


LANDOWNERS' AND ENERGY DEVELOPMENT

LAMONT & STRATHCONA COUNTY LANDOWNER SESSION 2014

Farmers' Advocate Office
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LAND AND ENERGY ADVOCACY

- Stakeholder engagement (extension);
 - Advisory for landowners on their rights, Legislative and Regulatory Framework, Process and Procedure as it pertains to energy development (survey, seismic, transmission, oil and gas, rural utilities and pipelines);
 - Advises landowners on negotiating energy related contracts;
 - Advocate landowners interests on industry, internal and intergovernmental committees in a consulting and/or advisory capacity;
 - Resource for stakeholder groups in advisory and/or consulting capacity (surface, synergy, agricultural, community etc.);
 - Make recommendations for Policy Development;
 - Intervene on behalf of landowners with energy companies in disputes;
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RIGHT TO DRILL (MINES AND MINERALS ACT)

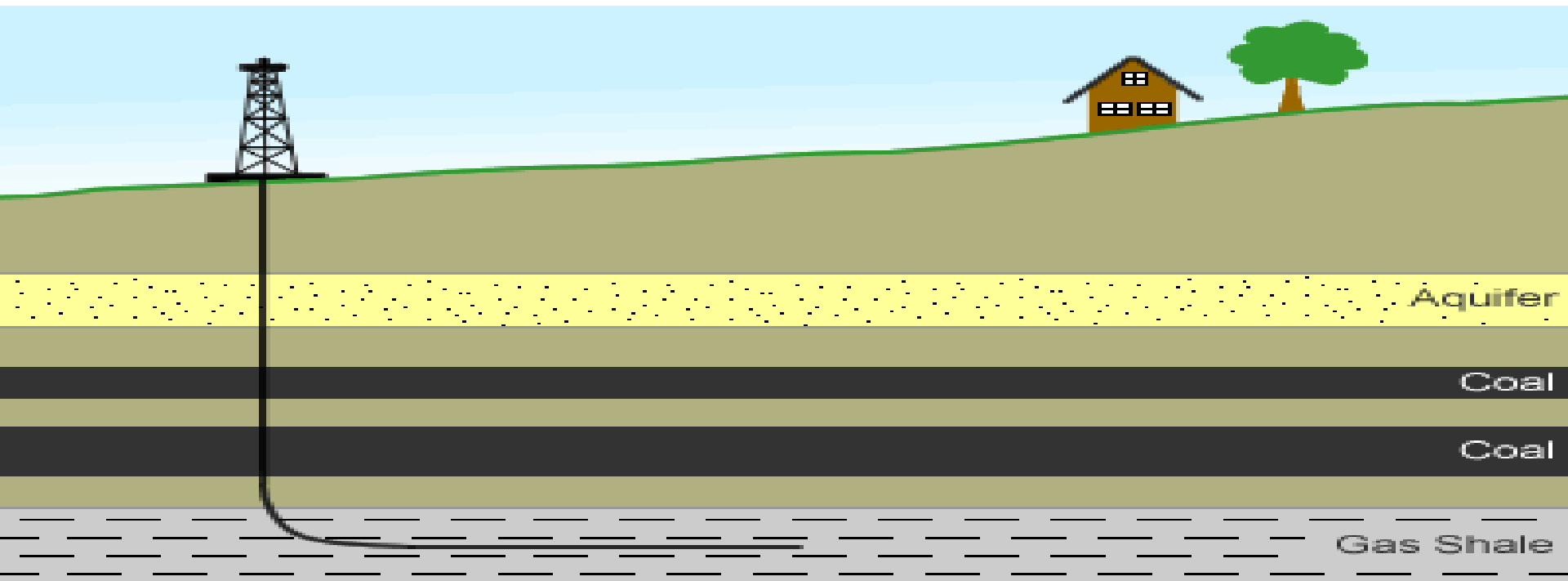
Sec 58 MMA: Right to work through the pore space and other minerals

Sec 59 MMA: Right to work through the pore space and minerals
outside tract


No requirement for notification to Surface or Mineral Owner:

No requirement for payment of compensation except in the case of authorizing statute;


Currently no authorizing legislation



DEFERRAL OF COMPENSATION PAYMENTS

- ✓ **Tax Purposes: Portion of the lump sum (L of U + AE) that equals annual payment considered to be income within Subsection 9(1) of the Income Tax Act;**
 - ✓ **The remainder of the first years payment is considered to be capital under the Income Tax Act;**
 - ✓ **Subsequent Annual rental payments are considered to be income;**
 - ✓ **Can request split cheques from the company as partial payments over two years to offset cost of higher lump sum payments (eg. Land Value, L of U; AE; Surface Damages; General Disturbance; Signing Bonus etc);**
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SOLICITORS' AND REPRESENTATIVE FEES

- ✓ Negotiable with company; vast majority will pay fees;
 - ✓ If not, force company to a Right of Entry and Hearing. Pursuant to SRA if a application for ROE proceeds to compensation hearing; landowners may request costs of negotiation and/or representation;
 - ✓ No 100% guarantee of reimbursement; considered on a case by case basis; SRB determines and awards “reasonable” costs, based on complexity of cases involved;
 - ✓ Discretionary to both AER and SRB to consider “reasonable costs”;
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LAND SPRAY AGREEMENTS

