

СЕКЦІЯ 4. ЗЕМЕЛЬНЕ ПРАВО; АГРАРНЕ ПРАВО; ЕКОЛОГІЧНЕ ПРАВО; ПРИРОДОРЕСУРСНЕ ПРАВО

SOME PECULIARITIES OF THE PUBLIC PROPERTY IN CANADA

Kovach B. L.

Postgraduate Student at the Department of Land and Agrarian Law

Yaroslav Mudryi National Law University

Kharkiv, Ukraine

The unification of the colonies of Canada into a federation resulted in the emergence of Canada as an independent modern state. This country was founded as a «resettlement colony» of France and Great Britain. Only in 1867 did it receive the status of a dominion, a self-governing colony (The British North American Act). In 1931 de facto the independence was obtained, which was eventually formalized in 1982 (the Canadian Act). Thus, Canada is a federal state comprising 10 provinces (from the west to the east – British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland) and 3 territories (from the west to the east – Yukon, North-Western Territories, Nunavut). As all the provinces have different legal status, land use is carried out according to the appropriate hierarchy, namely at different levels – at the federal, provincial (unit of administrative-territorial division in Canada is the province) as well as local regulation.

Nowadays in Canada there are approximately 90.3% of lands which are publicly owned. Nevertheless, the vast majority of the agricultural land (about 98 %) is privately owned.

The Constitution of Canada provides the provinces with the exclusive right to own land and to resolve all land tenure issues. In order to prevent abuses in the sales of public land, all land purchase and sale transactions are held at open auctions. According to the results of the land auction, the winner will be determined, in a way who will offer the highest price for the land plot. The state monitors the proper use of all the lands without exception.

The main responsibility of The Ministry of Nature, Land and Parks is to keep records of state lands, and is to maintain a special register which is called (The Crown Land Registry). Accounting, registration, and land management in Canada are governed by the national law and regulated by the federal law. All the records on the lease of public lands and national raw are kept in the State Land Register. The existence of two systems is the result

of the historical evolution. The system of the registration of land ownership officially fixes the ownership right. Registration is optional, but the majority of legal entities and individuals use the system to register their rights and interests, as the system protects them.

It should be noted that the provincial governments of Ontario and British Columbia have recently initiated the programs of selling state property in major urban centers, while the federal government of Ottawa has decided to alter the assignment of the federal land for residential and commercial use. For instance, in Toronto, a local school board has begun selling plots of the school grounds to pay for renovations and repair works , while in Edmonton, the surplus of the school land is being converted into senior centers as well as into affordable housing .

The provincial and municipal governments control land ownership such as parks, protected areas of universities and colleges, streets, and public housing projects.

At the constitutional level Canada does not provide protection of private property rights as a fundamental right to land ownership. Nevertheless, only about 10% of land is privately owned. The remaining lands are considered to be as the Crown lands, which means they are owned by the federal and provincial governments, mostly located in rural and remote areas.

The legislation stipulates that the federal land ownership in cities exists in three forms:

1) the ownership belongs to the Crown, but the administrative powers are vested in the department or in the crown corporation which is directly responsible of the minister (eg, Canada Lands Company);

2) the ownership and authority belong to the crown corporation or its subsidiary, which is wholly owned, regardless of the influence of ministers (for example, Canada Post);

3) the ownership of a corporate body established by the special legislation (for example, the former Canadian National Railways).

Given the above, we conclude that the territorial organization of authority in the country largely depends on the political and territorial structure of the state and the division of competence at the federal and provincial levels. The Government of Canada monitors the proper and appropriate use of all public lands without exception and guarantees land ownership through the introduction of land insurance institutions that promotes the development of the country's economy.