

Discussion Proposal  
for a  
New Expropriation Act

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**Province of British Columbia**

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## LET,US HEAR YOUR VIEWS

This paper is published so British Columbians may consider and state their views on an important legislative proposal — *Expropriation Act*.

These background notes consist of a summary of a proposed *Expropriation Act*, a brief explanation and an historical background of expropriation in British Columbia, and the text of a proposed Act.

Please forward your written comments to: "Expropriation Review", c/o Secretary to the Cabinet Committee on Legislation, Room 167, Parliament Buildings, Victoria. B.C.. V8V 1X4, by December 31, 1982.

## A PROPOSED EXPROPRIATION ACT

### INTRODUCTION

On April 17th of this year Canada acquired its new Constitution. Section 7 of the Charter dealt with the right to life, liberty and security of the person. It did not contain the right to property, which, together with the other rights, are the four equal democratic cornerstones on which true freedom is built.

To rectify that situation the Honourable G. B. Gardom, Minister of Intergovernmental Relations advanced a resolution proposing the first initiative for constitutional amendment in Canada. The resolution proposed that section 7 of the Canadian Charter of Rights and Freedoms be amended to read as follows:

“7. Everyone has the right to life, liberty, security of the person and *enjoyment of property*, and the right not to be deprived thereof except in accordance with the principles of fundamental justice”.

This resolution also urged “that the Legislative Assemblies of all other provinces and the Senate and the House of Commons pass similar resolutions.”

The resolution was adopted unanimously by the Legislative Assembly in Victoria on Tuesday, September 21, 1982.

It is undeniable that all Canadians have such a right.

It is our heritage. It belongs in our Constitution.

That right has to be confirmed and entrenched for all Canadians as a cornerstone of our democracy.

It is in the interest of all British Columbians and of all Canadians to have property rights enshrined in the Canadian Constitution. A companion initiative to that resolution is this proposal to provide fair and understandable expropriation and compensation laws in British Columbia where, in the public interest, there is a necessity for an individual's property to be utilized for public purposes.

Expropriation is the acquisition of property under legislative authority by the Crown or by one of its authorized agencies, or by a local government, without the consent of the owner. It therefore involved striking a delicate balance between the need, on behalf of the taxpayers, to acquire lands in the public interest and the right to enjoy property by the individual.

In the majority of cases when the acquisition of property is necessary for public purposes (highways? schools, transportation links, power projects, etc.), an agreement is reached between the parties concerning the amount of

property required and the amount of compensation to be paid. Only when such an agreement cannot be achieved is expropriation undertaken in the public interest.

In its 1978 *Report on Expropriation*, the Law Reform Commission of Canada identified five guiding principles it considered essential to fair expropriation law and practice. These are:

1. equality of treatment,
2. clarity and accessibility,
3. openness,
4. fairness, and
5. political accountability.

The proposals modernize a variety of outdated, inadequate and inconsistent expropriation procedures and compensation principles by adopting a single Act incorporating current concepts in this area of the law.

## **BACKGROUND**

Existing expropriation laws in British Columbia are derived from the English *Land Clauses Act* as it stood in 1858, modified by a variety of procedures in numerous statutes containing powers of expropriation.

In British Columbia, the Clyne Royal Commission was appointed in 1961 and published its report in 1964. The report suggested a comprehensive code of procedural and compensation provisions. The Law Reform Commission of British Columbia made an exhaustive study and issued its report in 1971.

Other jurisdictions have also considered this complicated matter: The Ontario Law Reform Commission, the Ontario Royal Commission Inquiry into Civil Rights (The McRuer Commission). Also, expropriation statutes were enacted in other jurisdictions: Ontario, the Government of Canada, Manitoba, Nova Scotia, New Brunswick, and Alberta.

The attached proposals incorporate many of the recommendations of the report of the Law Reform Commission of British Columbia. There has been consultation with expropriation authorities, and other interested groups. The draft of the Bill also reflects the experiences of other jurisdictions in the administration of their expropriation legislation, plus concerns of those involved in the expropriation process.

## **PROPOSED PROCEDURE**

In most cases, lands required for public purposes are acquired by purchase from a willing seller. However, in those few instances when agreement cannot be achieved, the proposals will offer a uniform and fair procedure to serve the needs of the public and taxpayers without disregarding the legitimate private rights of the property owner.

In the few cases when acquisition of land by agreement is not possible, the proposals oblige the expropriating authority as a first step, to serve a notice of intention to expropriate on the owner and publish that notice in a local newspaper. Within 30 days of that notice, any owner of land affected by the expropriation is entitled to request an inquiry by an officer appointed by the Chairman of the proposed Expropriation Compensation Board.

This first step will be available and required in all but the most extraordinary cases of urgency or compelling public interest. In those special circumstances, the expropriating authority may apply to the Lieutenant Governor in Council, who will have the ability to dispense with the public inquiry.

