

# Blue Ribbon Panel on Property Rights (BRPPR)

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*A Preliminary Report to Patrick Brown, Leader, Ontario PC Party*

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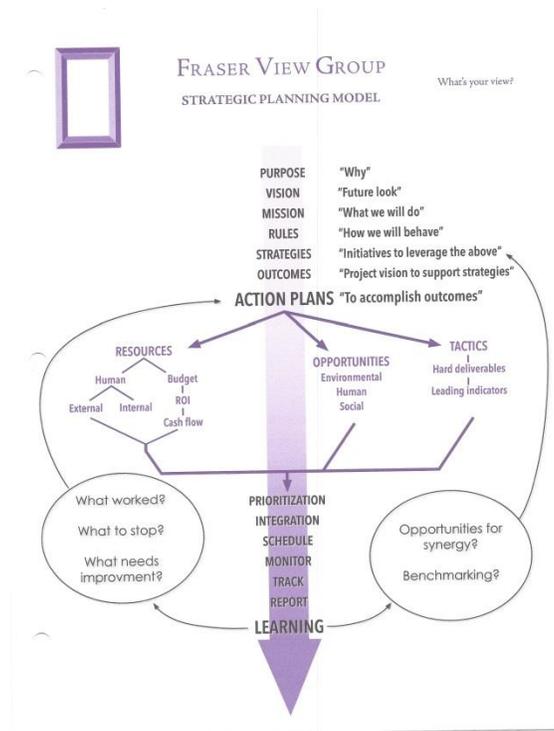
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## EXECUTIVE SUMMARY

In the Fall of 2015, Patrick Brown (leader of the Ontario Progressive Conservative Party), asked MPP Jack MacLaren to form a Blue Ribbon Panel on Property Rights (BRPPR). Subsequently, Jack assembled a team of leaders from within the Ontario Landowners Association (OLA). The OLA is a volunteer organization, with its roots in rural Ontario, where the erosion of property rights has been most apparent. Since its formation ten years ago, its members have sought to educate the public about the importance of property rights to the economic, democratic, and personal well-being of Ontarians and Canadians. The association, which began in 2006 with less than 10 county chapters, continues to grow, and today has over 20 chapters in Ontario. Executives from the OLA hear daily from citizens who are experiencing a loss of the right to enjoy, use, and profit from their land.

The most pressing decision for the BRPPR team was to decide how to proceed and a decision was made to use an internationally recognized model of a “Strategic Planning” process.



As noted in the model, our first task was to develop a Purpose Statement (see below). Our Purpose Statement contains our Mission (to define the scope of what we are doing), our Vision (what the future will look like when we are successful), and our Values (the character values that will permeate our core behaviour and how we will conduct ourselves). The key element in addition to the above is a sense of a much higher level of Purpose, to serve a higher level of Nobility, impacting positively on humankind.

Having completed our Purpose Statement, we began working our way through the Planning Process. This paper is part of our first action plan, which is to review and promote our strategy to our leader, Patrick Brown and seek his comments and approval of our direction.

## **PURPOSE STATEMENT**

This Blue Ribbon Panel shall develop and implement a strategic plan to champion the value of property rights for the benefit of all people of Ontario so that property rights are honoured and respected by people, the judiciary, and all levels of government.

We are passionate about responsible stewardship of property and its association with the ability of people to prosper and enjoy their personal rights and freedoms.

## PREAMBLE

How do you think Ontarians would react if the government introduced legislation requiring all families with a pool in their backyard to henceforth make it available to everyone on their street, free of charge?

Or imagine if the government designated your family townhouse a Heritage Site, thereby reducing its resale value, and preventing you from making much needed renovations at a reasonable cost.

These kinds of scenarios play out daily all over Ontario. Rarely do these stories reach the newspaper or nightly news. Unfortunately for thousands of Ontario families, there is little recourse.

Welcome to the discussion on Property Rights in Ontario.

The Ontario Landowners Association (OLA) is a group of volunteers who have worked tirelessly for the last decade to help people defend their property rights. Property rights are often referred to as a “bundle of rights and freedoms”. Without property rights protected in law, lending institutions will not give people and businesses loans because their properties cannot be registered as collateral.

The OLA is a grass-roots organization with thousands of followers, members and active supporters. They receive several calls and emails daily from desperate people with nowhere else to turn for help when government agencies are actively infringing on their property rights and personal freedoms.

