

This Act has "Not in Force" sections. See the [Table of Legislative Changes](#).

## **EXPROPRIATION ACT**

[RSBC 1996] CHAPTER 125

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#### Part 1 — Definitions and Application

##### Definitions

1 In this Act:

"approving authority", in relation to an expropriation, means

- (a) the minister charged with the administration of the Act under which the expropriating authority is given the power to expropriate, unless, in respect of any particular expropriation, the Lieutenant Governor in Council has designated another member of the executive council as the approving authority for that expropriation,
- (b) for an expropriation by a council under the Community Charter, the council, unless the Lieutenant Governor in Council designates the minister responsible for the administration of that Act as the approving authority for the purpose of
  - (i) expropriations under that Act, or
  - (ii) any particular expropriation under that Act,

(b.1) for an expropriation by a regional district board under the Local Government Act, the board, unless the Lieutenant Governor in Council designates the minister responsible for the administration of that Act as the approving authority for the purpose of

(i) expropriations under that Act, or

(ii) any particular expropriation under that Act,

(c) for an expropriation under the Vancouver Charter, the Vancouver City Council, unless the Lieutenant Governor in Council designates the minister responsible for the administration of that Act as the approving authority for the purpose of

(i) expropriations under that Act, or

(ii) any particular expropriation under that Act,

(d) for an expropriation under the School Act, the board of school trustees, unless the Lieutenant Governor in Council designates the minister responsible for the administration of the School Act as the approving authority for the purpose of

(i) expropriations under that Act, or

(ii) any particular expropriation under that Act,

(e) for an expropriation under the Greater Vancouver Sewerage and Drainage District Act, S.B.C. 1956, c. 59, or the Greater Vancouver Water District Act, S.B.C. 1924, c. 22, the Corporation constituted and incorporated, respectively, under those Acts, unless the Lieutenant Governor in Council designates the minister responsible for the administration of those Acts as the approving authority for the purpose of

(i) expropriations under either or both of those Acts, or

(ii) any particular expropriation under either of those Acts, or

(f) for an expropriation by the South Coast British Columbia Transportation Authority under the South Coast British Columbia Transportation Authority Act, the South Coast British Columbia Transportation Authority, unless the Lieutenant Governor in Council designates the Minister of Finance as the approving authority for the purpose of

(i) expropriations under that Act, or

(ii) any particular expropriation under that Act;

"court" means

(a) subject to paragraph (b), the Supreme Court, or

(b) in sections 7 (2) (a) (i) and 33 (b), any court;

"expropriate" means the taking of land by an expropriating authority under an enactment without the consent of the owner, but does not include the exercise by the government of any interest, right, privilege or title referred to in section 50 of the Land Act;

"expropriating authority" means a person, including the government, empowered under an enactment to expropriate land;

"highway" means a highway as defined in the Land Title Act and includes a forest service road under section 121 of the Forest Act;

"inquiry officer" means an inquiry officer appointed under section 12;

"owner", in relation to land, means

(a) a person who has an estate, interest, right or title in or to the land including a person who holds a subsisting judgment or builder's lien,

(b) a committee under the Patients Property Act,

(b.1) an attorney under Part 2 of the Power of Attorney Act,

(b.2) 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 that has a term of less than one year;

"plan" means an explanatory plan as defined in the Land Title Act or a reference plan under that Act;

"registrar", except in reference to a registrar of the court, means a registrar as defined in the Land Title Act;

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

Application

2 (1) If an expropriating authority proposes to expropriate land, this Act applies to the expropriation, and, if there is an inconsistency between any of the provisions of this Act and any other enactment respecting the expropriation, the provisions of this Act apply.

(1.1) Despite subsection (1), if there is an inconsistency between any of the provisions of this Act and the Nisga'a Final Agreement, as defined in the Nisga'a Final Agreement Act, the Nisga'a Final Agreement applies.

(1.2) Despite subsection (1), if there is an inconsistency between a provision of this Act and a provision of a final agreement, the provision of the final agreement applies.