In any given case the inquiry procedure may be initiated by the expropriating authority itself, which may apply for an inquiry prior to the serving and publication of the notice of intention.

An inquiry officer must be appointed within 7 days of the request and the inquiry must commence within 21 days after that date. The inquiry officer has 30 days to complete the inquiry and make his report to the approving authority. That authority must, within 30 days, decide either to approve the expropriation, disapprove it, or approve it with modifications.

If the expropriation is approved, the expropriating authority has a maximum of 7 days to pay to the owner compensation based on an appraisal. The appraisal upon which the amount of the payment is based must be given to the owner. The land then passes to the expropriating authority and the owner is required to give possession of the land 30 days from the date he receives payment.

These payment provisions serve two useful and important functions:

- (a) The owner has funds allowing him to relocate prior to giving possession; and
- (b) Any dispute concerning compensation will be narrowed in scope if not eliminated altogether.

This procedure is designed to encourage settlement at the earliest stage. To ensure fairness, an expropriating authority may be penalized if the payment is less than 90 per cent of any sum subsequently awarded by the Board in the event of a dispute.

If the compensatory payment is disputed by the owner, then the award of compensation will be determined, following a hearing, by the Expropriation Compensation Board. The procedures of the Board and the basis for awarding compensation are described in the proposed Act.

## **PRINCIPAL FEATURES OF THE PROPOSALS**

### **1. Pre-expropriation inquiry**

This inquiry procedure allows those who are directly affected by the intended expropriation to air their views.

The inquiry process has the following benefits:

- (a) A heavy onus is placed on the expropriating authority to be thorough in its planning and fair in its dealing with owners;
- (b) Persons affected will be able to present their concerns, and the expropriating authority will be able to present its rationale for the taking of the property for public purposes; and
- (c) Savings can be realized if it can be demonstrated at an early stage that the expropriating authority does not need all of the land proposed for expropriation, or that there is a less expensive alternative.

## **2. Right to object and request inquiry**

Any owner whose land is to be taken by expropriation may apply to the Chairman of the Expropriation Compensation Board for an inquiry. The Chairman may also accept a request for an inquiry from any other owner who establishes a prima facie claim for compensation for injurious affection where that owner's land is not taken.'

The Chairman has the authority to dispense with an inquiry if he considers the request to be frivolous, vexatious, not made in good faith or based solely on questions about the amount of compensation.

The expropriating authority may also request the Board for an inquiry when the expropriating notice is given.

## **3. Scope of the inquiry**

The inquiry is to explore whether or not:

- (a) the expropriation of the land is necessary, in the public interest, to achieve the objectives of the expropriating authority;
- (b) these objectives can be achieved by alternative means (e.g. a different site or route, etc.).

## **4. Approving authority**

The primary intent is to ensure accountability to the public for the final decision to expropriate.

It is proposed that the approving authority be a person designated by the Lieutenant Governor in Council for the purposes of the statute under which the expropriating authority is empowered to take the land.

## **5. Expropriation Compensation Board**

The proposal establishes an Expropriation Compensation Board appointed by the Lieutenant Governor in Council. The Board is the final arbitrator of compensation where agreement cannot be reached and is also responsible for the appointment of inquiry officers to conduct pre-expropriation inquiries.

The procedures of the Board are designed to provide:

- (a) readily accessible and expeditious hearings;
- (b) an informal process;
- (c) relaxed rules of evidence;
- (d) application of consistent principles for compensation; and
- (e) uniformity of awards.

## **6. Compensation**

Part 6 of the proposals set out the basic principles respecting compensation by codifying and improving the existing common law. Payment of fair market value for the land is the overriding principle. The "value to the owner" concept is retained. Properties for which there is no market, such as churches, hospitals, schools, etc., are dealt with on the basis of actual replacement cost.

The extremely complicated matter of compensation for security interests is left to regulation. This permits necessary flexibility in providing fair compensation for those interests.

The law dealing with disturbance damages has not changed, but provision has been made for determining these damages based upon actual expenditures rather than just estimates.

Owners of principal residences would be compensated by an additional payment to cover the inconveniences of relocation.

Month-to-month tenants may be entitled to reasonable moving expenses and three months' rent.

The law of injurious affection, where there has been partial taking or no taking, will be of general application.

Compensation may be awarded for reduction in market value of land where no land has been taken, provided the claimant can clearly establish that the use and enjoyment of his land has been substantially interfered with.

Provision is made for payment of costs, interest and penalties in the event of delay. These are designed to ensure fair treatment to both the owner and the expropriating authority on behalf of the taxpayer.

As first mentioned, please forward your written comments, observations and suggestions to "Expropriation Review". c/o Secretary to the Cabinet Committee on Legislation, Room 167, Parliament Buildings, Victoria, B.C. V8V 1X4, by December 31, 1982.



