surface rights, strata and mineral rights, easements, and rights-of-way, all of which can be owned by different people. The owner of each set of property rights is subject to governing legislation. Property rights owners are often not clear on what rights are included in their ownership and what rights are not part of their property rights. Disputes can arise between those having different property rights in the same land.

Property law is governed by a combination of legislation and common-law court decisions. Property law has a long history of common-law rules that developed through court decisions over time. Some legislation governing property law is a codification or a modification of the common-law rules, and to understand how the legislation works in practice, it is necessary to also know how the courts interpret that legislation.

Adverse possession is a legal principle that allows a person who has occupied another's land for at least 10 years to potentially claim ownership of that land if the occupation has been exclusive, continuous, open, and notorious. The person claiming adverse possession would start a court action, and if the court agrees that they are entitled to ownership under adverse possession, then the court order can be registered, and the title to the land would be transferred into the name of the adverse possessor.

Land registration systems across Canada are either a land titles registration system or a deeds registration system. Alberta is a land titles registration system. Including Alberta, six Canadian jurisdictions use a land titles system. In Alberta, the Northwest Territories, and Nunavut adverse possession claims can only be made against privately owned land. In British Columbia adverse possession claims can be made against land that is not in the land titles system as long as the claim arose before July 1, 1975, and adverse possession claims can be made against unregistered interests. In Saskatchewan and the Yukon there are no adverse possession claims.

Three Canadian jurisdictions use only a deeds system. In a deeds registration system it is necessary to establish a root of title to prove ownership of land. Adverse possession is one basis for a root of title. Prince Edward Island, Quebec, and Newfoundland and Labrador have deeds registry systems.

In addition, there are four Canadian jurisdictions that have both a land titles and a deeds system. In these provinces land is being moved over time from registration in the deeds system to the land titles system. Adverse possession is permitted in the deeds systems but is only permitted in land titles systems under specific conditions.

In Manitoba an adverse possession claim can be made against land in the land titles system when the merits of the claim took effect before the land was registered in the land titles system. Ontario is similar, but the claim against land in the land titles system had to take effect 10 years before the land was registered at land titles.

In Nova Scotia adverse possession claims appear to be available against land in the land titles system only when the percentage claimed is less than 20 per cent of the parcel, or, when the percentage is greater than 20 per cent, the claim must have been established before the land was registered at land titles, and the claim must be brought within 10 years of that registration. New Brunswick has abolished adverse possession claims.

Bill 206, the Property Rights Statutes Amendment Act, 2020, is a private member's bill that proposes the abolition of adverse

possession and also includes amendments to the Alberta Bill of Rights, the Alberta Land Stewardship Act, the Land Titles Act, the Limitations Act, and the Responsible Energy Development Act.

Section 1 of the bill would add section 1.1 to the Alberta Bill of Rights to recognize property rights. The Alberta Bill of Rights applies only to Alberta provincial legislation, and it can be overridden by the Legislative Assembly of Alberta.

In Bill 206 the proposed sections 3 and 4 are intended to eliminate adverse possession. In April 2020 the Alberta Law Reform Institute, or ALRI, released Final Report 115, Adverse Possession and Lasting Improvements to Wrong Land. ALRI's report includes seven recommendations which would work together to eliminate adverse possession. Bill 206's sections 3 and 4 address some of ALRI's recommendations; for example, ALRI's recommendation 1 is reflected in Bill 206, section 3(2). However, not all of ALRI's recommendations are included in Bill 206. Bill 206 and the ALRI report propose changes to the Land Titles Act, the Law of Property Act, and the Limitations Act.

The Land Titles Act establishes the mechanism for registration of land-related documents at the land titles office. A land title is guaranteed by the government. Section 74 of the Land Titles Act provides for the registration of judgment, giving the exclusive right to use land, or providing for quieting in the exclusive possession of the land.