Ontario used to be one of the most prosperous provinces in Canada. It is now a have-not province. We have an opportunity to return to a state of well-being and prosperity by strengthening our property rights. We are grateful for the opportunity to strike this Blue Ribbon Panel that we hope will encourage a change in tone by government law and policy makers when drafting legislation and regulations that affect property rights.

## PROVINCES EMBRACING PROPERTY RIGHTS

### Alberta Property Rights Advocate Office

The property rights dilemma is not unique to Ontario. This issue has already been addressed in the province of Alberta. *“The topic of property rights is an emotional one. Property rights are intrinsically linked to Albertans’ livelihoods, the well-being of their families and indeed their way of life.”*

The above statements are from the Report of the Property Rights Task Force commissioned by the Alberta government in 2011. The statements are as true in Ontario as they are in Alberta. The fact that this is an emotional topic sometimes makes discussion difficult. Indeed, farmers and property owners are sometimes mistakenly viewed as mean, greedy, and difficult when the subject of land usage comes up. But it is rather that farmers and landowners are passionate about their property. For them, it is more than merely a possession. It is their livelihood, their retirement, their future, and that of their children.

Alberta is a forerunner in Canada regarding property rights in that the Province has acknowledged that they must be protected. The completion of the task force was followed by the implementation of the Property Rights Advocate Act in May 2012 and the establishment of the Alberta Property Rights Advocate Office in December 2012.

N. Lee Cutforth, Q.C. was appointed as the first Alberta Property Rights Advocate. He and the Alberta Property Rights Advocate Office (APRAO) produced three Annual Reports which included a total of six recommendations for strengthening the province’s property rights.

From their observations, the APRAO has been able to make some recommendations to the Alberta government relating to property rights. They also are a resource to be consulted for information on proposed legislation and its likely effect on property owners - a role, if seriously taken in this province, would mitigate the difficulties caused by proposed Ontario legislation such as Bill 100, Supporting Ontario’s Trails Act and Bill 118, Great Lakes Shoreline Right of Passage Act.

### Ontario Landowners Association

In Ontario, the closest thing to the Alberta Property Rights Advocate Office is the Ontario Landowners Association (OLA). For over ten years, the OLA has heard complaints from citizens who are having their property rights taken from them by government. Over that time, the OLA has been able to observe the commonalities of property rights abuses and lack of protection in Ontario. Unlike the APRAO, they do not have a mandate from the Provincial government but they do have a longer history of in-depth observation of how property rights are being lost in Ontario, and beyond. Throughout its history, the OLA has been an advocate for property rights and has adopted as part of their mandate, the idea of educating the public on these rights. Whereas the APRAO has a staff of four and an annual budget of a half million dollars, the OLA relies on donations and member fees. The Association is fortunate to have a large contingent of talented volunteers to assist with communications, research, education, and marketing. Many

spend considerable time traveling across Ontario to speak at events. Receiving calls from desperate people who have exhausted all other options, OLA executive and members do what they can to help people understand their rights and navigate through the various tribunals and courts as they seek to protect those rights.

One of the common threads throughout the stories that the OLA hears is the scenario where a property owner is targeted by some government body or agency, usually based on one complaint, and ends up in court defending him or herself, and at the end of it all is a broken soul financially, mentally, and physically.

*"Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened." Hryniak v. Mauldin, 2014 SCC.*

The OLA has also observed that Ontarians are losing their individual, human rights as they lose their property rights:

*"Private property rights do not conflict with human rights. They are human rights. Private property rights are the rights of humans to use specified goods and to exchange them. Any restraint on private property rights shifts the balance of power from impersonal attributes toward personal attributes and toward behaviour that political authorities approve. That is a fundamental reason for preference of a system of strong private property rights: private property rights protect individual liberty." Professor Armen A. Alchian (The Concise Encyclopedia of Economics – Library of Economics and Liberty)*  
<http://www.econlib.org/library/Enc/PropertyRights.html>

Ontario used to be a province that was the envy of all other provinces across this country. We had and still have a unique richness with its many natural resources.

Property owners used to feel a sense of pride and ownership because their property rights promoted growth and development in communities across the province that allowed both urban and rural people to enjoy the fruits of their labour.

We have Laws - good laws - that were created since the birth of this country that were simple and easily understood by all; laws that encouraged respect and deterred criminal activity. These laws are still in effect today but they are buried and hidden under tons of new legislation that has been created with new verbiage that diminishes or obfuscates the true intent of the original law.