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# PROPOSED TEXT FOR A NEW EXPROPRIATION ACT

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows;

**PART 1**

INTERPRETATION AND APPLICATION

**Interpretation**

**1.** In this Act

“approving authority”, in relation to land expropriated, means

- (a) the person designated by the Lieutenant Governor in Council as the approving authority for the purposes of the Act under which the expropriating authority is empowered to expropriate the land,
- (b) where no person is designated in accordance with paragraph (a), the minister charged with the administration of the Act under which the expropriating authority is empowered to expropriate the land,
- (c) where the minister referred to in paragraph (b) is also the expropriating authority, the Attorney General, or
- (d) where no person is designated in accordance with paragraph (a) and no minister is charged in accordance with paragraph (b), the Attorney General;

“board” means the expropriation compensation board established under section 52;

“expropriate” means the taking of land under an enactment without the consent of the owner;

“expropriating authority” means a person, including the Crown in right of the Province, empowered under an enactment to expropriate land;

“injurious affection” means reduction in market value for which compensation is payable under section 40 or 41;

“inquiry officer” means an inquiry officer appointed under section 10;

“owner”, in relation to land, means

- (a) a person whose name is registered in the records of the land title office as having an estate, interest, right or title in or to the land.
- (b) a committee appointed under the *Patients Property Act* and a guardian, executor, administrator or trustee in whom land is vested, or
- (c) a person who is in legal possession or occupation of land, other than a person who leases residential premises under an agreement having a term of less than one year:

“security interest” means a charge on land, including a lien filed under the *Builders Lien Act*, that is owned or held by a person as security for the payment of money.

#### **Application of Act**

**2.** (1) Subject to subsection (2), but notwithstanding any other enactment, where

- (a) land is expropriated,
- (b) injurious affection is caused by an expropriation, or
- (c) a person claims compensation for a loss resulting from injurious affection or an expropriation of land owned by him,

this Act applies.

(2) Any other enactment that provides, directly, indirectly, by reference or otherwise, procedures or criteria in respect of matters referred to in subsection (1) shall be deemed to refer to this Act and not to that enactment or any other enactment.

#### **Where the owner agrees to transfer land**

**3.** (1) Where an owner agrees to transfer his land to an expropriating authority without expropriation, but cannot agree with the expropriating authority on the compensation to be paid, Parts 2 to 4 do not apply, but the board may, with the consent of both parties, determine the compensation to be paid to the owner as if the land had been expropriated under this Act and, subject to agreement between them, Compensation shall be determined effective the date the owner agreed to transfer his land to the expropriating authority.

(2) The expropriating authority shall serve an agreement and consent under subsection (1) on the board.

## **PART 2**

### **APPROVAL**

#### **Approval of expropriation**

**4.** Subject to section 5, an expropriating authority shall not expropriate land unless

- (a) an expropriation notice is served on the owner, and
- (b) the expropriation is approved by the approving authority.

#### **Dispensing with inquiry**

**5.** (1) The Lieutenant Governor in Council may, on the application of the expropriating authority, order that an expropriation proceed without the

approval and inquiry procedures where the Lieutenant Governor in Council considers that

- (a) undue delay in the project would result,
- (b) unjustified or unreasonable public expense would result if the order were not made, or
- (c) there exists, in the public interest, other special circumstances.

(2) Where the Lieutenant Governor in Council makes an order under subsection (1), sections 4, 6 and 8 to 16 do not apply to that expropriation.

(3) Within 30 days after the making of an order under subsection (1), the expropriating authority shall

- (a) serve the order on every owner of the land to be expropriated, and
- (b) file the order in the land title office.

### **PART 3**

#### **PRE-EXPROPRIATION PROCEDURES**

##### **Expropriation notice**

**6.** (1) An expropriating authority that intends to expropriate land shall

- (a) deliver an expropriating notice in the prescribed form to the approving authority and to each owner whose land is expropriated. and
- (b) file a copy of the notice in the land title office.

(2) Where a person on whom a notice is required to be delivered under subsection (1) cannot be located, the expropriating authority may apply to the Supreme Court for an order for substituted service and the court may determine the manner of serving that person.

(3) As long as the notice remains on title, the registrar shall not

- (a) register another instrument affecting the land described in the notice. or
- (b) deposit a plan of subdivision or otherwise allow any change in the boundaries affecting the land described in the notice

without the consent of the expropriating authority.

##### **Entry for limited purposes**

**7.** A person authorized by the expropriating authority may, before or after delivering an expropriation notice under section 6 (1),

- (a) during usual business hours. and
- (b) after making reasonable efforts to notify the owner or occupier of the land.

enter the land for the purposes of surveying, inspecting or appraising land that the authority intends to expropriate.

### **Request for inquiry**

- 8.** (1) An owner
- (a) whose land is included in an expropriation notice, or
  - (b) who the board considers would have a prima facie claim for compensation under section 41
- may request an inquiry by serving the board with a notice of request for an inquiry.
- (2) A notice of request for an inquiry must
- (a) be in writing and contain the name and address of the person making the request, his interest in the land to be expropriated, and his reasons for requesting an inquiry, and
  - (b) be served on the board and the expropriating authority within 30 days after the date the expropriation notice is filed under section 6 (1) (b).