The Law of Property Act establishes legal principles regarding real property. Section 69(1) of the Law of Property Act enables a court to order a lien on land or order that a person may retain land when improvements have been made to land under a mistaken belief that the land was a person's own.

The Limitations Act establishes time limits to start a civil action in the courts. Sections 2 and 3 of the Limitations Act include time limitations that apply to adverse possession claims.

When government forcibly takes title to land, the Expropriation Act establishes the process and compensation principles to be followed. Expropriation authorities include the Crown and municipalities. The Expropriation Act sets out a detailed and lengthy process for expropriation. The process must be followed exactly to make the expropriation effective. The expropriating authority must file a notice of intention to expropriate with the land titles office and serve this document on every person who holds a legal interest in the land. Publication of the notice in a newspaper is required.

If an objection is received, a hearing process will be followed to determine if the expropriation is necessary. A separate hearing process will be followed if the property rights owner and the expropriating authority can't agree on the appropriate compensation. The Expropriation Act sets out principles of compensation, and the compensation hearing will determine how those compensation principles are to be applied in each individual expropriation. The expropriating authority is responsible to pay the owner's legal costs.

Justice and Solicitor General has received stakeholder requests to review and modernize the Expropriation Act and to consider making changes to reduce red tape, streamline inefficient processes, add clear authority to dismiss unnecessary or unresponsive claims, allow landowners to receive compensation faster, allow public projects to proceed more expeditiously, reduce the amount of infrastructure funds paid by an expropriating authority to landowners' lawyers for substantial legal costs, and consider including processes that are found in other Canadian jurisdictions such as a tariff and scale of cost for legal fees and real estate appraisals, as in British Columbia's expropriation proceeding costs regulation, as well as processes to streamline decisions that

expropriations are necessary for large-scale projects such as transit systems, as in Ontario's Building Transit Faster Act, 2020.

Those are all of my comments.

The Chair: Thank you, Ms Hillier and Ms Tchir.

At this point in time we'll move on to our second presenter for panel C, which is the Ministry of Indigenous Relations. Mr. Lundquist is from Indigenous Relations. You will have 10 minutes for your presentation. Please begin when you're ready.

11:20

Mr. Lundquist: Good morning, Chair and committee members. Thank you for inviting Indigenous Relations to present to the Select Special Committee on Real Property Rights. Indigenous Relations has reviewed the amendments that are proposed in Bill 206 and the mandate of the select special committee.

The Metis Settlements Act is not identified as a relevant act by the committee, and Bill 206 does not propose any amendments to it. We therefore consider the Metis Settlements Act to be out of scope for this review.

Indigenous Relations is not responsible for the following acts that are identified in the mandate of the committee: the Alberta Bill of Rights, Land Stewardship Act, Expropriation Act, Land Titles Act, Law of Property Act, and Limitations Act. In light of this, the department reviewed the proposed amendments to these acts in relation to their potential on our department's mandate.

Section 16 of the Responsible Energy Development Act is a common responsibility of Energy, Environment and Parks, and Indigenous Relations; however, Bill 206 does not propose any amendments to section 16, so there are no apparent linkages between Indigenous Relations' responsibilities under the Responsible Energy Development Act and the mandate of this committee.

It is our assumption that the amendments to the provincial legislation would not affect Alberta's obligations for treaty land entitlement claims as these obligations flow from the Constitution. We also assume that the amendments proposed by Bill 206, particularly amendments to the Responsible Energy Development Act, do not have any impact on the mandate, policies, or conduct of the aboriginal consultation office in Indigenous Relations. It appears that the proposed amendments only relate to matters within the authority of the Alberta Energy Regulator. Indigenous Relations also assumes that the amendments proposed by Bill 206 will not impact treaty rights.

Thank you again for the opportunity to present Indigenous Relations' submission for your consideration.

The Chair: Thank you, Mr. Lundquist.

The committee will now move to the question-and-answer portion from the members. We will have up to 30 minutes for committee members to ask questions of the above ministries. I'll now open the floor to members. First I have on the list MLA Orr. Please proceed, MLA Orr.

