As a BC conservancy fends off bankruptcy, donors across the country wonder, should we be worried?

A matter of trust

By Ray Ford

For years, The Land Conservancy of British Columbia (TLC) was like a helpful cousin at the family estate auction, the one who leapt into the bidding when heirlooms were too precious to lose. Since 1997, the charity has rescued more than 130,000 acres of heritage homes, ranches and farms, at-risk lakelands, and oceanfronts from development: "Special Places," as TLC's slogan puts it, preserved "Forever, for Everyone."

Only now, with TLC smothering beneath a $9.5 million debt and in the midst of court-supervised financial restructuring that includes selling properties, "forever" doesn't seem so permanent, after all.

TLC's brush with bankruptcy is a public relations blow for one of BC's leading land trusts, and for a sector particularly active in cottage areas. There are about 120 land trusts in Canada, non-governmental charities working to preserve environmental, agricultural, social, or cultural heritage on private land. They range from big players such

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as the Nature Conservancy of Canada, which cares for 2.7 million acres, to regional groups like the Central Okanagan Land Trust, with 800 acres. But if an organization that safeguards heritage for the future can't maintain itself, how does that reflect on land trusts as a whole?

When cottager John Catto and his wife, Margaret, donated 20 acres of a windswept Georgian Bay island to a trust in 2002, the deal was "in perpetuity—forever," says Catto, a retired Toronto business owner, who later became treasurer for the Georgian Bay Land Trust. Without the assurance that their donation would be protected for the long term, "We wouldn't have done it."

That's why TLC's fate affects more than just its own supporters. "If TLC went down and did not honour the trust people have placed in it, it would send shock waves through the entire trust movement," says Trevor Goward, a prominent BC naturalist who was planning to donate almost 10 acres to TLC, as a learning centre and as part of a wildlife corridor at the south end of Wells Gray Provincial Park. Now the donation is on hold, at least until the trust rights itself.

In many ways, TLC is an outlier. After all, no other land trust has come so close to insolvency. But all conservancies share a central concern: Preserving landscapes and heritage buildings is expensive. Few can afford to buy all the properties they'd like to acquire, so they encourage people to donate land or make covenants (also known as conservation agreements or easements) that restrict future development but let landowners keep the property. Even after the land is sold, future owners are bound by the covenant.

So it's vital that donors and conservancies trust one another, working together to safeguard these cherished landscapes. Since donations can take months, even years, to put in place, donors and their legal and financial advisors have the time to ask tough questions and really get to know the land trust, says Catto. "Does the organization have any debt? What are the terms of that debt? How is it going to be paid off? How realistic is the payment plan? Or is it going to be paid off by wild promises?"

Money for upkeep is vital. In general, 10 to 20 per cent of a property's value should be set aside for perpetual care, including taxes, insurance, and monitoring. "Even volunteer stewards need supervision and management," Catto says. "It isn't free."

Paul Peterson is a lawyer with extensive land trust experience at HGR Graham Partners in Midland, Ont. In 2005, he helped draft the Canadian Land Trust Standards and Practices document that guides conservation groups across the country. "I can't tell you nothing will ever go wrong," Peterson says, with a lawyer's typical caution. But if donors and their legal and financial advisors do their homework, "there are a lot of tools for your protection."

Chief among them is Environment Canada's Ecological Gifts Program (EGP). By using the program to donate land certified as "ecologically sensitive" to government agencies and registered charities—including land trusts—cottagers can receive lucrative tax benefits. The EGP also vets recipients to verify that they have the resources to manage the donation, and it wields a big hammer—a punitive tax representing 50 per cent of the land's fair market value—on land sold without federal approval. The fact that the tax has never been applied is a benchmark of the EGP's success, says David Cunnington, the program's Pacific and Yukon regional coordinator.

With its hefty debts, TLC remains a "one-off," stresses Paul McNair, executive director of the Land Trust Alliance of British Columbia. Not only is TLC the only land trust ever to seek protection under the federal *Companies' Creditors Arrangement Act* (CCAA), but it also holds far more debt than its peers. Among the alliance's members—34 of BC's 36 land trusts—"there are no mortgages. The debt level is around $50,000 total, and the two trusts holding the debt have plans to get rid of it," McNair says.