### **Power to deny some requests**

- 9.** (1) Where the board considers that a request for an inquiry under section 8 or 11 is
- (a) frivolous, vexatious or not made in good faith, or
  - (b) based solely on a claim for compensation,
- the board may order that the request be denied.
- (2) Where an order is made to deny the request under subsection (1), the board shall promptly serve a copy of the order, together with reasons for making the order, on the person who requested the inquiry.

### **Setting down the inquiry**

- 10.** (1) Subject to section 9, where the board receives a request under section 8, the board shall, within 7 days after the period referred to in section 8
- (2) (b), appoint an inquiry officer who shall hold a public inquiry.
- (2) The inquiry officer shall fix a time not more than 21 days after the date of his appointment, and a place for the inquiry and shall serve notice of the time and place on
- (a) the persons served under section 6, and
  - (b) every person who served a notice of request under section 8 whose request has not been denied under section 9.
- (3) The participants in the inquiry are
- (a) the expropriating authority,
  - (b) all persons referred to in subsection (2) (b). and
  - (c) all persons who are added under section 13 (a).

### **Speedy inquiry procedure**

- 11.** (1) Notwithstanding section 10. before an expropriation notice is served by an expropriating authority, the chairman or a member of the board may
- (a) on the application of the expropriating authority. and
  - (b) on being satisfied that a request for an inquiry will be made.

appoint an inquiry officer who shall fix a date, time and place for an inquiry sufficiently in advance to enable the expropriating authority to comply with subsection (2).

(3) The expropriating authority shall

- (a) include in the expropriation notice a statement of the date, time and place fixed for an inquiry under subsection (1), and
- (b) comply with section 6 (1) in sufficient time to provide at least 21 days between the date the notice is filed under section 6 (1) (b) and the date fixed for the inquiry.

(3) Subject to section 9, where a notice has been given under this section, any person referred to in section 8 (1) may become a participant in the inquiry.

### **Inquiry**

**12.** (1) The inquiry officer shall hold a public hearing for the purpose of determining if the expropriation of the land that belongs to the participants in the inquiry is necessary or whether the objectives of the expropriating authority with respect to the project could be better achieved by

- (a) an alternative site or route, or
- (b) varying the amount of land taken.

(2) The necessity for the project or work for which the expropriation is sought shall not be considered at the inquiry.

(3) The inquiry officer may combine two or more inquiries that are related and conduct them for all purposes as one inquiry.

(4) A participant in the inquiry may

- (a) be represented by counsel or agent,
- (b) present evidence and argument, and
- (c) examine and cross examine witnesses and other participants in the inquiry.

### **Powers and duties of inquiry officer**

**13.** An inquiry officer

- (a) may add as a participant in the inquiry any person who he considers would be entitled to request an inquiry under section 8 (1),
- (b) is not bound by the legal rules of evidence,
- (c) may inspect any land, and
- (d) may call witnesses.

### **Modification or abandonment**

**14.** (1) Before the conclusion of the inquiry, the expropriating authority may amend the expropriation notice by adding or deleting land.

(2) Where the expropriation notice is amended, the expropriating authority shall file in the land title office a notice of amendment and serve it on

- (a) the inquiry officer.
  - (b) every participant in the inquiry. and
  - (c) every owner of land added by the amendment.
- (3) A person served under subsection (2)(c) may become a participant in the inquiry.

**Report of inquiry officer**

15. Unless the time is extended by the chairman or a member of the board, an inquiry officer shall, within 30 days after the first day of the inquiry, submit to the approving authority and every participant in the inquiry, a written report of his findings of fact, and his recommendations with respect to the proposed expropriation.

**PART 4**

EXPROPRIATION

**Decision of approving authority**

16. (1) After considering the report submitted under section 15, the approving authority shall approve, approve with modifications or disapprove the expropriation.

(2) Where an inquiry is not requested or has been denied, the approving authority shall promptly

- (a) approve the expropriation, and
- (b) notify every owner of the approval in writing.

(3) Where an inquiry was held, the approving authority shall, not later than 30 days after receiving the report submitted under section 15, serve his decision, with written reasons, on every participant and every owner of the land expropriated.

(4) Where a request for an inquiry is withdrawn, the approving authority may proceed as though the request had not been made.

**Abandonment**

17. (1) After the conclusion of the inquiry or where no inquiry is held, the expropriating authority may, before land vests under section 20, abandon all or part of the intended expropriation.

(2) Where an abandonment occurs under this section, the expropriating authority shall file in the land title office a notice of abandonment and serve a copy of it on

- (a) the approving authority, and
- (b) all participants in the inquiry whose land is affected by the abandonment.



