



POLICY SERIES

No. 240 / JULY 2023

2023 EDITION

CANADIAN PROPERTY RIGHTS INDEX

Assessing the State of Property Rights
Protections in Canada

BY JOSEPH QUESNEL



Ideas that change your world / www.fcpp.org



JOSEPH QUESNEL

Joseph Quesnel is a senior research associate for the Frontier Centre for Public Policy who mainly focuses on Aboriginal matters and property rights. Presently based in eastern Nova Scotia, he is from northeastern Ontario and has Métis ancestry from Quebec. He graduated from McGill University in 2001, where he majored in political science and history. He specialized in Canadian and U.S. politics, with an emphasis on constitutional law. He also has a Master of Journalism degree from Carleton University, where he specialized in political reporting. His master's research project focused on reformist Indigenous thinkers in Canada. He is currently studying theology at the Atlantic School of Theology in Halifax. In the past while as a policy analyst, he was the lead researcher on the Frontier Centre's flagship Aboriginal Governance Index, which is measured perceptions of quality of governance and services on Prairie First Nations. For over two years, he covered House standing committees as well as Senate committees. Quesnel's career in journalism includes several stints at community newspapers in Northern Ontario, including in Sudbury and Espanola. He also completed a radio broadcasting internship at CFRA 580 AM, a talk radio station in Ottawa, and the well-known Cable Public Affairs Channel (CPAC). He is a past editor of *C2C Journal*, an online Canadian publication devoted to political commentary. He wrote a weekly column for the *Winnipeg Sun* and contributes to *The Taxpayer*, the flagship publication of the Canadian Taxpayers Federation. Quesnel's policy commentaries have appeared all over Canada, including the *Globe and Mail*, the *National Post*, the *Financial Post*, the *Vancouver Sun*, the *Ottawa Citizen*, the *Montreal Gazette*, the *Calgary Herald*, *Winnipeg Free Press*, among many other major papers. Over the years, he has been featured as a guest commentator on many radio and television news programs.



FRONTIER CENTRE
FOR PUBLIC POLICY

203-2727 Portage Avenue, Winnipeg, Manitoba Canada R3J 0R2

Tel: 204-957-1567

Email: newideas@fcpp.org

The Frontier Centre for Public Policy is an independent, non-profit organization that undertakes research and education in support of economic growth and social outcomes that will enhance the quality of life in our communities. Through a variety of publications and public forums, Frontier explores policy innovations required to make the prairie region a winner in the open economy. It also provides new insights into solving important issues facing our cities, towns and provinces. These include improving the performance of public expenditures in important areas such as local government, education, health and social policy. The author(s) of this study have worked independently and the opinions expressed are therefore their own, and do not necessarily reflect the opinions of the board of the Frontier Centre for Public Policy.

Copyright © 2023 by the Frontier Centre for Public Policy.

Policy Series No. 240 • Date of First Issue: July 2023.

Reproduced here with permission of the author(s). Any errors or omissions and the accuracy and completeness of this paper remain the responsibility of the author(s).

ISSN 1491-78

Ideas that change your world / www.fcpp.org

POLICY SERIES*No. 240 / JULY 2023*

2023 EDITION

CANADIAN PROPERTY RIGHTS INDEX

Assessing the State of Property Rights
 Protections in Canada

BY JOSEPH QUESNEL**TABLE OF CONTENTS**

Executive Summary	4
Background	5
Notes on Methodology	7
Discussion of Results	9
1. Land Title System	11
2. Expropriation	13
3. Regulatory Takings	18
4. Civil Forfeiture	20
5. Endangered Species	25
6. Heritage Property	28
7. Municipal Power of Entry	32
Final Results	35
Conclusion	36
Policy Recommendations	37
Appendix A - Endangered Species	38
Appendix B - Heritage Property	39
Endnotes	40

EXECUTIVE SUMMARY

A Snapshot of Property Rights Protection in Canada After 10 years

The Frontier Centre for Public Policy—a non-partisan think tank—is pleased to release its Canadian Property Rights Index on its tenth anniversary. We are re-assessing the state of property rights in Canada after our inaugural index back in 2013.

The Canadian Property Rights Index (CPRI) is a project designed to measure the level of property rights protections in Canada on a provincial and territorial level. Due to the importance of property rights to individuals and the economic wellbeing of a country, the Index is intended to provide a comprehensive measure of the protections that are currently in place. This updated version of the Index includes seven indicators: Land Title System, Expropriation, Regulatory Takings (‘downzoning’), Municipal Power of Entry, Civil Forfeiture, Endangered Species, and Heritage Property. The CPRI begins with a measure of the provinces’ and territories’ land title systems. It recognizes the superiority of Torrens systems over deeds systems and looks at the procedural safeguards in place to protect individuals’ land titles. Similarly, the CPRI considers the protections available when it comes to formal expropriation processes. Regulatory takings, which refer to laws that limit landowners’ ability to use their property and reduce their land values, are also evaluated in the Index. The Index also assesses the procedural safeguards in place for individuals when it comes to municipalities’ power of entry, civil forfeiture, endangered species, and heritage property. By measuring the property rights protections of the provinces and territories on these seven criteria, it allows for an easy comparison between jurisdictions. It provides a comprehensive view of the current level of protection so that governments, individuals, and organizations can act to ensure that each jurisdiction is providing sufficient protections for its citizens.

Property rights are essential for economic freedom, but in Canada, some provinces and territories often lack the protections that are necessary for the proper safeguarding of rights. The revision reveals a distinct east-west dimension in the results, with the provinces from the West dominating the rankings. Even though Nova Scotia scored second, the Atlantic provinces remain at the bottom of the index. The solution to this issue lies in the need for a commitment to limited government and a more informed and vigilant public who demands better protections of their rights. Policy recommendations proposed include the enshrinement of property rights in the Canadian constitution, measures to control regulatory takings, and establishing an organization devoted to property rights monitoring, education, and protection. If implemented, these recommendations can go a long way to increase economic freedom and prosperity for Canadians.

"Sound government requires each person to forfeit some fraction of his liberty and property to supply the state with the authority and resources needed to enforce prior entitlements to liberty and property."

- Richard Epstein, *Supreme Neglect: How to Revive Constitutional Protection for Private Property*, 2008

BACKGROUND

Measuring property rights protections is important because secure property rights are central to our economic system. The economic literature confirms the connection between a country's economic wellbeing and robust property rights protections. A lack of property rights is demonstrably linked to poverty around the world.

In 2013 we decided to measure property rights protections in Canada. Most property rights issues in Canada occurred at the provincial and territorial level, so we decided to only measure protections at that level. By excluding the federal government, we also excluded intellectual property, which exists within federal jurisdiction in our country. This Index focuses solely on personal and real property held by individuals.

This Canadian Property Rights Index represents an updating of this project from 2013. Sufficient years have passed, and Canadians have dealt with threats to secure property rights over the last few years.

It was time for a new and improved Index. For a complete discussion about Canada's property rights system and historical evolution, please refer to the original Index. For the sake of simplicity, we have repeated the definitions of each of the indicators.

As before, we take the position that property rights are not absolute and that sometimes regulating property for the common good is necessary, although we insist that individual property rights owners not bear the burden of regulating property in the name of protecting public goods. We believe the benefits of public goods should be spread out evenly among the public.

In January 2013, the Frontier Centre for Public Policy released the inaugural Canadian Property Rights Index. At that time, the inspiration for the Index came from the International Property Rights Index (IPRI), which measured most countries in the world on physical and intellectual property indicators. This Index came out of questions from reporters on how the IPRI came down to individual provinces and territories in Canada. This Index came out of that inquiry although the methodology and intent are quite different in our case.

