

#8

Frequently Asked Environmental Law Questions

PROFIT AND PUBLIC LANDS

Q:

My neighbour has a public lands grazing lease. He cut a number of trees on the grazing leasehold land for range improvement purposes, sold the lumber, and is making a financial profit from its sale. Does the law relating to public land address whether a leaseholder can cut trees and to whom profits earned belong, even when the profits relate to something outside of the primary reason for the lease?

A:

Yes, provincial legislation pertaining to public lands does address whether leaseholders can cut trees and whether or not they are entitled to keep the profits from this activity. The Alberta government issues grazing leases on Crown land under the *Public Lands Act* (R.S.A. 1980, c. P-30). Under this Act, the *Public Grazing Lands Range Improvement Regulation*, (Alta. Reg. 221/80), prohibits any holder of a grazing disposition, such as a grazing lessee, from carrying out any range improvements without prior written authorization from the government. Authorization to cut trees, which is considered a range improvement, takes the form of a timber disposition under the *Forests Act* (R.S.A. 1980, c. F-16).

According to the Public Lands Management Branch (Diana Brierly, 10-16-98), "Most range improvement blocks involve enough timber that a Commercial Timber Permit or Deciduous Timber Permit is required. Most of the time these are issued through competitive auction, tender, or draw by the Land and Forest Service. Often the grazing lessee can take part in the competition, but he still does have to compete for the wood. Everybody must pay timber dues (a fee for the use of Crown timber, i.e. timber grown on public land). The few exceptions to competitive allocation are when the demand for wood in the local market is low, or if the quantity is small, less than 60 cubic metres, generally. Fenceline clearing is one situation where this can happen. ..."

So, if your grazing lessee neighbour is legally cutting trees, he should have a permit or licence authorizing this activity. If you want to check this, you should contact your local Alberta government Public Lands Services Branch.

Assuming your neighbour has a disposition, he or she may harvest the timber and keep the proceeds. However, if your neighbour has not been issued a tree cutting disposition, is cutting trees in excess of amounts permitted, or has not otherwise been authorized in writing to cut trees, then your neighbour could be guilty of an offence under the *Public Lands Act*, *Forests Act*, or *Timber Management Regulations* (Alta.Reg. 268/78). If you suspect that your neighbour has broken the law, you should first contact your local Alberta government Public Lands Services Branch for more information. If you determine that your neighbour does not have the right to harvest timber on his leasehold, you might also write to both the Minister of Environmental Protection and the Minister of Agriculture, Food and Rural Development, since both Ministers share responsibility over the *Public Lands Act*. If you are not satisfied with the actions taken by the local branch or the two Ministries, you might consider retaining a lawyer to investigate other avenues, including the potential for a private prosecution.

Finally, note that the Agricultural Lease Review Committee is completing its recommendations on public lands policy and grazing dispositions. Among other issues, the Committee is addressing harvesting timber on public land in the White (settled) area. Any recommendations the Committee makes will need to be passed into legislation.



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Environmental Law Centre

The Environmental Law Centre (Alberta) Society is a non-profit charitable organization operating in Alberta since 1982. The Society believes in making the law work to protect the environment and in support of this objective, provides services in environmental law education and assistance, environmental law reform, and environmental law research. The Society operates the Environmental Law Centre which is staffed by four full-time lawyers.

Funding is provided to the Society in part by the Alberta Law Foundation and through the generous support of the public. The Centre also accepts private and government research contracts for work relevant to and consistent with the Society's objectives.

For further information, pursue the following:

Environmental Law Centre Library Resources:

- ABOUT PUBLIC LANDS / Alberta Agriculture, Food and Rural Development. --Edmonton: Alberta Agriculture, Food and Rural Development, 1995.
- ALLOCATION AND MANAGEMENT OF TIMBER ON WHITE AREA GRAZING DISPOSITIONS -- [Edmonton] : Alberta Agriculture, Food and Rural Development; Environmental Protection, Land Administration Division, 1995.
- INTERIM REPORT OF THE AGRICULTURAL LEASE REVIEW COMMITTEE --Edmonton: Government of Alberta, 1998.
- ALBERTA PUBLIC RANGELAND LAW AND POLICY / Kwasniak, Arlene J. --Edmonton: Environmental Law Centre, c1993.
- CROWN TIMBER RIGHTS IN ALBERTA / Bankes, N.D. --Calgary: Canadian Institute of Resources Law, 1986.

Websites:

Alberta Agriculture, Food and Rural Development has a number of documents on their website that are relevant to the use of public lands. Check the following:

- <http://www.agric.gov.ab.ca/ruraldev/publands/publan26.html> *Conservation and Protected Areas*
- <http://www.agric.gov.ab.ca/ruraldev/publands/publan15a.html> *Public Land Management*
- <http://www.agric.gov.ab.ca/ruraldev/publands/publan19.html> *Crown Timber Resources on White Area Public Land*
- <http://www.agric.gov.ab.ca/ruraldev/publands/publan21.html> *Dispositions Under the Public Lands Act*
- <http://www.agric.gov.ab.ca/ruraldev/rurallea/publan24.html> *About Public Lands – Surface Compensation on Agricultural Leases, Licenses and Permits*
- <http://www.agric.gov.ab.ca/ruraldev/publands/publan12a.html> *About Public Lands – Public Land User's Rights and Responsibilities*
- <http://www.agric.gov.ab.ca/ruraldev/publands/aglease/index.html> The Agricultural Lease Review Report released in November 1998. Further information on the progress of legislative and policy changes should appear here.
- <http://www.albertapublicland.org/> Site of the Public Lands Coalition. Informative site on the management of public lands in Alberta from an 'other than government' perspective.

Contacts:

- For further information regarding the MLA Agricultural Lease Review, contact the Committee Chair, MLA Tom Thurber at fax: 780-415-0951 or e-mail: thurber@assembly.ab.ca.

- Relevant legislation is available from the Queen's Printer Bookstore
11510 Kingsway Avenue
Edmonton, AB T5G 2Y5
Phone 780-427-4952
Fax 780-452-0668
E-mail qp@gov.ab.ca
URL <http://www.gov.ab.ca/qp>
- For further information on timber on public lands under agricultural disposition contact:

Alberta Agriculture, Food and Rural Development
Public Land Management Branch
J.G. O'Donoghue Building
Room 200, 7000 - 113 Street
Edmonton, AB T6H 5T6
Phone: 780-427-3595

Alberta Environmental Protection
Forest Management Division
9920-108 Street
Edmonton, AB T5K 2M4
Phone: 780-427-8474

Alberta Environmental Protection
Land Administration Division
South Tower, Petroleum Plaza
9915-108 Street
Edmonton, AB T5K 2G8
Phone: 780-427-3570



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The information provided is current to December 31, 1998. While every effort has been made to ensure the accuracy and timeliness of the information, the answer, of necessity, is of a general nature. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this publication.

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