### **Advance payment**

- 18.** (1) Within 7 days of
- (a) the filing of an order of the Lieutenant Governor in Council under section 5 (3) (b), or
  - (b) the approving authority complying with section 16 (2) or (3),
- the expropriating authority shall deliver
- (c) payment of the amount the authority estimates is or will be payable to that owner as compensation, and
  - (d) a copy of all appraisal and other reports on which the payment is based.
- (2) The appraisal report shall be reasonably detailed and shall include
- (a) a description of the land,
  - (b) the date of the valuation, which must be within 6 months of the date the notice is filed under section 6 (1) (b),
  - (c) factual data necessary for the value estimate, including mathematical computations, if any, and
  - (d) the final estimate of compensation payable.
- (3) Where, before taking action under subsection (1), the expropriating authority is in doubt as to whether a person is an owner, or if an owner, as to the nature and extent of his interest, it may apply to the Supreme Court for a determination respecting the state of title to the land and for an order respecting the nature and extent of the interest of any owner of the land for the purpose of determining to whom and in what amounts the payment proposed to be made by the authority under subsection (1) shall be distributed.
- (4) The expropriating authority shall serve a copy of the application on all persons whom it considers would be affected by an order made under subsection (3) or (5).
- (5) After hearing an application under this section, the court may, in respect of the payment that the expropriating authority proposes to pay to an owner to comply with this section, order
- (a) to whom and in what amounts payment shall be made, or
  - (b) that money be paid into court.
- (6) On compliance with an order made under subsection (5), the expropriating authority shall be deemed to have complied with subsection (1).
- (7) To assist the expropriating authority in making payment under this section, an owner shall, on its request, provide the authority with any information relevant to estimate the compensation to which the owner is or will be entitled.
- (8) An owner who withholds relevant information may be penalized in costs and interest to which he would otherwise be entitled.
- (9) Payment and receipt of compensation under this section is without prejudice to the right of the owner who receives the compensation to have the amount determined in the manner provided for in this Act.
- (10) The Supreme Court may, on application by the expropriating authority and on being satisfied that the authority cannot practicably comply

with subsection (1), extend, subject to conditions the court considers appropriate, the period during which the payment is required to be made under that subsection.

#### **Abandonment after expropriation**

**19.** (1) Where land is vested in the expropriating authority under section 20 and the expropriating authority decides

- (a) that all or part of the land is not required for its purposes, or
- (b) that a more limited estate or interest only is required in all or part of the land,

it shall serve notice of its decision on every person whose land was expropriated and who is affected by the decision.

(2) **A** person served with a notice under subsection (1) may elect to

- (a) take back the land, estate or interest that is not required and claim compensation for consequential damage, or
- (b) require the expropriating authority to retain the expropriated land, estate or interest and claim full compensation for it.

(3) **A** person may elect under subsection (2) by giving written notice to the expropriating authority within 30 days after being served with notice under subsection (1), and where no election is made within that period, the person shall be deemed to have elected under subsection (2)(b).

(4) Where a person elects to take back the land, estate or interest that is not required, he shall return to the expropriating authority not later than 60 days after making the election, any compensation he has received for that land, estate or interest, less the amount of consequential damages, determined by the board, to which the person is entitled.

#### **Vesting and possession**

**20.** (1) The expropriating authority may file in the land title office a vesting notice in the prescribed form 30 days after it has complied with section 18 (1) or (5), whichever is later.

(2) **A** plan and description, in duplicate, of the land to be expropriated, certified correct by a British Columbia land surveyor and signed by an authorized person of the authority, shall be filed with the vesting notice.

(3) Where the land expropriated is required for a limited time, or where a limited estate, easement, right or interest in the land is required, the plan and description shall indicate that the land is taken for a limited time, or that a limited estate, easement, right or interest is taken.

(4) On filing of the vesting notice and plan, and on compliance with the *Land Title Act*,

- (a) the land or interest expropriated vests in the authority free of all encumbrances,
- (b) title to the land shall be registered in the authority, and
- (c) the authority is entitled to possession of the land.

(5) Notwithstanding subsection (4), the Supreme Court may, on application by the authority made after it has complied with section 6 (1), grant

possession of land expropriated to the authority at a time and subject to the conditions that the court considers appropriate.

**Order for possession**

**21.** Where possession of land is denied to an expropriating authority, it may apply to the Supreme Court for an order for possession.

**PART 5**

COMPENSATION PROCEDURES

**Owner deemed to have accepted payment**

**22.** Where no application is made to the board to determine compensation within 2 years after payment is made under section 18, the owner whose land was expropriated shall be deemed to have accepted the sum paid in full settlement of his claim for compensation and no proceedings to determine compensation shall be brought by that owner.

**Compensation for injurious affection**

**23.** Where a person claims compensation in respect of injurious affection under section 41, the practice and procedure respecting the claim and the determination of the claim shall be established by the board.

**Determination by board**

**24.** An expropriating authority or an owner whose land was expropriated may apply to the board in writing to have the amount of compensation determined by the board.