The Index has been simplified and streamlined. The focus remains on the security of real and personal property in the hands of individuals. Wills and successions have

been removed as an indicator as it is too dissimilar to the other indicators. On civil forfeiture, we have decided to put our money where our mouth is and have given a higher score to those jurisdictions that lack this hugely invasive set of laws.

For this revised version, there are seven indicators, and they are as follows:

- 1. Land Title System** – The original Index recognized that the provinces and territories have different systems to register land title. This current version recognizes that the Torrens system is superior to the older deeds system. For simplicity, we have eliminated the presence of a property transfer tax in the Index as part of this indicator. The land transfer tax also has more to do with economic development and taxation issues than security of property *per se*.
- 2. Expropriation** – All the provinces and territories have laws governing formal expropriation processes. Again, we have evaluated all these laws against a series of procedural safeguards that are designed to protect individual landowners.
- 3. Regulatory Takings** (‘downzoning’) – As before, we have included land use planning processes that interferes with property use and restricts it use. This often reduces land values. This indicator will strictly look at whether there are provisions for compensation. **Some land use regulations—such as the Greenbelt in Ontario and the Agricultural Land Reserve (ALR) in British Columbia—should be flagged as important measures that will reduce a jurisdiction’s score in regulatory takings in the long term if they are not addressed.**
- 4. Civil Forfeiture** – Again, this indicator assesses provinces and territories on this ability to gain title to property that is used in unlawful activity. However, there are safeguards protecting property owners, which this indicator will measure.
- 5. Endangered Species** – Governments may designate land that contains endangered species to protect them. However, this affects property rights. This indicator assesses the presence of safeguards in different jurisdictions.
- 6. Heritage Property** – Governments designate certain property to be of important heritage or cultural significance to a community. This indicator again looks at procedural safeguards to protect property owners who face designation.
- 7. Municipal Power of Entry** – Provincial and territories have laws allowing municipalities to permit officials to enter and inspect private premises to enforce certain bylaws. This indicator assesses which jurisdictions allow for procedural safeguards for property owners.

NOTES ON METHODOLOGY

Each jurisdiction receives “points” for certain procedural safeguards and every jurisdiction receives a numerical score again so that they can be compared against each other. Finally, each of these numerical scores is converted into a raw percentage to rate property rates protections across Canada. Of course, this is simplified as there are many nuances in understanding property rights.

All the indicators are then divided by seven. For fairness in comparability, provinces and territories lacking civil forfeiture are given a score of 30 to recognize their more robust form of property rights protection. It is to a province or territory’s credit that it lacks civil forfeiture as that is so ripe for property rights abuses. Jurisdictions with procedural safeguards surrounding civil forfeiture also receive a higher score. All the indicators have equal weight. This should not be seen as a statement about the importance of any indicator over another.

TABLE 1
METHODOLOGY

Indicator	Maximum Possible Score
Land Title System	3
Expropriation (Procedural Safeguards)	11
Regulatory Takings	6
Municipal Power of Entry	9
Civil Forfeiture	27 (or 30 if lack civil forfeiture laws)
Endangered Species	12
Heritage Property	15

TABLE 2
SUMMARY OF RESULTS

Jurisdiction	Land Title	Expropriation	Regulatory Takings	Civil Forfeiture	Endangered Species	Heritage Property	Municipal Power of Entry	Final Score	Grade
Alberta	3 (100%)	10 (91%)	1 (17%)	17 (63%)	6 (50%)	14 (93%)	7 (78%)	70%	B -
British Columbia	3 (100%)	10 (91%)	4 (67%)	24 (89%)	5 (42%)	15 (100%)	6 (67%)	79%	B +
Manitoba	3 (100%)	8 (73%)	1 (17%)	20 (74%)	6 (50%)	11 (73%)	9 (100%)	70%	B -
Ontario	2 (33%)	10 (91%)	1 (17%)	21 (78%)	8 (67%)	12 (80%)	6 (67%)	62%	C -
New Brunswick	2 (33%)	8 (73%)	1 (17%)	22 (81%)	4 (33%)	12 (80%)	5 (56%)	53%	D
Nova Scotia	2 (33%)	5 (45%)	4 (67%)	24 (89%)	12 (100%)	13 (87%)	7 (78%)	71%	B -
Saskatchewan	3 (100%)	9 (82%)	1 (17%)	20 (74%)	5 (42%)	11 (73%)	6 (67%)	65%	C
Quebec	1 (17%)	6 (55%)	3 (50%)	19 (70%)	5 (42%)	12 (80%)	3 (33%)	50%	F +
Yukon	3 (100%)	4.5 (41%)	1 (17%)	30 (100%)	4 (33%)	13 (87%)	9 (100%)	68%	C +
PEI	1 (17%)	1 (9%)	1 (17%)	30 (100%)	6 (50%)	9 (60%)	7 (78%)	47%	F
Newfoundland/Lbdr	1 (17%)	2 (18%)	4 (67%)	30 (100%)	7 (58%)	7 (47%)	4 (44%)	50%	D -
Northwest Territories	3 (100%)	8 (73%)	1 (17%)	30 (100%)	4 (33%)	7 (47%)	8 (89%)	66%	C
Nunavut	3 (100%)	7 (64%)	1 (17%)	30 (100%)	10 (83%)	7 (47%)	8 (89%)	71%	B -

TABLE 3
2023 FINAL PROVINCIAL RANKINGS











TOP 5			BOTTOM 5		
Jurisdiction		Final Score	Jurisdiction		Final Score
	British Columbia	79%		Ontario	62%
	Nova Scotia	71%		New Brunswick	53%
	Nunavut	71%		Newfoundland & Lbdr	50%
	Alberta	70%		Quebec	49.5%
	Manitoba	69.5%		Prince Edward Island	47%

TABLE 4
COMPARATIVE RANKINGS BETWEEN 2023 AND 2013 INDEX

Top Five Jurisdictions 2023		Top Five Jurisdictions 2013	
British Columbia	79%	Nova Scotia	68%
Nova Scotia	71%	Nunavut	67%
Nunavut	71%	Alberta	66%
Alberta	70%	British Columbia	65%
Manitoba	69.5%	Manitoba/Saskatchewan	60.5%
Bottom Five Jurisdictions 2023		Bottom Five Jurisdictions 2013	
Ontario	62%	Quebec	54.6%
New Brunswick	53%	Yukon	54%
Newfoundland & Labrador	50%	Newfoundland & Labrador	52.5%
Quebec	49.5%	Northwest Territories	52%
Prince Edward Island	47%	Prince Edward Island	47%

DISCUSSION OF RESULTS

Although the provinces and territories that make up the top five jurisdictions were the same, the rankings were indeed different. British Columbia leads the country this time, instead of being ranked fourth in the 2013 index. Nova Scotia is second as opposed to first place in 2013. Nova Scotia continues to be anomaly among the Maritime provinces. Alberta and Manitoba remain in the 2023 top five jurisdiction in the 2023 index. These results again confirm the east-west dimension in the results. Overall, provinces from the West performed better than those in the East, although Saskatchewan was lower on that scale. Saskatchewan is a middle scoring jurisdiction this time. This means the province needs to ensure it maintains its property rights protections to avoid slipping further.

How much the changes are due to some methodological tweaks is uncertain, but we believe we have improved the index to better measure property rights protections. Accounting for jurisdictions without civil forfeiture did not alter the rankings in any large way. The fact that the methodology was changed somewhat did not alter the main results shows that those changes did not cause any significant changes.

