

# Alberta and Regional Impact Assessments



**Gavin Fitch**

*McLennan Ross LLP*

*Canada*

Gavin.Fitch@mross.com



# Alberta's Land-Use Framework

---

- ❑ Established by the Government of Alberta in 2008
- ❑ Introduced as a high-level policy framework to be used to craft plans, policies and strategies to address land-use issues in the Province
- ❑ Laid out seven strategies to improve land-use planning:
  1. Develop seven regional land-use plans based on for new land-use regions based on major watersheds;
  2. Create a Land-Use Secretariat and establish a Regional Advisory Council for each region;
  3. Cumulative effects management to be used at the regional level to manage the impacts of development on land, water and air;
  4. Develop a strategy for conservation and stewardship on private and public lands;
  5. Promote efficient use of land to reduce the footprint of human activities on Alberta's landscape;
  6. Establish an information, monitoring and knowledge system to contribute to continuous improvement of land-use planning and decision-making;
  7. Inclusion of Aboriginal Peoples in land-use planning.



# *Alberta Land Stewardship Act, SA 2009, c. A-26.8, [ALSA]*

---

## Purpose and Background

- ❑ Provincial legislation proclaimed on October 1, 2009
  - ❑ Amended in May 2011
- ❑ ALSA provides legal basis and direction to implement the LUF's strategies
- ❑ Provides the Government of Alberta with the power to provide direction and leadership in identifying current and future land-use objectives, including economic, environmental and social objectives
- ❑ Applies broadly to municipalities, industry, land-owners, all other provincial decision-makers, including regulatory bodies
- ❑ Provides for the development of regional plans and the creation of a quasi-independent administrative agency called the Land-Use Secretariat ("LUS")
  - ❑ The LUS would be responsible for leading the development and implementation of comprehensive regional planning throughout the province.



# Progress To Date

- ❑ The Lower Athabasca Regional Plan (“LARP”) was developed first and implemented in 2012
  - ❑ area where the majority of Alberta’s oilsands development is located—mostly Crown land and numerous First Nations
  - ❑ Massive growth during 1990s and 2000s led to concern about cumulative effects
  - ❑ currently under statutorily-mandated 10-year review
- ❑ The South Saskatchewan Regional Plan (“SSRP”) came into effect in 2014
  - ❑ Populated area of province with mostly private property, numerous competing uses (agriculture including irrigation, conventional oil and gas, forestry, tourism, etc) and significant water constraints
  - ❑ 10-year review will commence September 1, 2024
- ❑ The planning and drafting for the North Saskatchewan Regional Plan (“NSRP”) was initiated in 2018 but has since stalled
  - ❑ Plan never finalized or implemented
- ❑ Work on remaining four plans (Upper Peace Regional Plan, the Lower Peace Regional Plan, the Red Deer Regional Plan, and the Upper Athabasca Regional Plan) never started and is in limbo.

# ALSA's Unrealized Potential

- ❑ Only two out of seven regional plans have been enacted to date with no indication any other plans will be developed;
- ❑ *ALSA* has had arguably disappointing results, leading to regional planning being under-utilized throughout the Province
- ❑ *ALSA* was not overly well-received when it was introduced. Two major criticisms:
  - 1. Centralization of power with Cabinet**

*ALSA* centralizes planning power with the Cabinet of the Government of Alberta;
  - 2. Landowner Compensation**

Regional planning perceived to impose limitations on property rights without adequate right to compensation

# 1. Strengthening of Cabinet's Power

---



Section 4 of ALSA states that Cabinet makes regional plans and section 9 provides Cabinet with the ability to make law through an enacted Regional Plan on any subject-matter that the Alberta Legislature would be authorized to make law.



While public consultation and presentation of draft regional plan to the Alberta Legislature required, Cabinet ultimately has the power to create and approve regional plans.



Section 13 of *ALSA* limits the judicial review of the contents of regional plans, as it explicitly provides that a regional plan is “an expression of the public policy of the Government and therefore the Lieutenant Governor in Council has exclusive and final jurisdiction over its contents”



In Canada, it is accepted law that courts cannot interfere with policy decisions, thereby immunizing decisions of Cabinet under *ALSA* from judicial review.



In effect, under an enacted regional plan, Cabinet is given broad oversight over the functioning of Alberta's economy, much of which is prefaced on land-use decisions, to drive the province's commodity-based market.

## 2. Landowner Compensation

---



The 2009 version of *ALSA* was initially criticized for not providing enough protection to landowners for a “compensable taking” resulting from the enactment of a regional plan.



This led to the introduction of amendments in 2011, which revised *ALSA* to provide that in the event a private landowner experienced any adverse impact to the use of private property because of an enacted regional plan, they would be adequately compensated. However, these amendments did **not** achieve their intended goal of reducing opposition to *ALSA*.

