

Conservation Easements: Q & A for Legal Advisors

Q: What is a conservation easement?

A: A conservation easement (CE) is a legal agreement between a landowner and a qualified conservation organization such as Ducks Unlimited Canada (DUC) whereby the landowner voluntarily agrees to provide an opportunity to conserve an area of land in perpetuity.

Q: What are some of the benefits for landowners who enter into CE agreements?

A: Landowners can choose to protect the natural aspects of their lands through the conservation easement provisions of the *Environmental Protection and Enhancement Act (EPEA)*. Entering into a conservation easement agreement benefits the local ecology and may provide additional benefits to the landowner including:

- tax benefits by way of reduced capital gains taxes and income tax deduction or credit;
- the ability to retain substantive use of and rights to the land while ensuring future preservation of the land; and
- a potential increase to property value, particularly where there are contiguous adjoining lands with conservation easements.

Q: What are the allowable land uses under a conservation easement and how might they affect the use of the land for farming and ranching?

A: The terms and conditions governing the grantor and grantee are expressed in a negotiated agreement, the “conservation easement agreement.” The terms of the agreement can be quite flexible, constrained only by the need to uphold the purpose of the easement and the objectives of the qualified organization (the grantee). A couple of issues are outlined below.

- the right to unhindered use and enjoyment of the land to the extent that this is not limited by the terms of the agreement, for example, grazing by livestock is allowable
- restrictions on interfering with the ecological characteristics that are the focus of the agreement, for example, typically no breaking or draining of the land is allowable.

Q: What is a “qualified organization” and which such organizations operate in Alberta?

A: A qualified organization is a body corporate that is a registered charity that has, as an object of incorporation, the acquiring and holding of an interest in land for a conservation purpose, and whose bylaws indicate that any interest held will pass to another qualified organization on dissolution. Examples in Alberta include Ducks Unlimited Canada and the Nature Conservancy of Canada.

Q: Why is it important for lawyers to be knowledgeable about CE agreements?

A: Landowners may seek legal advice in relation to either sale or gifts of conservation easements. Legal practitioners may need to effectively guide and advise clients in the conservation easement process. As a legal tool, conservation easements may be hindered or facilitated by the legal and policy framework in which they operate.

Q: How has the Environmental Law Centre been involved?

A: The Environmental Law Centre (ELC) is a charitable organization, incorporated in 1982 to provide an objective source of information on environmental law and policy in Alberta. In 2006, the ELC, in partnership with Ducks Unlimited Canada and the Alberta Law Foundation, undertook a project to inform Alberta lawyers about CEs and their legal implications. The project involved both primary and secondary research; the preparation of a brief, checklist and reference list for lawyers; and a series of presentations to professional legal associations

Q: How extensive are the use of conservation easements in Alberta?

A: As of June 2006, landowners in Alberta have donated or sold conservation easements covering 29,882 hectares, and donated or sold fee simple title covering 40,928 hectares to conservation organizations. Of these lands 19,110 hectares qualified as ecological gifts and were valued at \$41.85 million.

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