

Natural Legacies:

Your Educational Guide to Conservation in BC



Protecting Nature on Private Land - Profits à Prendre

What is a “profit à prendre”?

“Profit à prendre” means “the right of taking”. It gives the holder the right to take natural resources such as oil, minerals, timber, soil, or wild game from the land of another, and allows access to the land so that these resources can be gathered.

For conservation purposes, a profit à prendre can be used differently. The right to timber on the land (in the form of the living forest) can be granted to a conservation organization, who choose not to cut the trees. However, because the conservation organization has acquired the right to that timber, the landowner (or any other person) cannot cut the trees because they do no longer have the rights to it. The profit à prendre (or accompanying agreement) can place conditions on the use of the land. For example, if it is the landowner's intention to preserve the old growth forest on the land, the conditions would prohibit cutting mature trees.

The “thing taken” must be part of the land and be capable of being owned. A profit cannot include water. A profit agreement either implies or states the rights needed to benefit from the thing taken. This would include the right to enter the land and the right to use as much of the surface as necessary, including buildings.

PROFITS À PRENDRE



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When is a profit à prendre a good conservation tool?

From a landowner's perspective, profit à prendre is a good choice if:

- You want to retain ownership of the land, while working to protect its conservation values;
- You want to be able to grant other rights in the land to other people (a profit is not an exclusive right to use the land).

Considerations:

- The profit may decrease the value of your property if there are plans to sell before the term of the profit à prendre expires.
- If the profit is registered, it is binding on subsequent landowners.
- Profits à prendre can be for any length of time up to 80 years.

Legal Considerations:

Profits à prendre are acquired by statute or by agreement with the landowner.

If a profit is registered, it is binding on the purchaser of the land for the term of the profit. A registered profit is not terminated when the land is sold unless there is a clause in the profit stating so. The owner of a profit can sell, lease, give away, or bequeath the profit to someone else unless explicitly prohibited. Like a lease, a profit à prendre can pass to the successors on both sides. If an owner grants a profit à prendre to a conservation organization and then sells the property, the new owner will still have to abide by the terms of the profit à prendre. This is unlike a license or memorandum of understanding, which can be considered contracts in law.

A profit terminates:

- At the end of the specified term in the profit;
- At the end of 80 years (Perpetuity Act, Section 22);
- When the owner of the profit voluntarily gives up the profit with permission of the landowner (surrender);
- When the owner of the profit purchases the property from the landowner (merger);
- When the owner of the profit ceases to make use of it for a length of time where a reasonable owner may conclude it will no longer be used (abandonment); or
- When a court orders the profit terminated (court order).

Resources:

David W. Little, Allison MacInnis and Michelle Mullen. Easements, Covenants and Similar Rights in British Columbia – An Overview. April 28, 2004. Fasken Martineau DuMoulin LLP. http://www.fasken.com/files/Publication/a3a87878-1422-4267-8c77-45be524524f7/Presentation/PublicationAttachment/17143421-12b7-4643-87b2-b2344ccc04fa/DWL_AMW_MCM_EASEMENTS_COVENANTS_%26_SIMILAR_RIGHTS_IN_BC.PDF

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