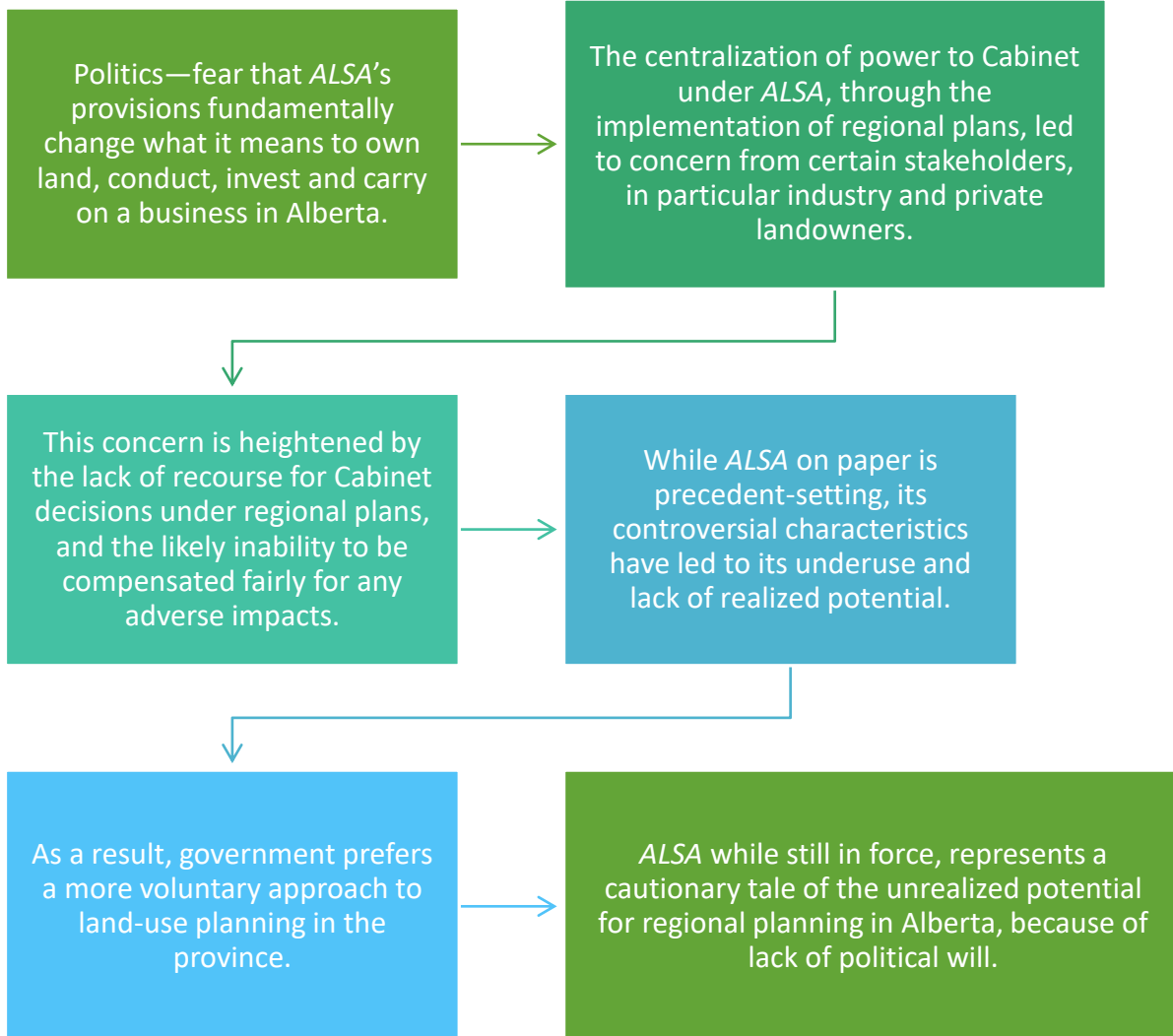


Further, section 11 of *ALSA* permits Cabinet to unilaterally rescind ‘statutory consents’ (e.g. permits, licenses, approvals, registrations, etc.); landowners are generally not entitled to compensation for rescission of such consents.



Result: continued uncertainty by landowners with respect to how they may be compensated, if at all, due to adverse impacts resulting from enacted regional plans, as well as wariness of being subjected to involuntary revocations of statutory consents.





# Discussion & Takeaways



**THANK YOU!**

---

# SOURCES

---

1. *Alberta Land Stewardship Act*, SA 2009, c A-26.8.
2. Dayna Scott, Osgoode – Re: Formal Request to Minister Wilinkson for a Regional Assessment for the Ring of Fire region, December 20, 2019 (online: PDF) < <https://iaac-aeic.gc.ca/050/documents/p80468/133838E.pdf>>.
3. David W. Poulton and Eran S. Kaplinsky, “Unfinished business: Market-based instruments under the Alberta Land Stewardship Act”.
4. “Environment and land use planning – Overview” *Government of Alberta* (online: nd) <<https://www.alberta.ca/environment-and-land-use-planning-overview>>.
5. S. L. Jaremko, A Critical Exploration of the South Saskatchewan Regional Plan in Alberta, Canadian Institute of Resources Law, 2016 CanLIIDocs 4648, <https://canlii.ca/t/t2qj>.
6. S. Palmer et. al., “Conservation Directives: Alberta’s Unknown and Untested Conservation Tool” Environmental Law Centre (online, October 2015) <

# Let's continue the conversation!

Post questions and comments in the IAIA24 app.



## #iaia24

**Gavin Fitch**

*McLennan Ross LLP*

*Canada*

Gavin.Fitch@mross.com