

**2022 CANADIAN
LAND TRUST
SUMMIT**

**SOMMET NATIONAL
DES ORGANISMES DE
CONSERVATION 2022**

October 24 to 26 | Ottawa | 24 au 26 octobre

Thanks to our sponsors!

This project was undertaken with the financial support of:
Ce projet a été réalisé avec l'appui financier de :



Environment and
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Investing in Canada – Investing in Nature



Fondation de la faune du Québec



Alliance of Canadian
Land Trusts

Alliance canadienne des
organismes de conservation



Réseau
de milieux
naturels protégés



ONTARIO LAND TRUST ALLIANCE



Land Trust Alliance of British Columbia

1997-2022



Personal easement: a new tool for conservation in Québec

October 25th 2022

© Marie-José Auclair

Mélanie Lelièvre
Executive Director

Territory of action

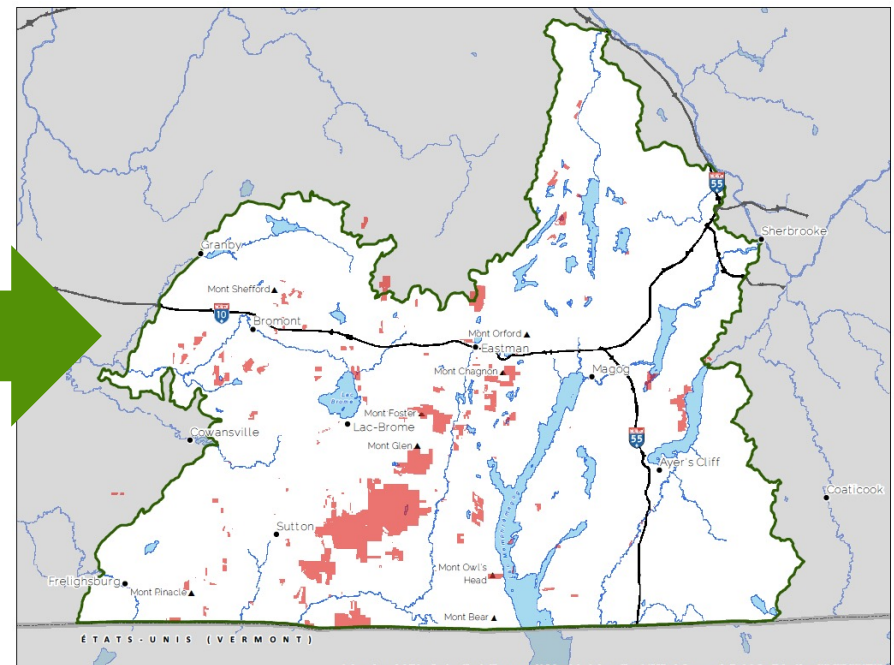
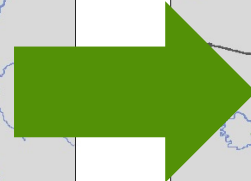
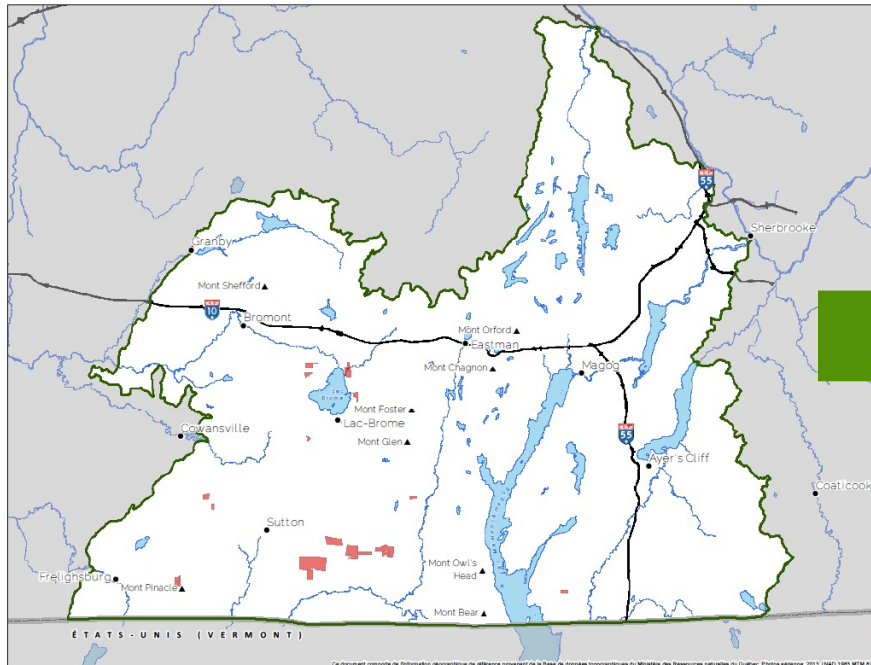
2000: 400 ha