The many natural resources in this province attracted all types of industry that created an abundance of work for the people as well as promoting tourism at the same time. Secure property rights create the collateral for investment in creating, developing and growing industries that create jobs that are the wealth and prosperity of the people of Ontario.

The duty of our elected politicians is to ensure that property is correctly documented for all to see in a registry and to protect those rights in the Rule of Law.

*“Prosperity and property rights are inextricably linked. The importance of having well-defined and strongly protected property rights is now widely recognized among economists and policymakers. A private property system gives individuals the exclusive right to use their resources as they see fit. That dominion over what is theirs leads property users to take full account of all the benefits and costs of employing those resources in a particular manner. The process of weighing costs and benefits produces what economists call efficient outcomes. That translates into higher standards of living for all.” Gerald P. O’Driscoll Jr. and W. Lee Hopkins (Property Rights: The Key to Economic Development).*

<https://www.cato.org/publications/policy-analysis/property-rights-key-economic-development>

## ELEMENTS OF PROPERTY RIGHTS

The APRAO's working definition of property rights consists of three basic elements:

- Right of possession
- Right of use
- Right of disposition

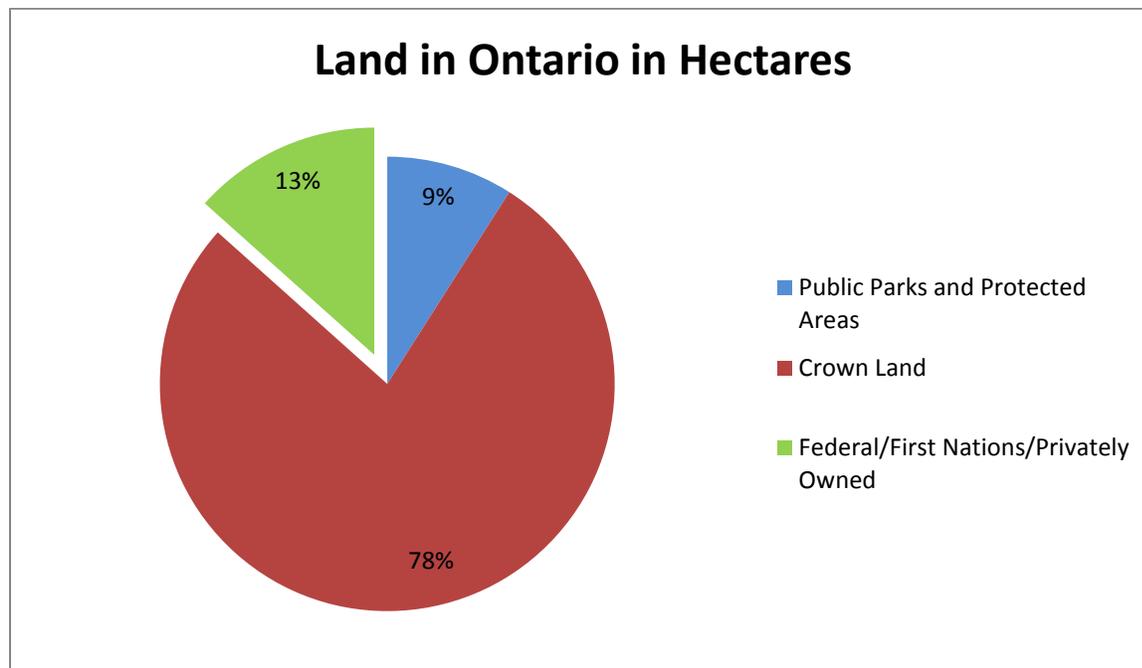
Their 2012 Annual Report states:

“The extent that a property owner can operate in these elements represents the degree of freedom enjoyed by that owner. The extent to which that ability is compromised or restricted represents a corrosion of those rights.”

We believe that all three of these elements have been compromised in Ontario, especially the right to use. Increasingly we find that provincial legislation is drafted without a second thought for the impact it might have on your property.

### Land Use Restrictions

It may surprise people that, in Ontario, less than 13% of the land is in the hands of private owners. Yet it often seems that the legislation, regulations, and particularly land use planning are directed at that small sector.