- ✓ Right of landowner to deny access for spreading of drilling waste;
 - ✓ No requirement by Regulator for disclosure to landowner of contents of drilling waste;
 - ✓ Can request disclosure by company; may be asked to sign privacy agreement;
 - ✓ Marketed by industry as “fertilizer” for land; no assurance as wastes may differ; have heard that in some cases may contain high phosphate levels which may have some impact on drainage;
 - ✓ Values: Similar to Temporary Work Space Agreements; 50% of land value
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RESERVATION OF RENTS FROM LEASES

- ✓ Occurs with Purchase and Sale of Lands;
- ✓ Forms part of the Sale Agreement;
- ✓ Land Transfers to new owner and compensation payments are retained by seller;
- ✓ Seller reserves right to assign and transfer rentals to subsequent successors and assigns;

Reservation is a Historical practice in AB:

Any agreement reserving out the rent and retaining the right to assign negotiated as part of a purchase and sale agreement.. Prior to 1985, reservation may not be binding on the current owner of the land ;

Vast majority of cases agreements overturned and rentals returned to current owner.

RESERVATION OF RENTS FROM LEASES

✓ 1985 Amendment to Law of Property Act (S63):

Law of Property Act:

Equitable interests in land

63(1) *The following are equitable interests in land:*


(a) a right of first refusal to acquire an interest in land;

(b) an assignment of rents payable pursuant to a lease of land.


(2) *After registration of a caveat under the Land Titles Act protecting an equitable interest referred to in subsection (1), the equitable interest takes priority in accordance with section 14 of the Land Titles Act and runs with the land.*

... prior to the Amendments to the Law of Property Act 1985, an assignment of rents did not constitute an interest in land and therefore the rents could not legally be assigned or retained beyond the purchaser and seller. The agreement was only binding on the purchaser and seller. With the 1985 Amendment assignment of rents can be transferred to future heirs and successors in interest.

RESERVATION OF RENTS FROM LEASES

- ✓ New owner of land is Lessor under the Lease; interest travels with land;
 - ✓ Not compensated for adverse effect and loss of use of farming around the lease although he has the impacts;
 - ✓ Challenges of enforcement of conditions in the agreement ;
 - ✓ May not have a copy; of agreement
 - ✓ Reservation holder often will not become involved with disputes as he is no longer in possession of land with only a financial interest; (occupancy)
 - ✓ Binds all future successors in interest on this parcel;
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“TEMPORARY” WORKSPACE AGREEMENTS

- ✓ Temporary takings for used for storage areas and other purposes (equipment, topsoil etc.
 - ✓ May also be used short term for pzeiometers etc.
 - ✓ Typical 1 to 3 years in term;
 - ✓ Entry fee is payable under the SRA for all temporary work space; paid over and above compensation values;
 - ✓ Require reclamation certificates; TWS is remediated but not reclaimed until pipeline or well or other associated taking is abandoned and reclaimed (50 years+)
 - ✓ Exception is Crown lands; on Crown lands Letter of Clearance within one year under a TFA;
 - ✓ No central repository or record kept of private lands taken for TWS (often not indicated on plans; onus on landowner for record keeping);
 - ✓ Under a Right of Entry TWS is a permanent taking;
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“TEMPORARY” WORKSPACE AGREEMENTS

- ✓ Both SRB and courts have confirmed (*Terasen Pipelines (Corridor) Inc. v Schroeter Enterprises Ltd., 2013 ABQB 482*) that Temporary Workspace is permanent in Nature;
- ✓ Sec 144 EPEA requires reclamation on land under Temporary Work Space;
- ✓ Reclamation is not granted until abandonment &/or reclamation;
- ✓ *Some rights to that area are retained by the Operator*, thus, the permanency of the taking under EPEA;
- ✓ SRB does not distinguish between land valuations on a ROW and TWS, but awards 100% land value on the TWS;
- ✓ Industry practice is to award 50% of the value of the right of Way); freely negotiable but precedents set by SRB and courts;
- ✓ When damage release signed by the landowner, ensure that when release is signed it only pertains to “forever discharging” the company from damages relating to construction phase of the development;

Temporary Work Space Agreements

- ✓ Typically associated with pipeline developments but may have multiple purposes;
- ✓ Usually not negotiated beyond 1 year term;
- ✓ Damage Release association; forever release and discharge;
- ✓ No central repository; definitive area (sketch plan);
- ✓ Rec Cert requirement;
- ✓ Compensation:
 - Industry Practice: 50% of land Value;
 - SRB Practice: 100% land Value;
- ✓ Entry Fee payable in addition to compensation under work space Agreements;

Recent Court Decision in December of 2013

- Terasen Pipelines v Schroeter 2013 ABQB 482
- Enbridge appeal of SRB Decision where SRB awarded 100% land value on temporary work space on the basis TWS is somewhat of permanent nature;
- EPEA S144 states no surrender or termination of any portion of surface agreement until Rec Cert;
- Environment no longer issues Rec Certs on TWS until pipeline abandonment;
- Courts confirmed some rights retained by Operator under TWS but declined to define rights;
- Court supported SRB decision to pay 100% land value on TWS and divert from POD on the basis that some rights retained under TWS;