(1.3) Despite subsection (1), if there is an inconsistency between a provision of this Act and a provision of either a regulation under section 99 (1) (m.1) of the Oil and Gas Activities Act or an order under section 76 (6) of that Act, the provision of the regulation or order prevails.

(2) This Act does not apply in respect of

(a) an entry on land for the purpose of exercising a power of inspection, investigation or enforcement in the course of administering an enactment,

(b) an entry on land under the authority of an enactment by a land surveyor or a person employed by a land surveyor for the purpose of conducting a survey, soil test or other examination, other than a survey, soil test or other examination conducted for the purpose of an expropriation,

(c) a right exercisable, without payment of compensation, under an exception or reservation to which the title to land is subject, or

(d) an entry on land under section 20 of the Hydro and Power Authority Act or section 8 of the Transportation Act.

(3) This Act does not apply to expropriations under the British Columbia Railway Act, the Emergency Program Act, the Railway Act and the Water Sustainability Act, except to the extent provided for in those Acts.

(3.1) After the coming into force of this subsection, this Act does not apply to an expropriation under section 11 (2) of the Park Act of an interest in land in the form of

(a) rights under a lease, as defined in the Mineral Tenure Act, of the recorded holder of the lease,

(b) rights under a lease, as defined in the Coal Act, of the lessee, or

(c) rights under a Crown granted 2 post claim of its owner.

(4) This Act does not apply to replotting under the Municipal Replotting Act.

(5) [Repealed 2001-41-2.]

(6) This Act does not apply to an expropriation under the Musqueam Reconciliation, Settlement and Benefits Agreement Implementation Act.

(7) This Act does not apply in respect of the Canadian Pacific Railway (Stone and Timber) Settlement Act.

If the owner agrees to transfer or dedicate land

3 (1) If an owner or, if there is more than one owner, all owners agree to transfer or dedicate land to an expropriating authority without expropriation, but cannot agree with the expropriating authority on the compensation to be paid,

(a) Parts 2 to 4, other than section 20, do not apply,

(b) the court must determine the compensation to be paid to the owner as if the land had been expropriated under this Act, and

(c) unless the parties to the agreement otherwise agree, compensation must be determined effective the date the owner agreed to transfer or dedicate the land to the expropriating authority.

(2) An agreement under subsection (1) must be in writing and must state

(a) that the owner consents to the transfer or dedication,

(b) that compensation must be determined by the court,

(c) the date set for possession of the land,

(d) that the owner must take the necessary steps to transfer or dedicate the land to the expropriating authority, and

(e) that the expropriating authority must make an advance payment under section 20.

(3) If the agreement under subsection (1) is made so that the expropriating authority can construct, extend, widen or alter a highway, the owner must dedicate the land covered by the agreement, and

(a) section 107 of the Land Title Act applies,

(b) if the agreement is with the minister responsible for the administration of the Ministry of Forests and Range Act, section 121 (8) of the Forest Act applies, or

(c) if the agreement is with the minister responsible for the administration of the Transportation Act, section 43 of the Transportation Act applies.

(4) If, in respect of a partial taking of a fee simple interest in land,

(a) all owners have agreed to transfer the land to the expropriating authority and have agreed to the consideration to be paid for it, or

(b) an agreement has been made under subsection (1),

section 99 (1) (g) of the Land Title Act applies in respect of the transfer of the land to the expropriating authority.

## Part 2 — Approval

### Approval of expropriation

4 (1) Subject to section 5, an expropriating authority must not expropriate land unless

- (a) an expropriation notice is served under section 6 (1) (a), and
  - (b) the expropriation is approved by the approving authority under section 18.
- (2) A person may not, in any proceedings under this Act, dispute the right of an expropriating authority to have recourse to expropriation.

### Dispensing with approval and 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 if the Lieutenant Governor in Council considers that an emergency exists or undue delay in the project would result.