Source: <https://www.ontario.ca/page/forestry-facts>

Some legislation where this is illustrated:

- Heritage designations on privately-owned structures – privately owned structures can be designated as part of a “zone”, the result of which is significant restrictions on the use and enjoyment of the property and residence.
- Species at Risk – restrictions on farmland because of presence of northern shrike and bobolink, birds that are plentiful in other parts of North America.
- Wetlands designations – suggested by the province and implemented by municipalities, wetlands designations have been a troublesome issue for many property owners with which to contend. Often a property owner will be unaware that his or her property has been designated until they apply for a permit to build, sever, or change a structure.
- Flood control areas – like the wetlands designations, a property owner may be confronted for the first time with being part of a flood control area when they seek permission to build and are denied.
- And others such as the Ottawa River Heritage designation and Managed Forest designations.

These designations reduce or eliminate the use, value, profitability and enjoyment of property in Ontario.

As previously noted, government has taken to abuse its power and resources by either dragging issues out in court or by playing an Ontario family off against one level of government. In other scenarios, a homeowner will pay thousands of dollars for an engineering report requested by the municipality or a Conservation Authority, and then be refused because the government’s engineer disagrees with the engineer hired by the owner. These cases often end up at the Ontario Municipal Board adding to the stress and financial challenges for the owner, not to mention the cost to the taxpayer. The fact that the property owner is frequently successful shows that municipalities are often at odds with the law (and common sense).

Land use restrictions and building permit processes have become very complex and confrontational. It often appears that municipal staff is there to police the property owner rather than to help, facilitate, and serve.

Similarly, property owners frequently feel lost in a forest of red tape, regulation, and non-existent help when attempting to get a problem solved. When flooding caused damage to crops on farmers’ fields in Ottawa in 2013, three levels of government were involved in discussions but no-one took ownership of the problem. Rather than the government coming to the aid of the property owners and taking a leadership role in problem solving, it is often left up to the owners to play that role.

### **Ontario Residents Haven’t Been Consulted**

The number of people living in rural areas is declining. Per Statistics Canada, in 1851, 86% of the population of Ontario lived in rural areas, with 14% living in urban areas. By 2011, that number was reversed. Indeed, the proportion of people living in rural areas in Canada is the lowest of the G8 countries. Could the escalating decrease in rural populations be attributed somewhat to the land use regulations and policies that make it increasingly difficult to build a new home or to grow a land based business? Per the 2015 State of Rural Canada Report,

“between 1986 and 1991 non-metro Ontario grew by 8.8% whereas between 2006 and 2011 growth has only been 0.5%”.

Property owners should be at the table, like other stakeholder groups, when legislation, regulations and policy that will impact their property are being discussed. Often, they are not included and are largely ignored or misunderstood when they speak out against proposed legislation. Bill 100, Supporting Ontario’s Trails is a perfect example of this. The Ontario Government and recreational associations have been drafting this bill since the mid 1990’s. Property owners only found out about it by chance, via the OLA, more than six months after it was tabled in the legislature. The Bill proposed legislation and regulation, and transferal of easements on property for recreational trails. As farm lawyer Kurtis Andrews pointed out “the sole purpose of the bill is to take away property rights from property owners...”

By failing to ensure that there was broad buy-in from all stakeholders, including property owners, the government has succeeded in seriously damaging a decades-old relationship between the property owners, who wish to allow recreational users to use specific pieces of their property during specific times and those that wish to use property owners’ land for recreational purposes. Several property owners have closed snowmobile trails across their property.

### **Landowners are Responsible Stewards**

It is apparent that there is a cultural clash between some environmentalists and rural property owners. Rural landowners and farmers in particular, are seen as mean-spirited, greedy, and careless with the environment. Environmental lobby groups push governments for recreational trails across private property, designations of flood control areas, and protection of “endangered species” habitats. Those who would like to enter the discussion from a property owner’s perspective are often characterized as not caring for the environment. Of course, nothing could be further from the truth. Many rural people “live off the land”; it is in their best interests to be good stewards to maintain and enrich their investments, and they do.

### **A Trusted Land Registry System**

In 1991, the Provincial government established a Public-Private Partnership with Teranet Land Information Services Inc. (Teranet), an electronic land registration and commerce company. Under this agreement, Teranet assumed responsibility for the implementation and operation of the Province of Ontario Land Registration System (POLARIS), and the transfer of all land registry documents to electronic form. The system is now known as the Electronic Land Registration System (ELRS). In 2003, the Province sold its 50 percent stake in Teranet to private investors and in December 2010, the Government of Ontario extended its exclusive relationship with Teranet by 50 years. Teranet operates the land registry system on behalf of our government and will do so until 2060. However, the government does have the right to cancel the arrangement at any time.

