

1996

CHAPTER C-27.01

An Act respecting Conservation Easements and to make consequential amendments to other Acts

(Assented to June 25, 1996)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

PRELIMINARY

Short title

1 This Act may be cited as *The Conservation Easements Act*.

Interpretation

2 In this Act:

- (a) **“conservation easement”** means a conservation easement within the meaning of section 3;
- (b) **“Crown”** means the Crown in right of Saskatchewan;
- (c) **“department”** means the department over which the minister presides;
- (d) **“grantor”** means a grantor of a conservation easement;
- (e) **“holder”** means the holder of a conservation easement;
- (f) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned.

CONSERVATION EASEMENTS

Nature of a conservation easement

3(1) A conservation easement is a voluntary agreement entered into between a grantor and a holder that:

- (a) grants rights and privileges to the holder respecting land that relate to the purpose for which the conservation easement is granted; and
- (b) may impose obligations, either positive or negative, on the grantor or holder respecting that land that relate to the purpose for which the conservation easement is granted.

(2) A conservation easement may:

- (a) exist for a fixed term or for perpetuity; and

(b) be assigned by the holder, subject to any terms in the easement, to anyone eligible to be a holder.

(3) Subject to this Act, a conservation easement runs with the land to which it relates for the period set out in it and is enforceable by the holder, whether the easement is positive or negative in nature, against the grantor or any subsequent owner of the land even though the holder owns no other land that would be accommodated or benefited by the easement.

Purpose of a conservation easement

4 A conservation easement may be granted for any of the following purposes:

- (a) the protection, enhancement or restoration of natural ecosystems, wildlife habitat or habitat of rare, threatened or endangered plant or animal species;
- (b) the retention of significant botanical, zoological, geological, morphological, historical, archaeological or palaeontological features respecting land;
- (c) the conservation of soil, air and water quality;
- (d) any of the purposes prescribed in the regulations.

Who may grant a conservation easement

5(1) Any owner of an estate in fee simple may grant a conservation easement.

(2) An owner may grant more than one conservation easement respecting land if there is no conflict between the rights and privileges granted and the obligations imposed by the conservation easements.

(3) The Crown, the Crown in right of Canada or a municipality may grant a conservation easement to:

- (a) itself; or
- (b) anyone eligible to be a holder.

Who may hold a conservation easement

6 Any of the following may hold a conservation easement:

- (a) the Crown;
- (b) the Crown in right of Canada;
- (c) a municipality;
- (d) a corporation within the meaning of *The Non-profit Corporations Act, 1995* that has as one of its primary purposes a purpose mentioned in section 4;

- (e) any person, body or group or class of persons, bodies or groups that are eligible to hold an interest in land and that are prescribed in the regulations for the purposes of this section.

REGISTRATION

Conservation easement notice to be registered

7(1) A conservation easement notice in the form prescribed in the regulations is to be submitted for registration in the appropriate land titles office against the certificate of title to the land affected by the easement.

(2) The registrar of a land titles office shall register a conservation easement notice that has been submitted where:

- (a) according to the conservation easement notice, all persons with interests appearing on the title, other than interests appearing from the general record, have been served with the notice of intent pursuant to section 8; and

- (b) the conservation easement notice:

- (i) is in the form prescribed in the regulations;

- (ii) contains the information required to be included pursuant to the regulations; and

- (iii) is, in the opinion of the registrar, fit for registration.

(3) A conservation easement has no effect until:

- (a) an executed copy of the conservation easement has been provided to the department;

- (b) the fees prescribed in the regulations have been paid to the department; and

- (c) the conservation easement notice, in the form prescribed in the regulations, has been:

- (i) provided to the department; and

- (ii) registered, in accordance with this Act and the regulations, in the appropriate land titles office against the title of the land affected by the conservation easement.

Notice of intent to be provided

8(1) Before submitting a conservation easement notice to the appropriate land titles office, the proposed holder shall serve a notice of intent in the form prescribed in the regulations on:

- (a) all persons with interests appearing on the certificate of title respecting the land against which the conservation easement notice is proposed to be registered; and

- (b) the municipality in which the land affected by the easement is located.

(2) A person mentioned in subsection (1) that objects to the registration of the proposed conservation easement notice may apply, within 60 days of being served with the notice of intent, to the Court of Queen's Bench for an order that the conservation easement notice not be registered or submitted for registration.