- (2) If an order is made under subsection (1), the Attorney General must report that fact to the Legislative Assembly at the earliest practicable opportunity.
- (3) If an order is made under subsection (1), sections 4, 6 and 10 to 18 do not apply to the expropriation.
- (4) If an order is made under subsection (1), the minister charged with the administration of this Act must promptly inform the expropriating authority, and on being informed, the expropriating authority must, within 30 days of the making of the order,
  - (a) serve the order on each registered owner of the land to be expropriated, and
  - (b) file the order in the land title office.
- (5) An order under subsection (1) must contain
  - (a) the name and address of the expropriating authority, and
  - (b) the matters referred to in section 6 (4) (b) to (g).

## Part 3 — Pre-expropriation Procedures

### Expropriation notice

6 (1) An expropriating authority that intends to expropriate land must

- (a) serve an expropriation notice on the approving authority and on each owner
  - (i) whose land is to be expropriated, and
  - (ii) whose interest in that land is recorded in the land title office, other than persons having an interest referred to in section 23 (2) (b) or (c),
- (b) serve on each owner referred to in paragraph (a) a copy of this Act,
- (c) post or erect, on the land to be expropriated, a sign containing a copy of the expropriation notice or a summary of its contents, and
- (d) file a copy of the expropriation notice in the land title office.
- (2) If the land to be expropriated is located outside of a municipality, the expropriating authority may, instead of posting or erecting the sign, publish a copy of the expropriation notice or a summary of its contents in a newspaper circulating in the area of the land affected.
- (3) If the owner is an individual, the expropriation notice must be served personally or by registered mail.
- (4) The expropriation notice must contain
  - (a) the name and address of the expropriating authority and the approving authority,
  - (b) subject to paragraph (c), a plan of the land to be expropriated that is sufficient, in the opinion of the registrar, to identify the land in the records of the land title office,
  - (c) if the fee simple interest in the whole of a parcel is being expropriated, a legal description of the parcel,
  - (d) the purpose for which the expropriation is required,
  - (e) if
    - (i) the land being expropriated is required for a limited time, or
    - (ii) a limited estate, right, title or interest in the land is required,the time period, or the nature of the limited estate, right, title or interest that is being taken,
  - (f) a description of any charge in respect of which the expropriating authority intends to make a directive under section 23 (2) (c), and
  - (g) other prescribed information.
- (5) If a person on whom a notice is required to be served under subsection (1) cannot be located, the expropriating authority may apply to the court for an order for substituted service.

(6) The expropriating authority must serve a copy of the expropriation notice on all persons who have, at the time the expropriation notice is filed under subsection (1) (d), registered a caveat or a certificate of pending litigation against the land to which the expropriation notice relates.

Land title office filing and registration

7 (1) On the filing of

(a) an order under section 5,

(b) an expropriation notice under section 6, or

(c) an amended expropriation notice under section 16 (2) or 18 (5),

the registrar must, without proof of the signature on or the authority of the order or notice, file the order or notice and make a note of it in the records of registered land and endorse it in the proper register.

(2) After the filing of an order or notice under subsection (1), the registrar must not

(a) register another instrument affecting the land covered by the order or notice other than

(i) a court order affecting the land,

(ii) a judgment for the payment of money,

(iii) a notice filed under section 99 of the Family Law Act,

(iv) an entry under section 2 (1) of the Land (Spouse Protection) Act,

(v) a caveat or a certificate of pending litigation,

(vi) a builder's lien or other instrument the application for registration of which was made before the order or notice was filed,

(vii) an easement, restrictive covenant or statutory right of way that does not affect any part of the land being expropriated, or

(viii) any other instrument that may be prescribed, or

(b) deposit a plan of subdivision or otherwise allow any change in the boundaries affecting the land covered by the order or notice.

Procedures — expropriation on Crown land

8 (1) If an expropriating authority has the power to expropriate the interest of a person on land

(a) that is owned by the government, and

(b) the title to which is not registered under the Land Title Act,

the Lieutenant Governor in Council may make regulations that are considered necessary or advisable specifying the procedures that are to be followed in carrying out the expropriation in place of the procedures contained in this Part.