Unfortunately, the Atlantic provinces are at the bottom again, especially Prince Edward Island. This is further affirmed in this year's rankings. In this revised version, British Columbia comes out on top, rather than Nova Scotia. However, Nova Scotia

continues to be the outlier among the Atlantic provinces. Nunavut also performed strongly again. How much this has to do with the exclusion of an entire indicator as well as some streamlining of others is not known. But the basic pattern remained of a dominant west over east. Although not as low as some Atlantic provinces, Ontario and Quebec continue to lag others. Quebec has actually fallen in the index this time. Quebec performs well on regulatory takings due to its civil code system, but did not perform well in other areas. Quebec needs to be monitored over time. Unfortunately, this time Ontario ends up on the bottom five jurisdictions, whereas in 2013 it did not. Ontario deserves to be followed to see if this an anomaly, given the importance of Ontario in the national economy.

On the east issue, part of the problem is some Atlantic jurisdictions still retain the older deeds system of title registration. Nova Scotia distinguishes itself once again (but going from first last time to second place now), but this province again has a Torrens title registration system and stronger scores in endangered species, civil forfeiture and heritage property.

Nunavut also distinguishes itself by placing in the top five ranked jurisdictions. However, one change from the 2023 index from the 2013 one was that the other two Northern territories did not place in the bottom five. This may represent a shift, but only time will tell.

In the next index, one measure that may affect final rankings is the final conversion of some jurisdictions to a Torrens title system.

1. Land Title System

Canada's 10 provinces and three territories have a similar approach to property, but jurisdictions have different land tenure systems.

The main difference between Canadian provinces and territories is the presence of a deeds registration system versus a Torrens title system. The North-West Territories were integrated into a Torrens system when they joined Canada, and it continues in the three prairie provinces that emerged from that territory. Historically, southern Ontario and the Atlantic provinces had retained the more traditional deeds system, although it is changing. In this revision of the index, there is recognition that some jurisdictions are converting to a stronger Torrens system. Earlier in common law, landowners had to prove ownership of a particular piece of land to its earliest grant by the Crown or sovereign. The proving documents were called the "chain of title." However, this process could lead a landowner on a search spanning hundreds of years and was subject to many potential legal challenges over land ownership. The common law position has been modified by legislation to limit required title searchers to validate lawful ownership. A deeds registration system involved registration of title and was often criticized for slowing down land transfers, being costly and unreliable.

Robert Torrens introduced a new title system in 1858 in Australia to resolve problems with the common law and the deed registration system. To better to protect land rights in South Australia, he established a central registry of all land. The registry also recorded any easements and mortgages. The chief strength of the Torrens system is the maintenance of a land register. It used to be done with paper records, but it is now maintained in an electronic database. The land is given a number and a file that includes the property boundaries and any legal interests affecting that land, such as easements and any restrictive covenants. The government then guarantees the accuracy of that registry and compensates those affected by any errors in that record. There is no longer a need to produce long documents proving a lawful transfer of title. All the necessary information and proof is contained in the single certificate of title. There are provisions to challenge title under a Torrens system, but challenges are rare.

The main advantages of the Torrens over the deeds systems are the certainty of title to land offered under the Torrens and the fact that land transactions are simplified and less costly. As such, the transfer of real property from one individual or business to another is better facilitated under a Torrens system.

For the purposes of this Index, it is assumed that jurisdictions with a Torrens system afford more property rights and easier property transfer than those with a deeds registration system. Therefore, Torrens provinces and territories receive a higher score than jurisdictions that are still under the deeds system. As stated, provinces and territories that are converting from a deed system to a Torrens one receives a slightly higher score among those with a deeds system.

As stated above in the executive summary, we also removed the land transfer aspect of this indicator. It was felt that the land transfer tax more properly is a fiscal and taxation tool and is not the best measure of property rights protection *per se*.

TABLE 5
PROVINCE SCORE BY LAND TITLE SYSTEM

Jurisdiction	Torrens Style system (3), Parts (2), Converting to Torrens (1)	Deeds System (1)	Final Score
 Manitoba	Yes	No	3
 Yukon	Yes	No	3
 Nunavut	Yes	No	3
 Northwest Territories	Yes	No	3
 Alberta	Yes	No	3
 Saskatchewan	Yes	No	3
 British Columbia	Yes	No	3
 New Brunswick	Converting	No	2
 Nova Scotia	Converting	No	2
 Ontario	Parts, Converting	No	2
 Prince Edward Island	No	Yes	1
 Quebec	No	Yes	1
 Newfoundland & Lbdr	No	Yes	1

2. Expropriation (procedural safeguards and grounds for expropriation)

Expropriation is one of the most significant ways governments can infringe on property rights because it involves the involuntary transfer of title from a private owner to the government. Expropriation generally occurs when a voluntary transfer between willing seller (landowner) and willing buyer (the government) fails to yield agreement. A public agency (for example a government or other agencies empowered to expropriate such as a school board or utility) takes property for a purpose deemed to be in the public interest. Typically, the landowner is given a notice of intent to expropriate and eventually an expropriation order. There is often an appeals process and a process for determining compensation. As mentioned above, the common law used in most of Canada assumes that compensation is payable for an expropriation.

However, not all jurisdictions treat expropriation the same. Some provide more protections for landowners than others. This section will measure these nuances and measure them from the perspective of individual landowners, not expropriating governments.

The procedures of expropriation are found in legislation at the federal and provincial/territorial levels.

In this section, 14 procedural statutes were looked at, one from every province and territory (14 because Saskatchewan has two statutes dealing with expropriation).

Expropriation Law for Each Jurisdiction:

1. Alberta – Expropriation Act, 2000
2. British Columbia – Expropriation Act, 1996
3. Manitoba – Expropriation Act
4. New Brunswick – Expropriation Act, 1973
5. Newfoundland and Labrador – Expropriation Act, 1990
6. Nova Scotia – Expropriation Act, 1989
7. Northwest Territories – Expropriation Act, 1988
8. Nunuvat – Expropriation Act, 1988
9. Ontario – Expropriations Act, 1990
10. Prince Edward Island – Expropriation Act, 1988
11. Quebec – Expropriation Act
12. Saskatchewan – Expropriation Procedure Act, 1978
13. Saskatchewan – Municipal Expropriation Act, 1978
14. Yukon – Expropriation Act, 2000

Evaluation Criteria

- 1) Advance notice** - Some statutes include a requirement for the expropriating authority to deliver notice to an owner before title to the land is transferred to the authority. This requirement is typically found in statutes which provide the owner with an opportunity to object to the intended expropriation. When there is no advance notice requirement the authority is free to acquire title without the owner's prior knowledge. A "Yes" indicates that the expropriating authority must deliver advance notice to an owner.
- 2) Right to Inquiry** - Some statutes provide an option for an owner to request an inquiry or investigation to be carried out by a third party before the expropriating authority acquires title to the land. The purpose of the inquiry is typically to consider justification for the proposed expropriation and to explore possible alternatives. A "Yes" indicates that an inquiry is available under some conditions.
- 3) Statutory agreement** - Some statutes provide for a statutory agreement between the expropriating authority and an owner. These agreements provide for the owner's co-operation to the extent of transferring title to the expropriating authority but provide the owner with access to a court or tribunal for determination of compensation. A "Yes" indicates that a statutory agreement is available.
- 4) Advance payment before entry** - Some statutes require the expropriating authority to deliver an advance payment of compensation prior to taking possession of the expropriated land. Availability of an advance payment is a significant benefit for an owner because it provides a source of funds from which to acquire a replacement property while compensation is being determined. A "Yes" indicates that the expropriating authority must deliver an advance payment.
- 5) Appraisal report** - Some statutes provide the owner with a right to receive an appraisal report supporting the expropriating authority's offer of compensation at the expense of the authority. Access to this information is an important step in providing the owner with information required to evaluate the authority's offer. A "Yes" indicates that an owner has the right to obtain an appraisal report at the expense of the expropriating authority.
- 6) Interim costs** - Some statutes provide the owner with a right to receive an appraisal report supporting the expropriating authority's offer of compensation at the expense of the authority. Access to this information is an important step in providing the owner with information required to evaluate the authority's offer. A "Yes" indicates that an owner has the right to obtain an appraisal report at the expense of the expropriating authority.