**Jurisdiction and decision**

- 25.** (1) The board shall determine
- (a) compensation to be paid in respect of every agreement served on it under section 3 (1), and
  - (b) compensation to be paid to persons making application under section 24.
- (2) The board shall give written reasons for its decision.

(3) Where the board determines that an owner is entitled to compensation in excess of the amount paid under section 18, it shall issue a certificate for the amount payable, together with interest.

(4) A certificate issued under subsection (3) may be filed in a registry of the Supreme Court and be enforced as though it were an order of that court.

(5) The chairman or a member of the board constitutes a quorum for all hearings.

(6) The board has powers and protection of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

### **Powers and duties of the board**

**26.** (1) The board may, subject to the approval of the Lieutenant Governor in Council, make rules governing its practice, procedure and exercise of its powers that are not inconsistent with this Act.

(2) Where practicable and convenient, the board shall hold its hearings in the area where the expropriated land is situated, unless all parties to a proceeding agree to hold the hearing at some other location.

### **Appeal**

**27.** (1) An appeal lies to the Court of Appeal from a determination or order of the board on questions of law or mixed fact and law, and the court may

- (a) refer the matter back to the board, or
- (b) make any determination or order that the board has power to make.

(2) The practice and procedure governing an appeal from a determination or order of the board shall be the same as though the appeal was from an order of the Supreme Court.

## **PART 6**

### **BASIS FOR COMPENSATION**

#### **Interpretation**

**28.** In this Part “date of expropriation” means the date the expropriation notice is filed in the land title office under section 5 (3) or 6 (1).

#### **Right to compensation**

**29.** (1) Where land is expropriated, every owner of the land is entitled to compensation to be determined in accordance with this Act.

(2) Where the amount of compensation determined under this Act is less than the amount paid under section 18, the board shall certify the amount of the difference, and that amount is a debt due to the expropriating authority recoverable by action from the owner to whom the overpayment was made.

#### **Basic formula**

**30.** The board shall award compensation to an owner for his estate or interest in the expropriated land based on the fair market value of that estate or interest plus reasonable damages for disturbance but, where market value is based on a use of the land other than its use at the date of expropriation, the compensation payable is the greater of

- (a) the market value of the land based on its use at the date of expropriation plus reasonable damages for disturbance, or
- (b) the market value of the land based on its highest and best use at the date of expropriation.

### **Definition of market value**

**31.** The fair market value of an estate or interest in land is the amount that would have been paid for it if it had been sold at the date of expropriation in the open market by a willing seller to a willing buyer.

### **Limited market — churches, hospitals, schools, etc.**

**32.** (1) Where, at the date of expropriation,  
(a) the land is used for a church, hospital, school or like use for which there is no general demand or market, and  
(b) the owner agrees with the expropriating authority to relocate and continue the same use on other land,  
the market value of his estate or interest in the land shall be deemed to be the cost of equivalent reinstatement.

(2) In determining the reasonable cost of equivalent reinstatement under subsection (1), depreciation of a building on the expropriated land shall not be taken into account where the building was being used for the particular use referred to in subsection (1) on the date the expropriation notice was served under section 5 or 6.

### **Advantages or improvements not reflected in market value**

**33.** Where the market value of land determined in accordance with section 31 does not include the value of  
(a) a special economic advantage to the owner arising out of his occupation or use of the land, or  
(b) improvements made by an owner occupying a residence situated on the land,  
the value of the advantage or improvements shall be added to the market value determined in accordance with section 31.

### **Exclusions from market value**

**34.** In determining the market value of land, no account shall be taken of  
(a) the anticipated or actual purpose for which the expropriating authority intends to use the land,  
(b) an increase in the value of land resulting from a use that, at the date of expropriation, was capable of being restrained by a court,  
(c) an increase in the value of land resulting from improvements made to the land after the expropriation notice has been served under section 5 or 6,  
(d) an increase or decrease in the value of land resulting from the development or prospect of the development in respect of which the expropriation is made,

- (e) an increase or decrease in the value of land resulting from any expropriation or prospect of expropriation. or
- (f) an increase or decrease in the value of land due to development of other land that forms part of the development for which the expropriated land is taken.

#### **Market value of leases**

35. (1) A lease shall, at the date of expropriation, be deemed to be frustrated where

- (a) the entire interest or estate of a lessee in land is expropriated, or
- (b) part of the interest or estate of a lessee in land is expropriated, and the expropriation renders the remaining interest or estate of the lessee unfit for the purposes of the lease.

(2) Subject to subsection (1), where part of the interest or estate in land of a lessee is expropriated, the obligation of the lessee to pay rent under the lease shall, to the extent of the interest or estate expropriated, be abated.

#### **Market value of security interests**

36. Where land subject to a security interest is expropriated, compensation shall be determined in the manner and amounts prescribed by the regulations.