(2) Without limiting subsection (1), the regulations may

(a) specify the form of the expropriation notice and the persons on whom it must be served,

(b) specify what provisions of this Part apply to the expropriation, and

(c) modify provisions of this Part as they relate to the expropriation.

Entry for limited purposes

9 (1) In addition to any other powers under an enactment, a person authorized by the expropriating authority may, before or after serving an order under section 5 (4) (a) or an expropriation notice under section 6 (1) (a),

(a) during daylight hours, and

(b) after making reasonable efforts to notify the owner or occupier of the land,

enter any land for the purposes of

(c) making surveys, inspections, examinations, soil tests or doing other things that are necessary to determine

(i) the location of proposed works, or

(ii) the description of the land that the expropriating authority intends to expropriate, and

(d) completing an appraisal of the value of the land or any interest in it.

(2) The person authorized may, on entering the land, cut down any trees or brush that obstructs the running of survey lines.

(3) The expropriating authority must pay compensation for damages that it causes by the exercise of its rights under this section.

(4) When the land entered on is not expropriated, an action does not lie against the expropriating authority for damage caused by the exercise of a right of entry under this section unless notice in writing, signed by the claimant, is given to the expropriating authority who exercised the right of entry, within 6 months after the entry occurred.

Request for inquiry

10 (1) In this section, "linear development" includes a highway, a railway, a hydro or other electric transmission or distribution line, a pipeline or a sewer, water or drainage line or main.

(2) An owner whose land is included in an expropriation notice, other than an expropriation notice in respect of an expropriation for the construction, extension or alteration of a linear development, may request an inquiry by serving the minister with a notice of request for an inquiry.

(3) A notice of request for an inquiry must

(a) be in writing,

(b) contain the name and address of the person making the request, his or her interest in the land to be expropriated and his or her reasons for requesting an inquiry, and

(c) be served on the minister and the expropriating authority within 30 days after the date the expropriation notice is served under section 6 (1) (a).

#### Power to refuse to hold public inquiry

11 (1) The inquiry officer may, by order, refuse to hold a public inquiry if, on the application of the expropriating authority and after granting both parties the opportunity to be heard, the inquiry officer considers that

(a) the request for an inquiry is

(i) frivolous, vexatious or not made in good faith, or

(ii) based solely on a claim for compensation, or

(b) the person who requested the inquiry has, at a previous hearing or otherwise, already had substantially the same opportunity to object to the expropriation that he or she would have at an inquiry under this Act.

(2) If the inquiry officer makes an order under subsection (1), the inquiry officer must promptly serve a copy of the order, together with the reasons for making it, on the person who requested the inquiry and on the expropriating authority.

#### Setting down the inquiry

12 (1) If the minister receives a request under section 10, the minister must, within 21 days after service under section 10 (3) (c), appoint an inquiry officer who, subject to section 11, must hold a public inquiry.

(2) The inquiry officer must set a date, that is not more than 21 days after the date of his or her appointment, a time and a place for the inquiry and must serve notice of the date, time and place on

(a) the persons served under section 6 (1) (a),

(b) the expropriating authority, and

(c) every person who served a notice of request under section 10 whose request was not refused under section 11.

(3) The participants in the inquiry are

(a) the expropriating authority or its authorized representative,

(b) all persons referred to in subsection (2) (c), and

(c) all persons who are added under section 15 (a).

Speedy inquiry procedure

13 (1) Despite section 12, before an expropriation notice is served by an expropriating authority, the minister 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 must set a date, time and place for an inquiry sufficiently in advance to enable the expropriating authority to comply with subsection (2).

(2) The expropriating authority must

(a) include in the expropriation notice a statement of the date, time and place set for an inquiry under subsection (1), and

(b) comply with section 6 (1) in sufficient time to provide not more than 21 days between the date that section is complied with and the date set for the inquiry.