Some statutes provide the owner with an opportunity to obtain interim funding from the expropriating authority for reimbursement of legal, appraisal or other costs incurred. A "Yes" indicates that an owner has an opportunity under some conditions to interim reimbursement of reasonable expenses.

- 7) Final costs** - Most statutes deal with reimbursement of an owner's expense for professional services after compensation for all other matters has been determined. No statutes provide an absolute guarantee for full reimbursement of owner expenses. However, some statutes are more generous to an owner than others. A "Yes" indicates that an owner has a non-discretionary legal right under some conditions to reimbursement of reasonable expenses.
- 8) Independent determination of compensation** - The availability of an independent body to make the determination of compensation payable is an important requirement to ensure fairness. This could be an established court or an administrative tribunal or ad hoc arbitrator. A "Yes" indicates that an independent body is given the power to make this determination.
- 9) Appeals** - The right to appeal the initial determination of compensation is an important requirement to ensure fairness. A "Yes" indicates that a right to appeal exists. Where this right is found in a separate statute the appropriate reference is supplied.
- 10) Reversionary rights** - A reversionary right refers to the right of an owner to reacquire title to expropriated land in the event the expropriating authority decides after expropriation is complete that the land is not required for its purposes. A "Yes" indicates that the applicable statute contains a reversionary right.
- 11) Home for a home** - Some statutes provide that when the owner's personal residence is expropriated, the owner should receive sufficient compensation to acquire a similar home even if the cost to acquire a replacement property is greater than the market value of the land taken. A "Yes" indicates that a "home for a home" provision is available in the applicable statute.

TABLE 6
PROVINCE SCORE BY EXPROPRIATION PROCEDURES

Jurisdiction	Advance Notice (1)	Right to Inquiry (1)	Statutory Agreement (1)	Advance Payment(1)	Appraisal Report (1)	Interim Costs (1)
 AB	Yes	Yes	Yes (s. 30)	Yes (s. 31)	Yes (s. 32)	No (s. 25 Repealed)
 BC	Yes (s. 6)	Yes (s. 10)	Yes (s. 3)	Yes (s. 20)	Yes (s. 20)	Yes (s. 48)
 MB	Yes (s. 4)	Yes (s. 3)	Yes (s. 3)	Yes (s. 16)	No	No
 NB	Yes (s. 6)	Yes (s. 9)	No	Yes (s. 37)	Yes (s. 37)	No
 NFLD/L	Yes (s. 7)	No	No	No	No	No
 NS	No	No	No	Yes (s. 13)	Yes (s. 13)	No
 NWT	Yes (s. 5)	Yes (s. 8)	No	Yes (s. 18)	Yes (s. 19)	No
 NU	Yes (s. 5)	Yes (s. 8)	No	Yes (s. 19)	Yes (s. 19)	No
 ON	Yes (s. 6)	Yes (s. 6)	Yes (s. 30)	Yes (s. 25)	Yes (s. 25)	No
 PEI	No (ss. 7, 12)	No	No	No	No	No (s. 7)
 QC	Yes (s. 401)	Yes (s. 44)	Yes	Yes (s. 53.2)	No	No
 SK A	No	Yes (s. 7)	Yes	No	Yes	No
 SK B	No	No	No	No	No	No
 YK	No and Yes	No	No	Yes (s. 21)	No	No

TABLE 7
PROVINCE SCORE BY EXPROPRIATION PROCEDURES

Jurisdiction	Final Costs (1)	Independent Determinations (1)	Appeals (1)	Revisionary Rights (1)	Home for a Home (1)	Total Score
 AB	Yes (s. 3)	Yes (s. 10)	Yes (Court of Appeal s. 37)	Yes (s. 70)	Yes (s. 47)	10
 BC	Yes (s. 45)	Yes (s. 10)	Yes (Court of Appeal)	Yes (s. 21)	No	10
 ON	Yes (s. 32)	Yes (s. 6)	Yes (s. 31 Divisional Court)	Yes (s. 42)	Yes (s. 15)	10
 MB	Yes (s. 15)	Yes (s. 3)	Yes (Court of Appeal s. 44)	Yes (s. 51)	Yes (s. 26)	8
 NB	Yes (s. 57)	Yes (s. 9)	Yes (Judicature Act)	No	Yes (s. 40)	8
 NWT	Yes (s. 36)	Yes (s. 8)	Yes	No	Yes (s. 30)	8
 NU	Yes (s. 36)	Yes (s. 8)	Yes	No	Yes (s. 30)	7
 QC	No (s. 68)	Yes	Yes (s. 44)	No	No	6
 SK A	Yes (s. 43)	Yes (s. 7)	Yes (s. 44)	No	No	6
 NS	Yes (s. 52)	No	Yes (Utilities and Review Board Act)	No	Yes (s. 27)	5
 YK	Yes (s. 16)	No	Yes (Court of Appeal s. 14)	No	Yes (s. 9)	4.5
 NFLD/L	No	No	Yes (Court of Appeal s. 32)	No	No	2
 PEI	No	No	Yes (s. 19)	No	No	1
 SK B	No	No	Yes (s. 7)	No	No	1

3. Regulatory Takings

Land use planning also affects private property as it places restrictions on property. Restrictions on permitted land uses also affect land value, which concerns landowners. For this section, in the original index, the Frontier Centre commissioned a legal expert on land use planning.¹

According to that expert, most land use planning decisions are made at the municipal level by local governments that have received those powers by provincial law.

Municipalities justify this power by stating they need it to develop land in an “orderly fashion.” That may be so, but this reduction in land value, or “down-zoning” as it is called, raises questions of whether the landowners receive compensation for the reduced value. As mentioned before, governments are not under obligation to provide this, but when they do, it represents respect for property rights. **Land use legislation coming from the province is also very important to note. Land-use planning under regulatory takings is a weak category for all jurisdictions. For example, Ontario’s Greenbelt Act and Places to Grow Act have severe land-use restrictions that cause significant strain on property rights.**

In British Columbia—despite its high ranking in other areas—there is a serious underlying problem with the so-called Agricultural Land Reserve (ALR), which preserves land for agricultural uses and restricts all other uses. This restriction most certainly has tightened the supply of land available for housing in that province. The ALR—if left alone—will affect BC’s rankings on regulatory takings in the future.

In 2022, the Supreme Court clarified the rules surrounding “constructive takings” or what we call regulatory takings, in favour of landowners. The decision in *Annapolis Group Inc v. Halifax Regional Municipality* clarified² the test surrounding such takings and ideally will better protect property rights into the future.

This comes a year after the Quebec government—in an unprecedented move—passed legislation banning local oil and gas exploration and development in that province.³ This move represented a form of de facto expropriation as many companies had invested time and resources into hydrocarbon exploration in the province over the years. The government passed a bill compensating companies but many felt the move represented an amazing breadth of overreach onto property rights.

This section focuses on instances where reductions in land value may be anticipated. Most jurisdictions have laws that address these instances. Three general categories were identified: (1) restrictions on compensation and (2) rights to compensation.