#### **Disturbance damages generally**

37. (1) An owner whose land is expropriated is entitled to disturbance damages consisting of the following:

- (a) reasonable costs, expenses and financial losses that are directly attributable to the disturbance caused to him by the expropriation;
- (b) reasonable costs of relocating on other land, including reasonable moving, legal and survey costs that are necessarily incurred in acquiring a similar interest or estate in the other land.

(2) Where a loss or an expense is claimed as a disturbance damage, and that loss or expense has not yet been incurred, either the claimant or the expropriating authority may, with the consent of the board, elect to have the loss or expense determined at the time, not more than 6 months after the date of expropriation, that the loss or expense is incurred.

(3) Where a person whose land is expropriated carried on a business on that land at the date of expropriation and, after the date of expropriation, moves the business to and operates it from other land, reasonable business losses directly attributable to the expropriation shall not, unless that person and the expropriating authority otherwise agree, be determined until the earlier of

- (a) 6 months after he has operated the business from the other land, or
- (b) one year after the date of the expropriation.

### **Occupiers and tenants**

**38.** (1) Where expropriated land includes a residence that is occupied by the owner and that is not being offered for sale by him on the date the notice was served on him under section 5 or 6, the owner is entitled to be paid, in addition to the amount required to be paid to him under section 37, an amount equivalent to 5% of the market value of his estate or interest in that part of the land, not exceeding 0.5 ha, that is used personally by him for residential purposes.

(2) Where expropriated land includes "residential premises" as defined in the *Residential Tenancy Act*, a person who leases or occupies those premises under an agreement having a term of less than one year, is entitled to be paid

- (a) an amount equivalent to 3 months rent of those residential premises, and
- (b) reasonable moving costs.

### **Disturbance damages for lessees**

**39.** Where land that is subject to a lease is expropriated, the lessee, whether or not he is an occupant of the land, is entitled to reasonable disturbance damages in an amount to be calculated by having regard to

- (a) the length of the term of the lease,
- (b) the length of the unexpired term of the lease,
- (c) the nature of the business, if any, carried out on the land under the lease, and
- (d) an investment in the land that the lessee cannot reasonably recover.

### **Partial takings and severance**

**40.** (1) Subject to section 45, where part of the land of an owner is expropriated he is entitled to compensation for

- (a) the reduction in market value caused to the remaining land by the expropriation, or by the construction or use of works that are constructed on all or part of the land expropriated. and
- (b) reasonable personal and business losses, directly attributable to the construction or use of works, for which the expropriating authority would be liable if the construction or use were not authorized by an enactment.

(2) Where a person claims business losses under subsection (1) (b), the losses shall not, unless the person and the expropriating authority agree, be determined until at least 6 months after the loss was sustained.

(3) Where part of the land of an owner is expropriated, the market value of the land that is expropriated may be established by determining the market value of the whole of the land expropriated and deducting from it the market value of the land not expropriated, but in no case shall compensation be less than the market value of the land expropriated.

- (4) For the purposes of this section, expropriation of part of the land of an owner occurs only where
- (a) he retains land contiguous to the expropriated land, or
  - (b) he owns land close to the land that was expropriated the value of which was enhanced by unified ownership with the land expropriated.

#### **No taking**

**41.** (1) Where a person claims compensation resulting from the expropriation of land in which he has no interest or estate, he is entitled to compensation for the reduction in market value of his land directly attributable to construction or use of works on the land expropriated that the expropriating authority would have been liable for had the construction or use not been authorized by an enactment.

(2) In determining market value for the purposes of subsection (1), market value shall be determined as of the date the claim was made under section 42.

#### **Limitation**

**42.** A claim for compensation under sections 40 and 41 must be made in writing to the board by the person suffering the damage or loss, with particulars of the claim, within one year after the damage or loss

- (a) was sustained, or
- (b) became known to him,

and if not so made, the right to compensation is forever barred.

#### **Replotted land**

**43.** Where land is replotted under the *Municipal Act*, and other land is substituted for the land so expropriated, the owner of the expropriated land is entitled to be paid compensation to the extent that the market value of the expropriated land exceeds the market value of the substituted land.

#### **Substituted land**

**44.** (1) An expropriating authority and an owner whose land is expropriated may agree that the expropriating authority grant to that owner, in complete or partial satisfaction of his claim for compensation,

- (a) other land, or
- (b) an interest or estate in the expropriated land or other land.

(2) Where the expropriating authority and the owner fail to agree on the extent to which the land granted to the owner under subsection (1) (a) or (b) satisfies his claim for compensation, the board may determine the extent to which that claim has been satisfied by the grant.



### **Work or use benefiting claimant**

**45.** (1) Where part of the land of an owner is expropriated, and the construction or use of works by the expropriating authority are either of general or special benefit to that person. or to his remaining land, the board shall deduct from the amount of compensation payable to that person the estimated value of the benefit.

(2) Where works are not constructed or used within a reasonable period of time, the owner may apply to the board for an appropriate adjustment of compensation.