Concerns over project completion dates and costs were raised about the privatization of our Land Registry System by the Ontario Auditor General. Ontario Public Service Employees Union characterizes the sale of the government’s 50 percent share in Teranet to private investors as a fire sale, saying the value of the company was closer to \$2 billion rather than \$740 million, a significant loss of money for the people of Ontario.

Elizabeth Marshall, Director of Research for the Ontario Landowners Association, raised the issue of the Statute of Frauds, section 2 being over-ridden by the Land Registration Reform Act. This Act allows land registration documents to be entered into ELRS without a signature, stating that “Despite section 2 of the Statute of Frauds Act, section 9 of the Conveyancing and Law of Property Act or a provision in any other statute or any rule of law, an electronic document that creates, transfers or otherwise disposes of an estate or interest in land is not required to be in writing or to be signed by the parties and has the same effect for all purposes as a document that is in writing and is signed by the parties”.

One of the 2013 recommendations of the APRAO was “that the Government retain the direct and full ownership and operation of the land registry office system under its existing format in the Land Titles Office” based on the idea that “Government provision of the land registry service provides a significant measure of confidence in and practical support of, that concept of indefeasibility – there is a certain objective security and quality assurance in government operation of the registry.” We would go further and say that the practice of “wet ink” signatures should be restored as per section 2 of the Statute of Frauds Act.

### **Unaffordable Justice is not Justice**

Increasingly, people are deciding to represent themselves in court, including in Ontario’s civil and criminal courts. Cost is the main reason why people decide to represent themselves, either from the outset of the case, or after months, or even years of court appearances with a lawyer whom they can no longer afford. A second reason is the practice of the court prosecutor to try to get litigants to plead to a lesser charge, with the support of their lawyer. Or they refuse to continue to pay a lawyer who, after a considerable amount of cost already paid out, recommends their client negotiate a deal with the accuser even when they are in the wrong, rather than go to court and fight for what belongs to them. Thus, rather than looking for another lawyer to represent them, they decide to go it alone, on their own terms.

There is no doubt that anyone deciding to self-represent is at a disadvantage. Usually, they don’t know the process or the rules and that means many hours spent getting up to speed. The unfamiliarity with the court system can lead to an overwhelming amount of information being filed with the court, resulting in a slowdown of the process. Self-reps become frustrated by the system and the whole ordeal, which can take years, often taking its toll on the person’s health.

This is often the situation that the OLA has witnessed when people are defending themselves in court against frivolous charges such as selling rocks off your property, having grass that is too long, or bringing in landfill to improve a property. The punishment of the ordeal of a long, drawn out court process for such things as failing to buy a dog tag or sharing pork with a neighbour only to have the charges dropped, is at odds with a fair and just court system. And yet charges continue to be levied by government agencies with no consequence for having brought the case forward in the first place. This results in a waste of valuable court time that could otherwise be directed at far more serious infractions that fall within the Provincial Offences Act, not to mention the waste of taxpayers’ money.

## Blue Ribbon Panel Next Steps

### Phased Approach

The Blue Ribbon Panel will follow three phases to complete its mandate:

- Phase I – Foundations
- Phase II – Consultation and Engagement
- Phase III – Policy Recommendations and the Convention

### Phase I – Foundations

#### Ending January, 2017

The Panel has met 11 times since its formation in 2015. Each member has made a valuable contribution not only to the forward-looking efforts of the Panel, but has also provided critical insight into the state of property rights in Ontario.

Over 11 meetings, we have set forth a foundation of clear, open and transparent consultations, and are employing a formalized strategic planning model for its operations.

The first phase of the Panel’s approach has been to consolidate both the opinions of the Panel members and to formalize the way forward. We are particularly in tune with the importance of engaging and acting on the advice and recommendations made by the Ontario PC Party membership and property rights stakeholders. The strength of the eventual recommendations will be dictated by the level of public and Party engagement into their formation, and it is the Panel’s desire to encourage a robust and comprehensive process.

The Panel deliberated over and finalized a key “Purpose Statement”, which will guide the consultation phase of the Panel’s work and the ultimate recommendations made to the Ontario PC Party.

Above all, the Panel has identified its paramount objective of changing the tone of public discourse as it relates to property rights in Ontario. We hope to see a tone change at all levels, from the language used by the public, to the legislative and regulatory process employed by all levels of government.