Mr. Orr: Thank you. This first question that I'm going to try to address: the adverse possession piece. I have some basic questions. I'm wondering if any comments can be made on the history of adverse possession rights. In other words, why do we find them in our legal culture? Specifically, I guess what I'm looking for there is: who originally in intent was protected by adverse possession, and, conversely, who is injured if we repeal adverse possession rights? I'd appreciate something on that. Secondly, I'm wondering: what is the greatest cause of claims under adverse possession? I suspect that it's survey discrepancies, but I wonder if you could clarify that. And, thirdly, I guess my question would be – I mean, I'm always hesitant to just repeal something without understanding

why it was there in the first place, and I try to avoid extremes of full adverse possession versus no adverse possession. So the question is: is there a better solution than repeal to address the potential problems?

Those are my questions on that one. Thank you.

The Chair: Thank you.

Ms Tchir or Ms Hillier, please go ahead.

Ms Hillier: Adverse possession is a historical common-law rule. That's how it started. It would help, I think, if I explained the deed system that is used in some of the provinces further east. It's an older system than the land titles system we use, and those provinces that are moving from a deed system to a land title system are doing that because a land title system such as in Alberta has quite a lot of advantages in streamlining principles in terms of its operations or operation as it relates to the economy.

In a deed system you have to go back to – every time you have to look at selling your land, mortgaging your land, or doing anything else with it, you have to actually search every piece of paper that's associated with that property all the way back to what we call a root of title. The question goes back to: how did it come out of the Crown? The Crown originally holds all title. One of those ways, of course, would be a Crown grant, but one of the other ways of doing it is adverse possession against the Crown, and that also extended to adverse possession against another individual.

The adverse possession rules got incorporated into the statute law from common law in the same way that a lot of real property rights and common-law rules outside of property law got incorporated in. It was a way, particularly before we used lawyers commonly for land and before – especially in places where there is a long history of property dealings, it was a way of claiming and gaining ownership of land that you would have had, perhaps, in your family for generations but where the documents had never been done on that land.

The second question – perhaps you can repeat the second one for me, because now it's gone.

Mr. Orr: Yeah. The question of causes for claims. Is it primarily surveys, or what is it?

Ms Hillier: Well, surprisingly, regardless of how precise you want to be in legislation, the operations on the ground over time can sometimes go sideways. There are actually very few claims in Alberta for adverse possession. The ALRI report, I think, lists eight of them that they were able to find in recent years. There are not a lot of them. I have not reviewed those cases in detail, so I can't tell you what they cover, what types of circumstances, but it's very often that, especially historically, on the ground a mistake got made on where a border was. It is not as common to find somebody who intentionally went out and took adverse possession of a property although it's possible. It's far more common if you go to a deed system.

I used to practise property law in Newfoundland, so I'm very familiar with these. When you go to a deed system, it's extremely common because of the fact that in Alberta when you register a piece of property, land titles is taking care of ensuring that the survey was done, the borders are right, your documents are appropriate for registration, et cetera, et cetera, and then we rely on the title, and the government guarantees that. None of those things happen in a deed system, which means that the adverse possession piece gets used far more often. Nobody is checking on where they put the fences or whether the house is partly over the boundary line because they got it wrong; it's things that happen generally in practice that are wrong.

In terms of the rule of title, you can get title to a property intentionally through adverse possession. It is technically possible.

The Chair: Thank you.

A follow-up, MLA Orr?

Mr. Orr: Just, lastly, do you have any suggestions for a better solution if I can word it that way? Is there another solution beside just repeal, or is repeal, from a legal point of view, the best process?

Ms Hillier: I'm sorry. I'm not able to give you an opinion. I don't have instructions to do that.

The Chair: Thank you.

