

Natural Legacies:

Your Educational Guide to Conservation in BC



Conservation Covenants in British Columbia: Conservation Covenants and Law

The law on the implementation and enforcement of conservation covenants, and their impact on other types of interests in property, is constantly evolving. This paper reviews the relevant law in British Columbia. Conservation covenants are voluntary legal agreements between a landowner and an approved covenant holder (usually a land trust organization or government body) to protect the “natural, historical, heritage, cultural, scientific, architectural, or environmental” value of land. They allow owners to use of their property while ensuring its long-term protection. Conservation covenants are binding on future owners even though they did not make the original agreement. While there are various ways to create covenants, this report focuses on conservation covenants created under section 219 of the *Land Title Act*. Although traditional covenants had several limitations and restrictions, section 219 of the *LTA* is very broad and gives landowners considerable freedom. However, creating a covenant does not make it valid. Requirements for creating a valid and enforceable conservation covenant are set out in the case law that is reviewed here.

Courts have responded to covenants by strictly interpreting them:

- Courts are unwilling to presume any intent or purpose to amplify or extend a covenant more broadly.

CONSERVATION COVENANTS AND LAW



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- Courts interpret the wording using ordinary dictionary meanings unless they are clearly technical terms or doing so creates an absurd interpretation.
- If a covenant is ambiguous, courts will interpret a covenant like a contract, considering its original purpose. Covenant ambiguities often arise in describing geographic areas subject to a covenant or the obligations or restrictions on landowners.

Interpretation of a conservation covenant is therefore crucial to determine whether a covenant is enforceable or not. Although much of the case law on the interpretation of covenants considered older restrictive covenants rather than s. 219 *LTA* statutory covenants, courts can apply some of the same principles of interpretation in future cases. Clarity and precision in drafting are essential to ensure validity.

Monitoring land subject to a conservation covenant to confirm compliance is important. Only the parties to the covenant can bring an action; covenant terms are not enforceable by third parties. As the covenant holder is the only party who can to enforce a breached covenant, monitoring is imperative for timely enforcement. Monitoring can also help deter deliberate breaches and catch breaches, accidental or otherwise soon after they occur.

In specific conditions, a court can cancel or modify a covenant – if the covenant has become obsolete, if the covenant holder agrees, if the covenant holder would not be injured by cancellation and reasonable use of the land is impeded and if the covenant was invalid or is unenforceable. The court also has discretion to cancel a covenant if a covenant holder does not seem to object. Active monitoring indicates continued interest in a covenant; failure to monitor could help a petitioner to cancel a covenant.

To illustrate these points, the full paper (Conservation Covenants in BC) summarizes ten covenant cases decided by the BC Supreme Court between 1993 and 2012.