In nearly 25 years of offering legal advice to land trusts and donors, and helping to set the national standards to guide the sector, Peterson says he hasn't seen another trust rely so heavily on mortgages. TLC's approach, he adds, is "not just rare, it's extraordinary among land trust organizations."

Almost every other land conservancy is conservative by nature, with acquisitions and fundraising campaigns taking years to play out. TLC could be patient, too: Near Wells Gray Provincial Park, Trevor Goward's wildlife corridor was in the works for years. TLC raised money and assembled land, and

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kept him apprised of its progress. "I'd give everyone involved an A-plus for their efforts," he says.

But TLC also had a flair for the dramatic, a whiff of the deal-making adrenalin charging Vancouver's frothy real estate market. Like a knight swooping in to save threatened buildings and landscapes, it would close deals before fundraising was complete, borrowing to cover the shortfall. Even in 2008, TLC founder (and former realtor) Bill Turner told *British Columbia Magazine,* "I would lie awake wondering how on earth we're going to pull it all together. I still do because we're not that secure yet."

When the Sooke Potholes, a well-loved 63-hectare stretch of rocky canyons, swimming holes, and waterfalls, went up for a court-ordered sale, TLC staved off potential resort development by snapping up the foreclosed mortgage. It helped Okanagan community groups save a historic Doukhobor village. When writer Joy Kogawa's childhood home in Vancouver faced demolition, TLC bought the property with a $108,210 mortgage.

As TLC grew, so did its costs. Staff swelled to manage 50-plus properties and the teams of volunteers needed to oversee everything from biological surveys to historically correct wallpaper for an 1860s home. By 2011, TLC's annual filing with the Canada Revenue Agency listed 150 full- and part-time employees, and just under $5.2 million in revenues. In contrast, the Nature Trust of British Columbia, with its narrower focus, listed a staff of 29 and $5.6 million in revenues.

Money became harder to find in the wake of the 2008/09 recession, and TLC's shrinking cash flow made it increasingly difficult to cover interest costs, taxes, and payroll. By 2013—the year it entered creditor protection—TLC was running a $136,228 deficit, its $1.9 million income less than half that of a year earlier. Only nine employees remained.

So it will be a much different organization that holds its annual meeting this Nov. 29 in Victoria. If members support efforts to sell or transfer nearly all the properties to pay creditors over the next few years, TLC will be "a much smaller organization," says John Shields, the former BC union president brought in as operations manager to help restore financial health. "The lesson is that it can't carry mortgages beyond its ability to pay the ongoing interest."

Even donated properties—especially heritage buildings—will be approached with caution. As Briony Penn, then-TLC vice-chair, wrote in *Focus* magazine in early 2014, "land donations will have to come with endowments or they will be refused." Calling TLC a "risky" but "well-meaning" experiment, Penn added that TLC must learn to say no. "When people left properties to us with no endowments, or they came to us asking us to save them, it was difficult to refuse, and we believed the money and members to look after them would follow. They didn't."

Slimming TLC won't be easy. Simply unloading properties to the highest bidder could contravene BC's *Charitable Purposes Preservation Act* (CPPA). The law shields properties donated "for a specified charitable purpose" from being seized or sold to pay debts. Instead, TLC is seeking sympathetic buyers willing to maintain those charitable purposes. One example: TLC sold a 5.6-acre parcel that was home to a raptor rehab and burrowing owl breeding site to the nearby Burrowing Owl Estate Winery for $50,000. The winery then transferred the land back to the two avian charities.

"If we're moving properties from the TLC portfolio, we're trying to do it with an awareness of the special nature of those properties, and not let them to go into commercial use," Shields adds. "We've opened a line of communication directly with the BC Attorney General's office, about whether or not a particular property comes under the [CPPA] legislation."

For his part, Trevor Goward hopes that his land will still form part of a wildlife corridor, either with TLC or another conservation agency. TLC may not have been "responsible from a financial perspective," he admits, but it was "responsible from the point of view of conservation. They were willing to step in when others were not." As Goward says, TLC is "a trust that's worked hard to make a difference." But the lesson remains: The gains conservancies make will only benefit future generations when they're backed by trust—and cash.

Award-winning contributor Ray Ford writes on topics all over the cottage map, from composting toilets to the science of tobogganing.