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

Ms Ganley: Thank you very much. I have questions. One is for Indigenous Relations, and I think the other – I think we tried to ask earlier, and I think it got referred back to Justice, so it's probably for you. When the committee deliberated on this, on having presentations come forward, one of the things – we had some questions that went with it, and two of them were questions of mine that the committee directed. I don't see the answers anywhere in here. I'm just assuming that somehow that got lost in translation, so I'll ask the questions again. Understanding that we have limited time, if you would like to undertake to follow up in writing, I am completely fine with that.

The first was about the process that Bill 206 outlines. It sort of changes the right to kind of notice and the right to make submissions and to have information on behalf of landowners. I was just hoping that that could be compared to the process for the aboriginal consultation office. Obviously, the ACO, there's a certain amount of, you know, rights that are provided to indigenous peoples, and they undergo a certain amount of the right to notice and the right to make submissions and the right to have information, so sort of similar things. I'm just wondering how those two processes differ.

The other question I just had is about statutory consent. Obviously, there are changes to rights around statutory consent in Bill 206. The definition of statutory consent is a bit complicated. It includes a whole bunch of things which, I mean, appear to be, like, rights to water access and to leases and to almost everything that isn't a fee simple. And then it excludes instruments under a bunch of different acts. I'm just wondering if we could just get a complete list of what we're dealing with because I think that would be helpful to the committee in their deliberations.

11:30

Those are my two questions. I would expect that the first is intended to go to Indigenous Relations and the second to Justice. Again, I'm fine to have that followed up in writing because I think that maybe the question got lost in process when the committee directed that.

Thanks so much.

The Chair: Mr. Lundquist, if you would like to comment on the first question.

Mr. Lundquist: Yes. Thank you. I think I will follow up in writing on that one. I don't have that material available to me at this time.

The Chair: Ms Hillier or Ms Tchir, if you want to comment on the second.

Ms Hillier: I can't comment on Bill 206 aside from its changes to adverse possession. There is included in the Justice submission a

comparison of the Bill 206 provisions to the ALRI recommendations if that's helpful.

The Chair: Thank you.

Ms Ganley, do you have any follow-ups at this time?

Ms Ganley: Yeah. I'm just a little bit curious. I feel like the definition of statutory consent isn't – like, I mean, obviously, it's complicated. It's not immediately evident to members of the committee, having sort of read the definition. But we heard from Environment that they're not able to comment on what that is or what impact that's having, and now Justice is saying that you also can't comment on what statutory consent is?

Ms Hillier: I cannot. I don't have instructions to comment on their legislation.

The Chair: Thank you.

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

Mr. Milliken: Thank you, Mr. Chair. This question, I believe, goes to Mr. Lundquist. I recognize that in your submissions you noted that a significant part, from your view, of what this committee is doing might be outside of the scope with regard to your ministry. My question kind of goes to – sometimes the routes of highways are identified as having to go through indigenous lands. I know that just south of my riding in Calgary-Currie there's Tsuut'ina Nation. There's a highway going through there. There's also amazing development going on in the area. They're doing beautiful developments and things of that nature. I guess my question is: who negotiates, then, with regard to essentially the taking of that land for the purposes of a highway? Is that the provincial government or the federal government?

The Chair: Mr. Lundquist, if you'd like to answer that question.

Mr. Lundquist: I'm not fully aware of this, but I believe it would be, if it's in Alberta – and this would be a question more for Transportation – a negotiation between the province and the First Nation, I believe.

Mr. Milliken: Okay. Yeah. I wasn't sure, actually, so that's great. Given your answer I actually don't even think that I have a follow-up on that. Thank you so much for that.

The Chair: Thank you.

Next I have on the list Mr. Nielsen. Mr. Nielsen, please proceed.