TABLE 8
PROVINCE SCORE BY RESTRICTIONS/RIGHTS

Jurisdiction	Restrictions on Compensation (0)	Rights to Compensation (3)	Common Law (1), Civil Code (3)	Total Score
 AB	s. 621		Common Law (1)	1
 BC	s. 924	s. 924.2 (3)	Common Law (1)	4
 MB	s. 192		Common Law (1)	1
 NB	s. 118		Common Law (1)	1
 NFLD/L	s. 5	s. 96 (3)	Common Law (1)	4
 NWT	s. 30		Common Law (1)	1
 NS	s. 261	s. 222 (3)	Common Law (1)	4
 NU	s. 30		Common Law (1)	1
 ON			Common Law (1)	1
 PEI			Common Law (1)	1
 QC			Civil Code (3)	3
 SK	s. 238		Common Law (1)	1
 YK	ss. 351.4, 352		Common Law (1)	1

4. Civil Forfeiture

Civil forfeiture refers to a remedial device contained in provincial statutes designed to recover the proceeds of unlawful activity, as well as the property used to facilitate that unlawful activity.⁴ Court proceedings are brought against the property not the property owners. The court then enquires into the origin and use of that property. If the Crown can prove that to the satisfaction of the court that the property is either proceeds of, or an instrument of, unlawful activity, the court is empowered to transfer title to the state. The proceedings are civil, a conviction against any person is not required and the burden of proof is a civil balance of probabilities rather than a criminal beyond reasonable doubt standard.

Modern civil forfeiture originated in the United States in the 1970s and 1980s and has proliferated in countries following the common law. Largely in response to organized crime, civil forfeiture regimes have three main objectives: 1) to disgorge offenders of their ill-gotten gains; 2) to disable the financial capacity of criminal organizations; and 3) to compensate victims of crime.⁵ While notice is usually given to persons with an interest in the targeted property, a significant amount of civil proceeds are uncontested, either because no one has come forward to contest the government or a settlement has been reached.

The policy rationale for civil forfeiture is that gains from unlawful activity should not accumulate in the hands of those who commit or benefit from unlawful activity. From a governmental perspective, it was often difficult to secure convictions against leaders of organized crime as they were far removed from the activity, so civil forfeiture bypassed this problem by allowing the state to go after the property used in crime. It was also felt that the state has an interest in ensuring victims of crime are compensated.⁶ Although this sounds good in theory, civil forfeiture is ripe for abuse as governments have lowered the burden of proof to secure title away from owners. It is the contention here that there are fewer extreme ways to acquire the proceeds of crime that must involve a higher burden proof of criminality.

Historically, forfeiture rules were contained in federal criminal laws, such as the Criminal Code, narcotics control legislation, customs and fisheries legislation. When Parliament expanded its forfeiture powers through the Criminal Code over the years, courts required that forfeiture be exercised in accordance with the principles of criminal law, including the presumption of innocence and proof beyond reasonable doubt. The courts imposed criminal standards because they regarded forfeiture as an extension of Parliament's criminal law authority.

The provinces began to introduce the first civil forfeiture laws in 2001. The passage of the Ontario law triggered a constitutional challenge. The basis of the challenge was whether the provinces, which have jurisdiction over "property and civil rights", were empowered to enact these laws. Canada's federal Parliament has jurisdiction over "criminal law and procedure" (explaining why there is one federal Criminal Code,

and not state /provincial criminal codes as in the United States). The Supreme Court of Canada concluded that Ontario's Civil Remedies Act of 2001 was constitutional in *Chatterjee v. Ontario (Attorney General)* because the legislation was aimed at suppressing crime and compensating victims, and thus within the provincial domain over "property and civil rights".

The problem with civil forfeiture regimes is they often do adversely affect third parties who become entangled in its proceedings. One B.C.-based criminal defense counsel wrote, "Civil forfeiture threatens to be employed in situations where the connection between the crime and the property is tenuous, disproportionate (meaning the asset is used only occasionally or in small part for the commission of crime), or where the state wants to get back at individuals it isn't able to convict in a criminal court."⁷

The claim that asset forfeiture is taking a bite out of organized crime is suspect. For instance, researchers from the U.S., Australia, and Great Britain have noted that forfeiture has failed to limit organized crime.⁸ It might increase policy budgets, but not necessarily address crime or help victims of crime.

In 2023 and beyond, civil forfeiture will continue to be an important issue. The NDP government in British Columbia got into some hot water for discussing amendments to their civil forfeiture laws, introducing the concept of so-called "unexplained wealth orders" that would require people to explain how they acquired their assets if there is suspicion of unlawful activity.

Definition of Property - Property subject to forfeiture is generally defined the same, including all real property, such as buildings and land, and personal property, like vehicles and boats. Some provinces define the term more precisely, whereas some provinces (such as Quebec) do not define it at all. Many statutes are broad enough to capture intellectual property and Alberta's statute is much broader in scope than others. The clearer the definition, the better for property rights and the higher the score.

Scope of Unlawful Activity - Similarly, the definitions of the scope of unlawful activity vary between provinces. Ontario and Manitoba, for example include all Canada & provincial offences, as well as all foreign jurisdiction offences if the act or omission would also be an offence in Ontario or Manitoba. Alberta, on the other hand, does not include foreign jurisdiction offences. The more limited the scope, the higher the score.

Scope of Proceeds of Unlawful Activity - These are quite similar between provinces, as they all tend to capture directly and indirectly acquired property. Ontario, however, has a narrower definition.

Scope of Instruments of Unlawful Activity - These are quite similar, in that most of the provinces capture property used or, likely to be used, to engage in unlawful activity that is intended to, or was likely to, result in or cause, the acquisition of other property or serious bodily harm to a person. However, Quebec has no definition

and New Brunswick only captures property used, or likely to be used to engage in unlawful activity. That broad scope has to potential for abuse.

Legitimate Owner Defence Available - If the court finds that property is proceeds of unlawful activity or an instrument of unlawful activity and a party to the proceeding proves that he, she or it is a legitimate owner or a responsible owner of the property, the court, except where it would clearly not be in the interests of justice, shall make such order as it considers necessary to protect the legitimate owner's/responsible owner's interest in the property. However, this defence is not available to the same extent in all provinces. Alberta provides no standalone defence, although curial discretion is implicitly available (see below under residual discretion). Also, in most provinces the defence is available for both proceeds and instruments of unlawful activity, but in Nova Scotia the defence is available only with respect to instruments of unlawful activity. The better access to the defence, of course, yields a higher score.

Residual Discretion - In the forfeiture proceeding, this sub-component speaks to whether the court must issue the forfeiture order or whether the court has discretion to decline to exercise its authority. The more permissive and discretionary language, the higher the score, as this would allow the court to tailor the outcome to the circumstances, may be appropriate in many cases.

Interim Preservation Order - The powers of the court to put a temporary hold or restriction on the property pending disposition of the final proceeding are similar between provinces. The Crown can seek interim preservation orders on an *ex parte* basis, meaning it need not give notice to the person who has possession of the property before getting the order.

Immunity for Liability for Crown and His Agents - In most provinces, the Crown or any agents acting on its behalf cannot be sued for negligence when managing property held under an interim preservation order or in the performance of their duties under the statute, unless they are acting in bad faith. In Alberta, the Crown is not liable even if the conduct were in bad faith, while in Quebec and Nova Scotia there are no express immunity provisions. Restrictions on immunity confers a higher score.

Limitation Period - The limitation period is the length of time during a civil forfeiture proceeding can be brought. The shorter the limitation period is the higher the score.