### **Legal and appraisal costs**

**46.** (1) Where there is an inquiry, the inquiry officer may order that a participant be paid reasonable costs, to be fixed by the inquiry officer, incurred by a participant for the purpose of participating in the inquiry.

(2) Subject to subsections (3) and (4), a person

- (a) whose interest or estate in land is expropriated, or
- (b) who claims compensation under section 41

is entitled to be paid reasonable legal and appraisal costs necessarily incurred by him for the purpose of asserting his claim for compensation.

(3) Where the compensation awarded to an owner is greater than 110% of the amount paid by the expropriating authority under section 18, the authority shall pay the owner his costs.

(4) Where the compensation awarded to an owner is 110% or less than the amount paid by the expropriating authority under section 18,

- (a) the owner shall pay his own costs, but not the costs of the authority, and
- (b) the owner is not entitled to interest under section 47.

(5) The costs payable under subsection (1) or (2) shall be determined in accordance with a tariff of costs prescribed by the Lieutenant Governor in Council.

(6) Where an expropriating authority and a person referred to in subsection (2) agree on the amount of compensation, but do not agree on the amount of costs to be paid, they shall be determined by the chairman.

(7) Where the board determines the amount of compensation to which a person is entitled, the amount of costs shall be determined by the chairman.

(8) In a determination of costs under subsection (7), the following considerations shall be taken into account:

- (a) the number and complexity of the issues;
- (b) the degree of success taking into account
  - (i) the determination of the issues, and
  - (ii) the difference between the amount awarded and the advance payment under section 18:
- (c) the manner in which the case was prepared and conducted.

(9) An order for costs under this section may be enforced in the same manner as an award of compensation.

(10) An appeal lies to a judge of the Supreme Court from a determination under subsection 16) or (7).

### **Interest**

**47.** (1) Interest shall be ordered on the amount awarded by the board, less any amount paid under section 18, and the board may determine the date from which the interest runs in respect to any loss, damage or expense payable as compensation.

(2) Interest shall be payable at an annual rate that is equal to the prime lending rate of the banker to the government.

(3) During the first 6 months of a year, interest shall be calculated at the interest rate in subsection (2) as at January 1 and during the last 6 months interest shall be calculated at that interest rate as at July 1.

(4) Where the amount of the payment under section 18 is less than 90% of the compensation awarded, excluding interest, the board shall order the expropriating authority to pay additional interest at an annual rate of 5% on the amount of the difference calculated from the date that the payment is made to the date of the determination.

### **Interest penalties for delay**

**48.** Where, in the opinion of the board, an unreasonable delay in proceedings under this Act has been caused by an owner or the expropriating authority, the board may penalize

- (a) the owner, by depriving him, in whole or in part, the interest to which he is entitled, or
- (b) the expropriating authority, by increasing, by not more than double, the interest it is required to pay.

## **PART 7**

### **GENERAL**

### **Service**

**49.** (1) Where a notice or other document is required to be served under this Act, a copy of the notice or other document may be served personally or by registered mail addressed to the person to be served at his last known address, or, if that person or his address is unknown, by publication once in a newspaper having general circulation in the locality in which the land is situated and service shall be deemed to have been effected

- (a) on the date a person is served personally,
- (b) where a notice or document is sent to a person by registered mail, on the 14th day after it is sent, or
- (c) where a notice or document is published, on the 7th day after the date it is published.

(2) Publication under subsection (1) need not be made where publication of the same notice is made under another section of this Act and that publication shall be deemed to be service under this section.

#### **Limitation**

**50.** (1) No legal proceedings to challenge the validity of an expropriation shall be brought after land vests under section 20.

(2) Except as provided in subsection (1), an application under the *Judicial Review Procedure Act* shall be brought within 30 days after the order or determination subject to review is made.

#### **Liability for taxes**

**51.** The owner of land that is expropriated is liable, to the same extent as if he had continued to be the owner, to pay all taxes levied against the land in respect of the period he remains in possession of the land, whether possession is under an express agreement or otherwise and an appropriate adjustment with respect to these taxes shall be made between the owner and the expropriating authority.

#### **Expropriation Compensation Board**

**52.** (1) The Lieutenant Governor in Council shall establish an expropriation compensation board composed of a chairman and such other members as the Lieutenant Governor in Council may appoint.

(2) The chairman

- (a) shall be appointed for a 4 year term, and
- (b) may be reappointed for further terms of 4 years.

(3) Other members of the board

- (a) shall serve on a full or part time basis as the Lieutenant Governor in Council may order,
- (b) shall be appointed for a 3 year term, and
- (c) may be reappointed for further terms of 3 years.

(4) The chairman, members of the board and inquiry officers shall be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in the discharge of their duties under this Act and may be paid such remuneration for services as the Lieutenant Governor in Council may order.

(5) There may be appointed, pursuant to the *Public Service Act*, officers and employees of the board.

#### **Regulations**

**53.** The Lieutenant Governor in Council may make regulations.

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