Mr. Nielsen: Thank you, Mr. Chair. I guess the question will go to Justice, but I know that Service Alberta, although they didn't make a presentation, is there to help. It kind of feels like it sort of goes to Service Alberta. As we understand the way land titles are administered – and, of course, that's also currently being changed right now, with offices potentially outsourced and privatized. I was wondering if you might be able to tell us a little bit about how this will affect people that need these services. For example, are there going to be any closures of land titles offices in rural Alberta which could make, you know, Albertans' inquiries around land titles a problem?

The Chair: Mr. Grove.

Mr. Grove: Thank you. Just checking my volume first.

The Chair: You're all good. Please proceed, Mr. Grove.

Mr. Grove: Okay. Thank you. I don't know that this question relates necessarily to adverse possession or land titles as part of this. I would have to defer and have no response on that at this point.

Mr. Nielsen: Is it something that you might be able to follow up on later in writing? I mean, if we're talking about property rights of Albertans and they're not able to access the offices without, I guess, significant challenges to maybe getting to one, I'm just wondering how those folks are going to be able to manage their situations should they come up.

Mr. Grove: Yes. I would recommend that we would follow up in writing.

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

Mr. Orr: Thank you. This is for aboriginal affairs. I understand that the department feels that most of this committee is sort of not really within your guys' bailiwick, but I have to challenge that a little bit because I have, right within my own riding, pieces of property on private land that the indigenous people consider sacred sites. There are relics buried or that could be found on some of those sites. There are gravesites. There are historic campsites. These are on private land, not Crown land. They're not federal; they're not provincial. My question is: what are the aboriginal rights? Even if they're constitutional, how do those constitutional aboriginal rights affect those private landowners, and how do we address that one? That's my question.

Thank you.

The Chair: Please go ahead, Mr. Lundquist.

Mr. Lundquist: Thank you. The indigenous have their rights on their reserves, so they wouldn't have any rights to the private land.

Mr. Orr: Wow. So even constitutionally, like, there are no grounds even – I mean, I'm thinking: we're living in a changing world here. We've got the United Nations rights of indigenous people. That has no impact on private land ownership where indigenous people might have claims to any of it?

Mr. Lundquist: We'll follow up in writing on that one.

Mr. Orr: Thank you.

The Chair: Next I have on the list Ms Ganley. Go ahead.

Ms Ganley: Thank you. I have a question just with the written submissions from Justice and Solicitor General. One of the things it mentions – and I'm just reading directly from it – says, "The Alberta Bill of Rights applies only to Alberta provincial legislation and it can be overridden by the Legislative Assembly of Alberta." I'm just curious how that override works. Would you need to explicitly say, like, "notwithstanding the Alberta Bill of Rights"? The reason I'm curious about that is because, obviously, if we include property rights in the Alberta Bill of Rights, that will presumably have an effect on all Alberta legislation which currently exists, most of which, to the best of my knowledge, does not contain such an explicit override. I'm just wondering – yeah. How does that override work?

Ms Hillier: Answering your question would require me to give a legal opinion, and I am not authorized to give a legal opinion to the committee.

The Chair: Ms Ganley, you have a follow-up?

Ms Ganley: Yeah. Sorry. I guess I'm a little bit confused by the answer. It says in your bill briefing that the Legislative Assembly can override the Alberta Bill of Rights, and you're telling me that you can't tell me whether that could be done by implication or whether it has to be explicit?

Ms Hillier: If the committee has a question on that, I suggest that you direct it to the Minister of Justice.

The Chair: Thank you.

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

Mr. Rowswell: Thank you. In the process set out by the Expropriation Act, landowners have an opportunity to object within 21 days. It also states that the Lieutenant Governor in Council may determine that the expropriation is urgent and in the public interest and must proceed without inquiry. Is there any ability to appeal this decision? How frequently has this ability been used and in what situations?

11:40

Ms Hillier: The Expropriation Act is the responsibility of Justice, but its administration is not done by Justice. The administration of the act and the operations of them are done by the expropriating authorities. For example, the municipalities are expropriating authorities, and the Expropriation Act operates as an umbrella, but their authorizing legislation can also give further details and make further requirements, et cetera. Because Justice doesn't actually administer the act, I don't have that information.