TABLE 9
PROVINCE SCORE BY CIVIL FORFEITURE









Jurisdiction	Definition of Property Open (1), Closed (3)	Scope of Unlawful Activity Very Wide (1), Wide (2), Closed (3)	Scope of Proceeds of Unlawful Activity Wider (1), or More Closed (3)	Scope of Instruments of Unlawful Activity Very Wide (1), or More Closed (3)	Legitimate Owner Defence Available No Standalone Defence (1), Full Defence (3), Limited Defence (2)	Residual Discretion Mandatory (1), or Permissive (3)
 ON	Closed (3)	Very Wide (1)	More Closed (3)	More Closed (3)	Full Defence (3)	Mandatory (1)
 BC	Closed (3)	Closed (3)	Wider (1)	Closed (3)	Full Defence (3)	Permissive (3)
 AB	Open (1)	Closed (3)	Closed (3)	Closed (3)	No Standalone Defence (1)	Permissive (1)
 SK	Closed (3)	Very Wide (1)	Wider (1)	Closed (3)	Full Defence (3)	Mandatory (1)
 MB	Closed (3)	Very Wide (1)	Wider (1)	Closed (3)	Full Defence (3)	Mandatory (1)
 NB	Closed (3)	Closed (3)	Wider (1)	Very Wide (1)	Full Defence (3)	Permissive (3)
 NS	Closed (3)	Closed (3)	Wider (1)	Closed (3)	Limited Defence (2)	Permissive (3)
 QC	Open (1)	Closed (3)	Wider (1)	No Definition (1)	Full Defence (3)	Permissive (3)

TABLE 10
PROVINCE SCORE BY CIVIL FORFITURE

Jurisdiction	Interim Preservation Order - Powers Too Broad? No (3), Yes (1)	Immunity from liability for Crown and its agents No Immunity (3), No Liability except for bad faith (2), No Liability even in bad faith (1)	Limitation Period? Yes, 10 Yrs (3), Yes, 15 Yrs (2), No (1)	Total Score
 ON	No (3)	No Liability Except for bad faith (2)	Yes, 15 Yrs (proceeds) (2)	21
 BC	No (3)	No Liability Except for bad faith (2)	Yes, 10 Yrs (3)	24
 AB	Yes (1)	No Liability Even in bad faith (2)	Yes, 10 Yrs (3)	17
 SK	No (3)	No Liability Except for bad faith (2)	None (1)	20
 MB	No (3)	No Liability Except for bad faith (2)	None (1)	20
 NB	No (3)	No Liability Except for bad faith (2)	Yes, 10 Yrs (3)	22
 NS	No (3)	Liability by Private Action (3)	Yes, 10 Yrs (3)	24
 QC	No (3)	No Immunity	None (1)	19

5. Endangered Species

In all the provinces and territories, natural resources like fish and wildlife, are held in a trust-like relationship on behalf of citizens by the provincial or territorial government (the Crown). The habitat these resources exist upon is a mix of private land, Crown land that is leased for use by the private sector, and Crown land managed by the government.⁹

The challenge, of course, is that some of these natural resources (wildlife and fish) are often mobile and transient.¹⁰

Endangered species legislation prohibits damage or destruction of habitat for species at risk. All jurisdictions have standalone endangered species legislation, save British Columbia, which relies on its Wildlife Act and forestry codes to protect endangered wildlife and plants. All of the laws also typically sanction powers of enforcement. The process of listing species is at least determined often by independent scientists, as to ensure the process is not politicized. Conservation officers are generally authorized to conduct searches. Oftentimes, these officers have powers to issue fines and sometimes forfeiture of property for lack of compliance. This is often where maintaining habitat for endangered species affects private landowners.

Much of the criticism levelled at Canada's federal and provincial legislation dealing with endangered species is based on the experience in the United States where that country's Endangered Species Act where burdens were often placed unfairly on "unlucky landowners."¹¹














The main concerns were over the "Shoot, Shovel and Shut Up" incentive created by the legislation.¹² If the landowner reveals that an endangered species exists on his or her land, then the value of that land may fall, often dramatically, because the uses to which the land could be put are reduced. Keeping that information to yourself then reduces the risk of a loss in value, thus landowners have an incentive to remove or kill endangered species on their land or purposely render the land habitat unsuitable for these species before they are discovered.¹³

The assumption here is that endangered species regulations are necessary and provide the public benefit of protecting species for future generations. There is however a compelling interest in governments co-operating with landowners who share land with these species. They should not be required to shoulder the full costs of a public benefit.

Does the legislation require the government to give its reasons for listing an endangered species? The public needs to know what kind of science was used to determine to list a particular species for protection.

Is there a requirement to notify landowners or lessees about the presence of species at risk on their property? The presence of a notification requirement

TABLE 11
PROVINCE SCORE BY ENDANGERED SPECIES

Jurisdiction	Does legislation require government to give reasons for listing species? No (1), Yes (3)	Is there a requirement to notify landowners or leasees about presence of species? No (1), Yes (3)	Is there requirement for a full and fair compensation? Is it market value as opposed to discretionary? Yes, Market (3), Yes, Discretionary (2), No (1)	Does the framework allow for voluntary conservation between province and landowners? Yes (3), Vague (2)	Total Score
 BC	No (1)	No (1)	No (1)	Vague (2)	5
 AB	No (1)	No (1)	No (1)	Yes (3)	6
 SK	No (1)	No (1)	No (1)	Vague (2)	5
 MB	No (1)	No (1)	No (1)	Yes (3)	6
 ON	Partially (3)	No (1)	No (1)	Yes (3)	8
 QC	No (1)	No (1)	No (1)	Vague (2)	5
 NB	No (1)	No (1)	No (1)	No (1)	4
 NS	Yes (3)	Yes (3)	Yes (3)	Yes (3)	12
 PEI	No (1)	No (1)	No (1)	Yes (3)	6
 NFLD/L	No (1)	No (1)	Discretionary (2)	Yes (3)	7
 YK	No (1)	No (1)	No (1)	No (1)	4
 NWT	No (1)	No (1)	No (1)	No (1)	4
 NU	Yes (3)	No (1)	Yes (3)	Yes (3)	10

signals the intent of working together with landowners to protect endangered species. Assumptions should not be made that landowners know the list of species on list or that they can identify these species if they even noticed them.

Is there a requirement of full and fair compensation for a designation? Is it market value as opposed to 'discretionary'?

Does framework allow for voluntary conservation agreements between province and landowners? These voluntary agreements allow for the land to be used while being designated. Sometimes they require funding, but these arrangements exemplify the use of incentives and co-operation, rather than just the blunt regulatory instrument, to ensure compliance.

6. Heritage Property

Individual citizens and government policy makers have decided that heritage is a precious resource, and a cultural or natural asset visible to everyone, which bestows identity and distinctiveness to a community. In order to preserve heritage properties for future generations to enjoy, provinces and territories have enacted legislation that protects these sites. Designations do not always restrict use of the property, but the protection it affords may prevent unsympathetic changes or delay demolition while practical options are explored, and advice provided.

All three levels of government in Canada designate heritage objects or places. Sites, buildings or items of archaeological significance are also within this category but often face regulation from multiple levels of government and are thus somewhat outside the scope of this index. Perhaps in the future they will be included.

However, for the index, only provincial and municipal designations are of interest. Each provincial government has distinct systems and approaches to heritage conservation. They may delegate the authority to preserve historic buildings to municipalities, and/or have a provincial heritage register.

Governments are not obligated to provide compensation for property rights affected by heritage designations, but some jurisdictions do, and some provide tax relief (property tax abatement, etc.) as a way to help affected property owners.

Notice Period for Provincial Designation - Is there a notice of intent to designate a property? How long is that period? These could be requirements to notify in the newspaper.

Notice Period for Municipal Designation - Same as with provincial designations.

Post-Designation Compensation Measures - These measures are often direct grants to property owners or nowadays can come in the form of tax abatements.

Timely Compensation for Loss of Economic Value - Some jurisdictions do not provide this or outright forbid. Some make allowance for discretionary compensation. Others require compensation.

Land Registry: Notice from Province/Municipality Required? Is the Heritage Designation Noted on the Deed? - This is either discretionary or mandatory. This would be important for a future buyer to know if a land has been designated as heritage property.

