

RESOLUTION 12-23
REVIEW OF THE LAND AND PROPERTY RIGHTS TRIBUNAL (LPRT)

WHEREAS: agricultural producers in rural Alberta remain some of the most skilled individuals at growing, harvesting, and producing high quality food products for Canadian, as well as international consumers; and

WHEREAS: the oil and gas industry and the agricultural production industry are both very important parts of the Alberta economy; and

WHEREAS: the oil and gas industry and the agricultural production industry both benefit from an environment of mutual cooperation when the surface of privately owned lands are being utilized for the purpose of extracting natural resources; and

WHEREAS: the Surface Rights Act and related legislation outlines considerations for landowner compensation through surface leases for these expropriation-like activities; and

WHEREAS: a level of knowledge of relevant modern agricultural practices including agricultural law, science, agronomy, valuation and business experience is imperative to surface rights deliberations; and

WHEREAS: the LPRT has in recent years seen a steady and significant increase in the number and type of applications received, indicating a consistent trend of year over year increases in the number of disputes between landowners and oil and gas companies; and

WHEREAS: the LPRT is the appointed body that is mandated to provide Albertans with access to independent, fair and timely quasi-judicial and alternative dispute resolution processes.

THEREFORE BE IT RESOLVED
THAT THE ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST

That Municipal Affairs establish a task force comprised of Agricultural Service Board Members, agricultural producers, experts in agricultural science, agronomy and business, as well as representatives from the oil and gas industry associations, to conduct a full review into the function and mandate of the Surface Rights components of the LPRT as directed by related legislation, with a focus on matters of, or related to:

- Contractual negotiations being fully paid by energy operators,
- Implementation of mandatory mediation prior to LPRT application,
- Improved timeliness of applications, and
- Clarity of terms used in the Surface Rights Act.

SPONSORED BY: Wheatland County
MOVED BY: _____
SECONDED BY: _____
CARRIED: _____
DEFEATED: _____
STATUS: Provincial
DEPARTMENT: Alberta Municipal Affairs

BACKGROUND INFORMATION

The oil and gas industry in Alberta has successfully expanded over past decades by the granting of leases by the Government of Alberta and the subsequent negotiations of lease terms between landowners and oil and gas companies to access resources on private lands. This relationship deprives the landowner of the ability or the right to end the lease and have the area reclaimed and returned to its original use. The landowner is obliged, over decades, to remain in the lease arrangement with oil and gas companies. An overriding principle of the development of oil and gas leases on privately owned land was that the landowner, being subject to a loss of their land use, is not to experience financial loss due to the oil and gas development on their land.

Historically, landowners and oil and gas companies have engaged in negotiations to develop lease terms and to renew leases that were acceptable to both parties. In Wheatland County, since 2019, landowners have expressed concerns of a breakdown in negotiations and relationships between certain oil and gas companies and landowners. As a result, trust and respect between these landowners and the oil and gas operators functioning on their land appears to be becoming increasingly strained. This has resulted in undue stress and anxiety to landowners, particularly when facing a threat of substantial financial loss due to obligatory and complex lease renegotiations with oil and gas companies. Landowners are often required to retain subject matter experts, at their own cost, to ensure they understand both their legal rights and the fair market value of their leased land. These costs are rising, as some operators are choosing high level representation, which usually is out of reach for landowners.

The negotiation for compensation to landowners should be approached based on the various considerations outlined in Section 25 of the Surface Rights Act. The present day state of the oil and gas market should not be included as a consideration when determining or negotiating compensation amounts to landowners. Landowners are also subject to variable risks to their business, such as weather, drought, insect infestations, resistant weed strains, and food commodity prices, all of which persist regardless of economic fluctuations of the oil and gas sector.

Compensation has been eroded over time by the fact that leases do not include an inflation adjustment; this was left to be factored into the 5-year compensation review. Past negotiations had resulted in increases in compensation to account for this cost-of-living

adjustment; however, the practice seems to have been abandoned by some companies. In addition, landowners are at risk of being affected adversely by liability costs.

Some landowners have reported that their requests for the legislated 5-year compensation review have been ignored and, in some instances, they have reported that they are unable to contact operators after receiving notifications of upcoming reviews. In such situations, landowners often find themselves needing to spend significant time away from their primary business to navigate the complex process of lease renegotiations, and, in some cases, arbitration, tribunal hearings, and court appeals. For many landowners, the process of lease renegotiating can be highly stressful, and even unmanageable, where oil and gas companies may have access to in-house subject matter experts, including legal counsel who negotiate land leases on a regular basis.

The primary mandate of the LPRT is to resolve disputes that may arise in relation to oil and gas leases established on private lands. The Government of Alberta, in the Municipal Affairs 2021-2022 Annual Report, noted that “when the rights of citizens are impacted by government decisions or where there is conflict between the competing interests of individuals, industry, or municipalities, the Land and Property Rights Tribunal provides Albertans with fair, timely, and well-reasoned decisions on a variety of different matters including...compensation disputes involving surface rights and expropriation.” (June 2022. p.15.)

Furthermore, this report states that “the overriding consideration and the true measure of the success of the tribunal is that parties who appear before it feel that, win or lose, they have been treated fairly,” with a key objective of the tribunal “to [strengthen] the rights of landowners and operators to fair and timely decisions on surface rights matters.” (June 2022. p. 15.)

In 2021, the tribunal received 7,446 surface rights applications, an increase of 41 per cent from 2020; conducted 6,591 hearings, both written and virtual, an increase of 19 per cent from 2020; and issued 6,555 decisions and/or orders, up 19 per cent from 2020.

In 2021, the tribunal received 487 applications for a rate review under Section 27 of the Surface Rights Act, 300 of which were filed by operators. This compares to 345 applications received in 2020 and 256 in 2019.

Another area that has seen a substantial increase in applications are requests for reconsideration under Section 29 of the Surface Rights Act, where the tribunal is asked to effectively reconsider its own decisions. In 2021, there were 149 such applications filed, which represented a large increase from 2020 and 2019 when 22 and 26 applications were received respectively.

Landowners are often at a severe disadvantage in comparison to oil and gas companies, both financially and in legal experience. The primary business of landowners is not in the legal realm, but many landowners are required to negotiate, in a quasi-judicial process, with corporate entities with far more access to financial and legal resources. When landowners

are facing the risk of having to undergo a tribunal hearing process, and when landowners recognize a financial and legal resource disadvantage, this situation can make the landowner susceptible to succumbing to the pressures of signing lease agreements with compensation amounts that are far below what is warranted.

The financial risk for landowners at a tribunal hearing can be large and unpredictable. They can significantly outweigh the value of their individual lease compensation. A landowner is extremely disadvantaged if there is a risk that their costs for engaging legal or other expertise to participate in the quasi-judicial process may not be recoverable.

Alberta relies on both its local agriculture and oil and gas industry, and both have developed world-class reputations. Concerted efforts toward maintaining and enhancing positive, collaborative relationships between these two industries is important work in support of strong economic development, and the enhancement of overall quality of life within the province.