The Chair: Sorry. Mr. Rowswell, do you have a follow-up?

Mr. Rowswell: I guess. Then can you answer how much difference there is between jurisdictions relative to expropriation? Or is that not . . .

Ms Hillier: No. I can give you some indication. I am aware that we have had unsolicited requests from some of the cities to review the Expropriation Act. In particular, they note some changes or some developments that have happened in other jurisdictions that are not reflected in Alberta law. Alberta's Expropriation Act was brought into force in the early 1970s and has not received a thorough review in our memory, so nobody currently in legislation development at Justice remembers us ever reviewing it in any kind of detail. There are advantages and differences in other provinces, and there are other provinces who are currently reviewing their legislation.

The Chair: Thank you.

Next I have on the list Mr. Milliken. Go ahead.

Mr. Milliken: Thank you, Mr. Chair. I guess this goes to Justice. The Alberta law review institute has recommended that the principle of adverse possession should be eliminated. Are amendments proposed in Bill 206 adequate to eliminate adverse possession if that was the will of the Alberta Legislature?

Ms Hillier: I can't tell you if they are adequate because that would involve me giving you a legal opinion on Bill 206, but I can tell you that in the Justice submission there is a chart that compares the ALRI recommendations to Bill 206. Some of ALRI's recommendations are not reflected in Bill 206. Bill 206 also makes other changes that are not part of ALRI's proposed elimination of adverse possession.

Mr. Milliken: Okay.

A follow-up?

The Chair: Yes. Please.

Mr. Milliken: Going to that chart that you referred to, I think that 3 on the right column, the second point – I'm on page 5.

Bill 206 does not specifically state that once the bill comes into force new actions may not be started on adverse possession claims . . .

And then there's an "even" in there; I'm not quite sure if it's supposed to be there.

. . . even if the time required as a basis for adverse possession has been met.

Does this basically imply that if it was the will of the Assembly and Bill 206 was ultimately passed, there still would be carry-over claims of adverse possession just given some of the changes or nonchanges with regard to the Limitations Act, things of that nature?

Ms Hillier: I'm limited by my restriction that I can't give you a legal opinion, but I will say that any matter that is identified that is not addressed in Bill 206 will, of course, simply not be addressed. That will leave that question open and subject to court interpretation and would need to be settled through court actions if required.

Mr. Milliken: Thank you.

The Chair: At this point in time we still do have roughly eight and a half minutes remaining, but I don't have – oh, I see Mr. Nielsen. Mr. Nielsen, go ahead.

Mr. Nielsen: Yeah. Thanks, Mr. Chair. This is probably to Justice. With the recent Bill 62, the red tape reduction act, 2021, there were some changes to the AER and potentially impacts around timelines of projects and the ability of a company to come to the government to request that a decision be quickly made on a project. In other presentations earlier, which I know you were sitting in on, there was mention of Albertans having access to due process. If a decision by government is to shorten the timeline on the decision on a project, does that not potentially affect Albertans' ability to achieve due process if we're cutting it off too quickly?

Ms Hillier: That also would require me to give you a legal opinion, which I can't do. Due process: it will be governed by the legislation, the complete suite of legislation that affects that particular question. So it very much will depend on the specific fact situation and what legislation is being considered. Due process is affected that way, so it is very difficult for me to even answer. Even if I could give you an opinion, I can't answer without all the specifics, including which pieces of legislation would be involved.

The Chair: Mr. Nielsen, a follow-up?

Mr. Nielsen: No, not at this time.

The Chair: Thank you.

Next I have on the list again Mr. Milliken. Please go ahead.

Mr. Milliken: Thank you, Mr. Chair. This goes to Justice as well. I think you may have stated the answer to, I think, kind of my first question, which is: what is the frequency of adverse possession claims filed in Alberta? I think that at one point you may have mentioned something along the lines that there were eight outstanding. Is that correct?