TABLE 12
PROVINCE SCORE BY HERITAGE PROPERTY







Jurisdiction	Notice period for Provincial designation? No (1), Yes (3)	Notice period for Municipal designation? Yes (3), Yes, but unspecified period (2), No (1)	Post-designation compensation? Yes (3), Authorized, but not required (2), No (1)	Timely and/or framework immediate compensation for loss of economic value? Yes (3), No (1), - May pay (2)	Land Registry: Is the Heritage designation noted on the deed? Required (3), Vague (2), Not required (1)	Total Score
 BC	Yes, 30 Days (3)	Yes, public hearing required (3)	Yes, public hearing required (3)	Yes, preferable by agreement between owner and municipality but failing that, by arbitration (3)	Yes (3)	15
 AB	Yes, 30 days notice to property owner. 30 days notice to rest of province via Alberta Gazette, to allow hearings (3)	Yes, 6 days notice (3)	s. 50 of the Act authorizes but does not require the Lt Gov in Council to make regulations for compensation of titleholders affected by non-municipal designations, and for the minister to make compensation according to regulations (2)	Yes, preferable by agreement between owner and municipality but failing that, by arbitration by the Land Compensation Board (3)	Yes (3)	14
 SK	Yes, 60 Days notice (3)	Yes, 30 days notice to owner; NOI is good for 20 days (3)	Funds available but not required(1)	No (1)	Vague (2)	11
 MB	Yes, in two different newspapers in the area (3)	Yes, 21 days notice to owner and lessee (3)	Not required (1)	Not required (1)	Yes (3)	11

TABLE 12 Cont'd

 ON	Yes, but downloaded to municipalities (3)	Yes, 30 days notice to owner and newspaper publication requirement (3)	For provincial designations no, but at discretion of lower levels of govt in form of tax credit schemes (2)	Not required (1)	Yes (3)	12
 QC	Yes, 30 days notice (3)	Yes, 60 days notice (3)	Not required, however, authorizes minister to offer assistance (2)	Not required (1)	Yes (3)	12
 NB	Yes, 30 days notice (3)	Yes, owner must be notified but vague about period (3)	Yes, property tax abatement program for owners (3)	Not required (1)	Yes (3)	12
 NS	Yes, 30 days notice to titleholders (3)	Yes, 30 days notice (3)	Yes, provincial portion of GST on renovations is refundable (3)	Not required (1)	Yes (3)	13
 PEI	Yes, adequate in Act and 30 days notice in regulations (2)	No separate municipal designation. Same timeline as province (2)	Not required (1)	No, s. 12 forbids payment of compensation (1)	Yes (3)	9
 NFLD/L	No notice requirement in Act (2)	No separate provincial and municipal regulations (1)	Heritage Foundation has grant money to offer heritage property owners (3)	Not required (1)	No (1)	7
 YK	Yes, 60 days notice, newspapers (3)	Yes, 30 days' notice, objections filed (1)	Per s. 15(6) of the Act, minister may pay compensation up to the amount of depreciation (2)	May pay (2)	Yes (3)	13

TABLE 12 Cont'd

 NWT	Not sure, discretion with minister (2)	Not sure, discretion with minister (2)	No (1)	No (1)	Not required (1)	7
 NU	No specified period (2)	Not specified (2)	No (1)	No (1)	Not mentioned (1)	7

7. Municipal Power of Entry

Municipal officials are granted certain rights by provincial statute to create bylaws allowing for the entry on land for the purpose of carrying out an inspection to ensure that its bylaws, directions, orders and conditions of a licence are being complied with. As a function of bylaw enforcement, municipal power or right of entry onto private premises is one option available by legislation to municipalities.

The Municipal Act of each province or jurisdiction sets out the powers and restrictions of the right of entry. Depending on the jurisdiction, a municipality may apply for a special order to enter a premise or may impose fines for non-compliance.




Notice Required - Some jurisdictions, such as British Columbia under its Community Charter, provide an occupier at least 24 hours' written notice of the entry and the reasons for it. Others, such as Ontario, do not require notice, although it must be at a reasonable time.

Warrant Required - Does the jurisdiction require the municipality to seek a warrant from a court to enter a private property, and hence must provide reasoning for the entry? Some jurisdictions do not require such approval.

Oversight - Is there some kind of judicial oversight over the entire process?

TABLE 13
PROVINCE SCORE BY MUNICIPAL POWER OF ENTRY

Jurisdiction	Notice Requirement? Yes (3), No (1)	Warrant Requirement? Yes (3), No (1)	Oversight Requirement? Yes (3), No (1), Unsure (2)	Total Score
 MB	Yes (3)	Yes (3)	Yes (3)	9
 YK	Yes (3)	Yes (3) *Justice of the Peace	Yes (3)	9
 NU	Yes (3)	Yes (3) *Nunavut Court of Justice	Unsure (2)	8
 NT	Yes (3)	Yes (3) *Supreme Court	Unsure (2)	8
 AB	Yes (3)	Yes (3) *Court of Queen's Bench	No (1)	7
 SK	Yes (2) *Reasonable effort except in emergency	Yes (3) *Justice of the Peace or provincial court judge	No (1)	6
 NB	No (1) *Restrictions apply	Yes (3) *Judge	No (1)	5
 PEI	Yes (2) *24 hours not required	Yes (3) *Justice of the Peace or provincial court judge	Unsure (2)	7
 BC	Yes (2) *Reasonable effort except in emergency	No (1)	Yes (2)	6
 NS	Yes (3) *Written notice at least 24 hrs in advance and in daylight hours, except in emergency	Yes (3) *Order from the Supreme Court of Nova Scotia	No (1)	7

TABLE 13 Cont'd				
 ON	Yes (2) *Exceptions	Yes (3) *Provincial judge or Justice of the Peace	No (1)	6
 QC	No (1)	No (1)	No (1)	3
 NFLD/L	Yes (2) *Reasonable effort	No (1)	No (1)	4

FINAL RESULTS

TABLE 14
SUMMARY OF RESULTS BY INDICATOR AND FINAL SCORE

Jurisdiction	Land Title	Expropriation	Regulatory Takings	Civil Forfeiture	Endangered Species	Heritage Property	Municipal Power of Entry	Final Score	Grade
Alberta	3 (100%)	10 (91%)	1 (17%)	17 (63%)	6 (50%)	14 (93%)	7 (78%)	70%	B -
British Columbia	3 (100%)	10 (91%)	4 (67%)	24 (89%)	5 (42%)	15 (100%)	6 (67%)	79%	B +
Manitoba	3 (100%)	8 (73%)	1 (17%)	20 (74%)	6 (50%)	11 (73%)	9 (100%)	70%	B +
Ontario	2 (33%)	10 (91%)	1 (17%)	21 (78%)	8 (67%)	12 (80%)	6 (67%)	62%	C -
New Brunswick	2 (33%)	8 (73%)	1 (17%)	22 (81%)	4 (33%)	12 (80%)	5 (56%)	53%	D
Nova Scotia	2 (33%)	5 (45%)	4 (67%)	24 (89%)	12 (100%)	13 (87%)	7 (78%)	71%	B -
Saskatchewan	3 (100%)	9 (82%)	1 (17%)	20 (74%)	5 (42%)	11 (73%)	6 (67%)	65%	C
Quebec	1 (17%)	6 (55%)	3 (50%)	19 (70%)	5 (42%)	12 (80%)	3 (33%)	50%	F +
Yukon	3 (100%)	4.5 (41%)	1 (17%)	30 (100%)	4 (33%)	13 (87%)	9 (100%)	68%	C +
PEI	1 (17%)	1 (9%)	1 (17%)	30 (100%)	6 (50%)	9 (60%)	7 (78%)	47%	F
Newfoundland/Lbdr	1 (17%)	2 (18%)	4 (67%)	30 (100%)	7 (58%)	7 (47%)	4 (44%)	50%	D -
Northwest Territories	3 (100%)	8 (73%)	1 (17%)	30 (100%)	4 (33%)	7 (47%)	8 (89%)	66%	C
Nunavut	3 (100%)	7 (64%)	1 (17%)	30 (100%)	10 (83%)	7 (47%)	8 (89%)	71%	B -

CONCLUSIONS

Without constitutional protection for property rights, Canadians in all provinces and territories exist at the mercy of legislative activism. As in the first Index, the problem is the growth of the state and regulation. Provincial and territorial lawmakers make more and more laws and regulations that erode property rights. The period of the pandemic taught us that legislators and policy makers were not afraid of draconian laws and regulations. The ideal way forward is to codify certain laws in the constitution (although even in the United States where rights to compensation are enshrined, governments find ways around that to limit property rights).