2022: 16 000 ha +

protégés en terres privées grâce aux actions combinées de partenaires locaux et nationaux

Near to 40 000 acres protected on private land due to combined actions of local and national partners



Scope of action and expertise



**Conservation
Actions**



**Management and
enhancement**



Science



**Influence and
Education**



Our Team



Legislative change

Federal Tax Act (and Provincial harmonization)

2017

Makes personal easements of 100 years or more eligible for the Ecological Gifts Program

« Personal servitudes

- In Quebec, under civil law, both real and personal servitudes can be established. However, only real servitudes can be donated under the Ecological Gifts Program since personal servitudes cannot be in perpetuity. Because the conditions associated with real easements can be difficult to meet, such donations are infrequent. In order to encourage more donations of ecologically sensitive property in Quebec, Budget 2017 also proposes that certain donations of personal easements be considered donations of ecologically sensitive property. Eligible donations will have to meet a number of conditions, including the requirement that the personal servitude be for a term of at least 100 years.

- These measures will apply to transactions or events occurring on or after budget day. »

Source: <https://www.budget.gc.ca/2017/docs/tm-mf/si-rs-fr.html>



On personal servitude...

Like the real servitude, the personal servitude ties up a piece of land called the “serviant land”, but it is stipulated in favour of a person rather than a piece of land. This is what distinguishes it primarily from a real servitude. It is therefore a personal right of enjoyment that cannot be transferred to a third party by the person named in the deed. In this respect, a personal servitude is a hybrid institution: while it may be a real right, it produces certain effects similar to those resulting from purely personal rights.»¹

To dispel any doubt:

Real by purpose (serviant land), personal by recipient (conservation organization)

1: *Autopoint Inc. c. Collin*, [1991] R.D.I. 415 (C.S.), 418-419.
La décision du juge Frappier

On the duration of the personal servitude...

“Perpetuity is permissible only where there is an express stipulation to that effect and to the extent that it does not undermine the concept of sole ownership.”²

And: conservation organizations have a perpetual vocation

² : Madeleine CANTIN-CUMYN, « Essai sur la durée des droits patrimoniaux », (1988)

Recommended wording

- «**Servitude Beneficiary**

This Servitude is *real* in its subject matter - it restricts the use of the SERVIANT LAND referred to in Section X) - and *personal* in its subject matter - the Conservation Authority.

Accordingly, the beneficiary of this Servitude is the Conservation Authority, a private legal entity which has, in its name, a vocation of perpetual succession.

Duration of the servitude

This Conservation Servitude is perpetual.

In addition, the disappearance of any ecosystem on the SERVIANT LAND, as a result of natural disaster or otherwise, shall not terminate the servitude by that fact alone, and any new ecological succession or ecosystem shall be protected by the applicable provisions of this servitude."

Challenges to the deployment of this tool

- Lack of knowledge of this tool by Conservation Organizations
- Reluctance from MELCC
- Refusal from the MELCC to fund them (ex. PPMN)

Benefits

A true revolution for conservation in Québec!

1. No need for a dominant land
2. Les risks: No contestation of the ecological link
3. Allows to offer a short-term solution to owners-
years of delays avoided (ex. Nature reserve on private land:
10 years of waiting)
4. Eligible for the EGP with the same tax advantages

Thanks



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