Ms Hillier: I said that that [inaudible] were most frequent, and in ALRI's report they actually list, I think, eight of them that they were able to locate, so it is not a frequent process in Alberta.

Mr. Milliken: Not a frequent process.

Then as a follow-up: has there been any marked uptick in claims since 206 was introduced?

Ms Hillier: In order to lead a claim to adverse possession, you have to file a court action and go through a court process to get an order. The court process and the filing of a court action: it's not recorded. We would not know. Until we get the decisions out of the other side, when the court action is over and then they would be presented for registration at land titles, we wouldn't know that.

Mr. Milliken: Yeah. For the purposes of if Bill 206 proposes to potentially – no legal opinion needed or anything like that – get rid of adverse possession claims, essentially, or the rights in law, then I was just wondering if maybe there was an uptick in claims to try to get them through before 206 was passed or anything along those lines. That's all.

The Chair: Thank you.

Next we have on the list Ms Ganley. Ms Ganley, go ahead.

Ms Ganley: Thank you, Mr. Chair. I just want to come back around to this because, you know, Bill 206 touches on a lot of things, and I think it's pretty important that the committee be able to understand what we're doing when we're making recommendations in our deliberations. Obviously, the Alberta Bill of Rights: there's a section being inserted into it. It's adding property rights. These are not something that exist under the Constitution, so this would be different than usual. I'm just trying to understand: what impacts would that have? I think, like, that's a pretty important thing for the committee to understand, what the impact would be.

Now, certainly, Bill 206 makes other changes, specifically to the Responsible Energy Development Act. I mean, the argument made by property rights advocates and by rural landowners tends to be that they feel that the lack of due process and the lack of their ability to get noticed and to make submissions and even the lack of the ability to seek redress from the Surface Rights Board because the AER has ruled on whether or not they're directly and adversely affected or impacted – I'm just wondering, like: will this provision have impacts on that? I'm not asking here for, you know, an opinion on exactly what the impacts will be. I'm just wondering if the insertion of this provision has any impact on those acts at all.

Ms Hillier: The impacts of adding that to the Bill of Rights would be determined through court decisions, and until the court hears it – it will require legal opinion, but it would be an opinion at most. Really, the determination would [inaudible] courts started looking at rendering decisions on the meaning of adding that section to the Alberta Bill of Rights.

The Chair: Ms Ganley, a follow-up?

Ms Ganley: Yeah. Basically, what you're saying is that none of the departments have any analysis on what the impact of the addition of that section would be.

11:50

Ms Hillier: No. What I'm actually saying is that I don't have any authorization to give you that opinion here. I don't have any authorization to give the committee a legal opinion.

Ms Ganley: So you know; you just won't say. Okay.

The Chair: Thank you.

Next I have on the list MLA Orr. MLA Orr, please go ahead.

Mr. Orr: Thank you. I'd like to address the subject of riparian rights. It's becoming an increasing issue of conflict, particularly in rural areas, between ranchers and farmers and recreational users, lakefront owners. I wonder if you could just clarify for me, first of all, specifically: who owns riparian rights? Do they change over time, and do you have any suggestions to the committee in terms of addressing the issue of riparian rights, if we should be looking at any policy changes there?

Thank you.

Ms Hillier: That is an issue that is outside the issues I've been asked to speak on, so I don't have any comment on the subject of riparian rights.

The Chair: Mr. Orr, do you have a follow-up?

Mr. Orr: Let's try a different subject, then, related but different. Leaseholder rights are also property rights of a form. They're not ownership – well, they're ownership of a certain element of property rights, a complicated issue. I refer to grazing leases, mineral leases, even tourism development leases of Crown lands. Generally the public considers those to be public lands, and they have right of access to them, but it's an increasingly conflicted area of property rights. Once again I'm looking for direction or advice, and if you can't give it to me now, I would appreciate in writing something on both of these from the department. Are there any suggested directional changes that we should be aware of to address these very relevant current issues?