The best solution is an informed and vigilant public that demands an end to over-regulation that limits property rights and is insistent that governments pay big time if they encroach on rights. The answer is a commitment to limited government at all levels and only a public pledged to freedom can achieve that in the end. It should be mentioned that this index obviously only looks at property rights in isolation. There are many other variables of economic freedom (such as taxation levels, level of bureaucratic red tape, etc.) that affect an overall level of economic liberty and consequent prosperity. Although property rights are foundational to economic freedom, that is not the end of the story when it comes to determining if a jurisdiction is economically free.

This Index shows that even absent constitutional protection there are still provinces and territories doing a better job of protecting individual property rights than others. Canadians from coast to coast to coast need to know that. This allows Canadians in different provinces and territories to learn from those who are doing the best job at safeguarding property rights. Canadians need to become more vigilant and care much more about property rights.

In closing, the hope is that Canadians in all jurisdictions can learn from this Index and improve in the areas that need improving. It is hoped that ordinary citizens share these results with provincial legislators and hold them accountable for the results and for improvement.

But even more important is a sincere desire that these rankings and discussions can serve as a springboard for a broader movement among Canadians to preserve, protect, and enhance property rights across the country. In the end, that will make this all worthwhile.

POLICY RECOMMENDATIONS

- 1. The federal government and the provinces and territories need to enshrine property rights or the right to timely and full compensation in the Constitution.** Canada—due largely to pressure from the New Democratic Party—resisted calls to put property rights in the patriated constitution. As stated in the first Index, there is an amending formula in our constitution that can insert property rights in the document.
- 2. Provinces and territories must control regulatory takings.** Provincial and territorial governments can follow the lead of Europe and other parts of the world and place significant measures to compensate landowners for regulations and measures that reduce economic value of land (so-called regulatory takings) or limit economic uses of land. Canadians need to be informed that we are outliers in the world on this issue.
- 3. Governments need to strive for consistency in area of government policy that affect property rights.** For example, expropriation laws, civil forfeiture laws (if they exist), and heritage laws need to provide robust protections for individual landowners.
- 4. As stated in first Index, Canada needs a research organization or advocacy group that is completely devoted to property rights education and protection.** This will inform Canadians how much behind we are on property rights education and how to reform our laws to give us maximum property rights protections. Jurisdictions can share best practices at this level. This would enhance Canada's economic wellbeing.

APPENDIX A

Endangered Species

The following pieces of legislation were analyzed to determine the endangered species indicator:

- 1) **British Columbia** - Wildlife Act
- 2) **Alberta** - Wildlife Act
- 3) **Saskatchewan** - Wildlife Act
- 4) **Manitoba** - Wildlife Act; Endangered Species Act
- 5) **Ontario** - Fishing and Wildlife Conservation Act; Endangered Species Act
- 6) **Quebec** - An Act respecting threatened or vulnerable species; an Act respecting the conservation and development of wildlife.
- 7) **New Brunswick** - Fish and Wildlife Act; Endangered Species Act
- 8) **Nova Scotia** - Wildlife Act; Endangered Species Act
- 9) **Prince Edward Island** - Wildlife Conservation Act
- 10) **Newfoundland** - Wild Life Act; Endangered Species Act
- 11) **Yukon** - Wildlife Act
- 12) **Northwest Territories** - Wildlife Act
- 13) **Nunavut** - Wildlife Act

APPENDIX B

Heritage Property

The following pieces of legislation were analyzed to determine the heritage property indicator:

- 1) **British Columbia** - Heritage Conservation Act, Local Government Act
- 2) **Alberta** - Historical Resources Act
- 3) **Saskatchewan** - Heritage Property Act, Saskatchewan Heritage Foundation Act
- 4) **Manitoba** - Heritage Resources Act
- 5) **Ontario** - Ontario Heritage Act
- 6) **Quebec** - Currently: Cultural Property Act; as of 19 October 2012, Cultural Heritage Act
- 7) **New Brunswick** - Heritage Conservation Act
- 8) **Nova Scotia** - Heritage Property Act
- 9) **Prince Edward Island** - Heritage Places Protection Act
- 10) **Newfoundland** - Historic Resources Act
- 11) **Yukon** - Historic Resources Act
- 12) **Northwest Territories** - Historical Resources Act (2010)
- 13) **Nunavut** - Historical Resources Act (NWT-1989), Nunavut Land Claims Agreement: <http://www.gov.nu.ca/hr/site/doc/nlca.pdf>.

ENDNOTES

1. The law was considered as of February 2023 except where specifically noted.
2. <https://www.osler.com/en/resources/regulations/2022/supreme-court-of-canada-clarifies-law-on-de-facto-expropriation>.
3. <https://www.newswire.ca/news-releases/expropriation-of-oil-and-gas-companies-quebec-must-respect-its-own-legislation-and-pay-fair-value-822663894.html>.
4. Young, Simon N. M (2009). *Civil Forfeiture of Criminal Property: Legal Measures for Targeting the Proceeds of Crime*. Cheltenham, UK: Edward Elgar. Print.
5. *Ibid.*
6. *Ibid.*
7. Pearce, Christian (2011). "Asset Forfeiture Efforts Ramp Up." Christian Pearce Web Log. <http://cplegal.ca/criminallawnews/?p=1512>.
8. Blumenson, Eric & Eva Nilsen (1998). *Policing for Profit: The Drug War's Hidden Economic Agenda*. 65 U. Chi. L. Rev. 35. Freiberg, Arie & Richard Fox (2000). *Evaluating the Effectiveness of Australia's Confiscation Laws*. 33 *The Australian and New Zealand Journal of Criminology* 239. Sproat, Peter (2007). *An Evaluation of the UK's Anti-Money Laundering and Asset Recovery Regime*. 47 *Crime, Law and Social Change* 169 at 177-183.
9. Al, Claudia Schmidt, & Bob Seguin (2012). *The Ontario Endangered Species Act: Understanding the Incentives, Implications, and Alternatives*. Geogemorris.org/. George Morris Centre, Sept. 2010. Web. 20 Nov. 2012. <http://www.geogemorris.org/publications/file.aspx?id=8f3dc6d6-c83b-4014-956c-f31fc16b2b86>.
10. *Ibid.*
11. Should Canadian Legislators Learn Anything from the U.S. Experience with Endangered Species Legislation? Paper presented by Glenn Fox and Vic Adamowicz in Organized Symposium OS-8J, Sharing the Environment: Cross-Border Policy Issues and their Resolution at the Joint Meetings of the American Agricultural Economics Association and the Canadian Agricultural Economics Society, Toronto, Ontario, 1997.
12. *Ibid.*
13. *Ibid.*