Property rights are the foundation of democracy, freedom, and are the underpinnings of a prosperous and healthy society.

## Phase II – Consultation and Engagement

### Beginning February, 2017

The goal of Phase II is to begin a conversation with Ontarians about changing the tone of government as it relates to property rights. This goal will be achieved by implementing the following activities:

### Outward Communications and Media Plan

- Formal announcement to launch the BRPPR consultation process (Toronto/Ottawa)
- News Bulletins will be provided to all current MPPs about core property rights issues facing Ontario
- Letters will be written from the Panel to Ontario PC Party members in the province of Ontario, informing them about core property rights issues
- Proactive Op-Ed Communications Campaign in each media market in Ontario
- Communication Activities in support of the regional consultation meetings, and online/mail consultation process

### Stakeholder Consultation

- Formal engagement with businesses and Non-Governmental Organizations (NGOs) began in 2016 and will continue in a formal capacity beginning in early February, 2017
  - Real estate agents and associations
  - Small and medium size municipalities and their associations, such as Ottawa and Kingston and others like Hamilton-Halton and Niagara.
  - The insurance industry
  - Tourism and recreation industry players and associations
- A large stakeholder roundtable will be organized in late April/early May, to bring together experts, stakeholders and concerned citizens to discuss/learn about the Panel and property rights issues more generally
- Other Landowner Groups such as the Renfrew Country Private Landowners Association, Ontario Woodlot Association, and the Ontario River Alliance among many others.

### Resident Consultation

- Small round-table meetings will be organized, starting with 2 and growing to 8 if interest warrants, in communities across Ontario. The first two meetings will be set in the Ottawa Region and Niagara Falls. Other areas to consider: Huron-Bruce, Chatham Kent, Peterborough, Eastern Ontario, Pembroke, and Dufferin regions.

### Party Membership/Riding Association (RA) Consultation

- All RA Presidents will be written and formally asked to consider submitting a policy proposal related to property rights. A few options will be provided, but they will be encouraged to consult their membership for new ideas.
- Using the party email system, all current and lapsed members will be contacted and asked to submit written proposals to their local RA or to the Panel directly.

## All MPPs and staff

- MPPs and their staff (Queen's Park and Constituency) will be formally written and asked to submit ideas to their local RA or to the Panel directly about how to address core issues facing property rights in Ontario.

## Plan Requirements

1. Plan and schedule - Develop a plan and schedule which includes a budget.
2. Fundraising – either receive monies from the Ontario PC Party, the Riding Association, or launch a small fundraising campaign, or a combination of the above.
3. Website – a simple, portal website will be created and launched that will provide an email and mailing address to submit information directly to the Panel for consideration.
4. Logistic Support – Champions in either industry, the NGO community, or from caucus will be needed to help facilitate local events in their community. These leaders will be identified during the stakeholder engagement phase.

## Phase III - Policy Recommendations and the Convention

### Beginning September, 2017

The Panel will meet prior to the May 15 deadline to determine what policy proposals it supports, based on the Panel members' input and that of the consultation process. The Panel will also decide the criteria it will use to evaluate incoming proposals from RAs across the province. The Blue Ribbon Panel Secretariat will produce a document outlining the Panel's recommendations. The final document will include the formal templates provided by the Ontario PC Party but may include other materials.

Following the May 15, 2017 deadline for RA policy submissions, the Blue Ribbon Panel Secretariat will review and compile all received proposals for consideration by the panel. The Secretariat will prepare a report for the panel that outlines each project and scores it based on the established criteria. A proposal that does not meet the criteria will be clearly identified in the report, with reasons given for this determination.

The panel will meet between May 15 and July 30<sup>th</sup> to receive and discuss the Secretariat's report. The panel will ratify the core proposals, and will authorize the Secretariat to prepare a document to brief the Ontario PC Party. A meeting will be arranged between July 30<sup>th</sup> and September 15<sup>th</sup> between the PC Party and select members of the panel to formally determine which proposals will be made to members at the PC Party Convention.

The Panel will launch a communications campaign to all party members leading up to and at the convention. Details of this plan will be finalized in July, 2017, but should include:

1. An updated website
2. Stakeholder Communications
3. Mail/Emails to members, MPPs, RA Presidents
4. Presentations to priority RAs
5. Print Literature

During the Convention:

1. A BRPPR Hospitality Suite
2. Keynote speech from a leading property rights advocate and/or Panel members
3. Information booth to be staffed by Panel members each day of the convention