Thank you.

Ms Hillier: Neither of the pieces of legislation that I've been instructed to speak on today affect either of those issues. It is true that leases are a form of property rights ownership and, as such, are subject to the Expropriation Act, but past that, I have nothing further to add or any comment to make on them.

The Chair: Thank you.

At this time we roughly only have seven seconds remaining, so I do believe that that has concluded our time for questions with regard to ministries in panel C and overall for the technical briefings in today's meeting. Having said that, I would like to thank Ms Hillier, Ms Tchir, Mr. Lundquist as well as Mr. Grove for presenting. That concludes that portion.

We are now on to item 5, other business. Are there any other issues for discussion before we wrap up today's meeting? Ms Ganley, please go ahead.

Ms Ganley: Yes. Thank you very much, Mr. Chair. This may happen automatically, but because we have people who are writing in and providing submissions and who may have been listening today to the submissions of the committee, I just want to ensure – and I'll make a motion if I need to – that all material submitted to the committee in preparation, the written material, is available to the public. Again, it's just so that those individuals can have context on the submissions they're making to the committee. I think we all want to do the best job we possibly can, and the more information we have and the more information people have in front of them to respond to, I think the better we can all do.

The Chair: Sorry, Ms Ganley. Just one sec.

I just wanted to confirm with counsel. Of course, we would have to get permission from the committee to put a motion forward in that respect on this other business. Is that your intent, Ms Ganley?

Ms Ganley: Yeah. I think that in light of the fact that the agenda wasn't provided until after the motions were due and the fact that for most other committees it has been fairly par for the course to make those submissions, the department submissions, available to those submitting, I would respectfully ask that the committee be willing to consider a motion to make those public.

The Chair: Yeah. Just one second.

This is just to allow a motion at this time. Of course, this would require the majority of the committee to be put through. So I will ask: to allow a motion to be heard under other business.

At this point in time I will ask the question. All those in the room in favour of allowing a motion under other business, please say aye. On videoconference? All those in the room opposed, please say no. On videoconference? That motion appears to be defeated.

Ms Ganley: Could I request a recorded vote? It's difficult to track who's saying what.

The Chair: I appreciate that, Ms Ganley, absolutely.

We will start within the room. All those that were in favour of the motion, please raise your hand. I have Mr. Schmidt and Mr. Nielsen.

This will be a little bit different, of course, on videoconference. You will have to just chime in on your own, and we will record. Please state your name and if you're in favour on videoconference. Those in favour, please state as such.

Ms Ganley: MLA Ganley. In favour.

The Chair: Hearing none further on videoconference, I will then ask in the room. All those opposed to the motion, please raise your hand. I've Mr. Milliken, Mr. Rowswell, and Mr. Orr.

All those opposed on videoconference, as previously stated, please state your name and your intention on the vote.

Mr. van Dijken: Glenn van Dijken. Opposed.

Mr. Hanson: David Hanson. Opposed.

Ms Glasgo: Michaela Glasgo. Opposed.

Ms Goodridge: Laila Goodridge. Opposed.

The Chair: Anybody else that has not had the chance, please state your intentions now.

Mr. Huffman: Thank you, Mr. Chair. For the motion, three; against, seven.

The Chair:

That motion is defeated.

Are there any other issues for discussion before we wrap up today's meeting?

Hearing none, the date of the next meeting will be at the call of the chair.

If there's nothing else for the committee's consideration, I will call for a motion to adjourn. MLA Milliken. Moved by MLA Milliken that the meeting be adjourned. All those in favour in person, say aye. And on videoconference? All those opposed in person? All opposed on videoconference? Hearing none, that motion is carried.

Thank you, everyone. For the health and safety of LAO staff, please remember to clean up any drinks and other items before you leave. This meeting is adjourned.

Thank you.

[The committee adjourned at 11:58 a.m.]