(3) In an application pursuant to subsection (2), the court, if satisfied that the proposed conservation easement would adversely affect the interests of the applicant, may order that the conservation easement notice not be registered or submitted for registration.

(4) Where no person makes an application to the court within 60 days of being served, the conservation easement notice may be submitted to the land titles office for registration.

Priority of other interests

9(1) Subject to subsection (3) and to section 27 of *The Tax Enforcement Act*, a conservation easement notice that has been registered pursuant to this Act does not have priority over:

- (a) a prior interest registered or filed respecting the land affected by the conservation easement; or
- (b) the implied conditions in *The Land Titles Act*.

(2) The registration of a conservation easement notice does not limit or otherwise impair the rights, including the rights of enforcement and realization, under any prior interest or implied condition mentioned in subsection (1).

(3) A person with a prior registered interest may postpone that interest in favour of a conservation easement notice in accordance with the provisions of *The Land Titles Act*.

Termination of a conservation easement

10(1) A conservation easement may be terminated:

- (a) by a written agreement between the holder and the owner of the land against which the conservation easement notice is registered;
- (b) by the Court of Queen's Bench on application:
 - (i) by the holder or owner of the land, where the court is of the opinion that continuation of the easement would produce a severe hardship for the applicant; or
 - (ii) by any person where the holder ceases to exist.

(2) Where a holder ceases to exist, any person wishing to make an application pursuant to subclause (1)(b)(ii) shall provide 30 days' notice to the Crown, and the Crown, within that period, may elect to assume the obligations of the holder and accept the rights and privileges respecting the conservation easement.

(3) A conservation easement notice may be discharged by submitting for registration in the appropriate land titles office:

- (a) a notice of discharge in the form prescribed in the regulations; or
- (b) a court order obtained pursuant to an application mentioned in clause (1)(b) directing the registrar to cancel and discharge the conservation easement notice.

GENERAL

Obligations may be enforced

11(1) The obligations in a conservation easement, whether positive or negative, of the holder, the grantor or any subsequent owner of the land may be enforced by an action in the Court of Queen's Bench by:

- (a) the holder;
- (b) the grantor;
- (c) a subsequent owner of the land; or
- (d) in the court's discretion, anyone else who is eligible to be a holder.

(2) The court may grant any relief or remedy available at common law to the parties mentioned in subsection (1) whether or not the applicant is a party to the conservation easement or has suffered any damage.

(3) In addition to the relief or remedy mentioned in subsection (2), the court, in its discretion, may order the defendant to take any action the court considers appropriate to restore, or remedy any harm to, the land to which the conservation easement relates.

Regulations

12 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing the purposes for which a conservation easement may be granted;
- (c) for the purposes of section 6, prescribing a person, body or group or a class of persons, bodies or groups;
- (d) respecting the procedures for registering a conservation easement notice and an amendment of a conservation easement;
- (e) respecting the service of any documents required to be served;
- (f) respecting the information to be included in a conservation easement, a conservation easement notice and a notice of intent, including basic requirements that must be contained in a conservation easement;
- (g) prescribing any forms to be used for registration and discharge, including the manner in which a form is to be attested to, and the form mentioned in subsection 8(1);
- (h) prescribing fees to be paid to the department;

- (i) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations;
- (j) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

CONSEQUENTIAL AMENDMENTS AND COMING INTO FORCE

S.S. 1983-84, c.P-13.1 amended

13 Section 132 of *The Planning and Development Act, 1983* is amended:

- (a) by renumbering it as subsection 132(1); and
- (b) by adding the following subsection after subsection (1):

“(2) This Part does not apply to conservation easements within the meaning of *The Conservation Easements Act*”.

S.S. 1988-89, c.S-17.1 amended

14 The following subclause is added after subclause 76(e)(vi) of *The Saskatchewan Farm Security Act*:

“(vii) any conservation easement, or combination of contiguous conservation easements, within the meaning of *The Conservation Easements Act* respecting farm land of one quarter section or greater”.

R.S.S. 1978, c.T-2 amended

15 The following clause is added after clause 27(a) of *The Tax Enforcement Act*:

“(a.1) conservation easements within the meaning of *The Conservation Easements Act*”.

Coming into force

16 This Act comes into force on proclamation.