(3) Subject to section 11, if a notice has been given under this section, any person referred to in section 10 (2) may become a participant in the inquiry.

Inquiry

14 (1) Subject to section 11, the inquiry officer must hold a public hearing for the purpose of inquiring into whether the proposed expropriation of the land is necessary to achieve the objectives of the expropriating authority with respect to the proposed project or work, or whether those objectives could be better achieved by

(a) an alternative site, or

(b) varying the amount of land to be taken or the nature of the interest in the land to be taken.

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

(3) The inquiry officer may combine 2 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

15 An inquiry officer may

(a) add as a participant in the inquiry any person who the inquiry officer considers would be entitled to request an inquiry under section 10 (2), and

(b) inspect any land.

Modification of expropriation

16 (1) Before the conclusion of the inquiry, the expropriating authority may alter the expropriation by adding or deleting land from it.

(2) If the expropriation is altered, the expropriating authority must file in the land title office an amended expropriation notice in accordance with section 6 (4) and serve it on

(a) the inquiry officer,

(b) every participant in the inquiry,

(c) each owner of land added or deleted by the amendment, and

(d) the approving authority.

(3) A person served under subsection (2) (c) may become a participant in the inquiry, and the inquiry officer may adjourn the inquiry for a period not exceeding 30 days from the time the person was served.

Report of inquiry officer

17 Subject to an adjournment under section 16 (3), unless the time is extended by the minister, an inquiry officer must, 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 the inquiry officer's findings of fact and recommendations with respect to the proposed expropriation.

## Part 4 — Expropriation

### Decision of approving authority

18 (1) After considering the report submitted under section 17, the approving authority must approve, approve with modifications or reject the expropriation, but an expropriation must not be modified so as to affect land of a person who was not a participant in the inquiry.

(2) If

(a) an inquiry is not requested or has been refused, or

(b) an owner is not, under section 10 (2), entitled to request an inquiry,

the approving authority must

(c) approve the expropriation, and

(d) notify the expropriating authority and each owner of the approval in writing.

(3) If an inquiry was held, the approving authority must, not later than 30 days after receiving the report submitted under section 17, serve his or her decision, with written reasons, on every participant and every owner of the land expropriated.

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

(5) If the approving authority modifies the expropriation under subsection (1), the expropriating authority must

(a) file in the land title office an amended expropriation notice in accordance with the modification, and section 6 (4) applies, and

(b) notify each owner of the modified approval in writing and accompany the notice with a copy of the amended expropriation notice.

(6) If the approving authority rejects the expropriation,

(a) the expropriating authority must file in the land title office a notice of cancellation in the prescribed form, and

(b) on receiving the notice of cancellation, the registrar must cancel the expropriation notice filed and endorsed under section 7 (1).

### Abandonment

19 (1) After the conclusion of the inquiry, or if an inquiry is not held, the expropriating authority may, before the advance payment is made under section 20, abandon all or part of the intended expropriation.

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

(a) the approving authority, and

(b) each owner who was served with an expropriation notice under sections 6 (1) (a), 16 (2) (c) and 18 (5) (b).

(3) On receiving a notice of abandonment under subsection (2), the registrar must cancel or amend the endorsement made under section 7 (1).

(4) If the expropriation is abandoned under subsection (1), the expropriating authority must pay

(a) compensation consisting of the damages suffered by an owner as a result of the initiation of the expropriation, and

(b) the reasonable legal, appraisal and other costs incurred by the owner up to the time of the abandonment, in an amount to be agreed on or determined by a registrar of the court.

Advance payment

20 (1) Within 30 days after

(a) an order is filed under section 5 (4) (b),

(b) the approving authority complies with section 18 (2) or (3), or

(c) an agreement is made under section 3 (1),

the expropriating authority must

(d) pay to the owner the amount the expropriating authority estimates is or will be payable to that owner as compensation, other than for business loss referred to in section 34 (3), and

(e) serve on the owner a copy of all appraisal and other reports on which the payment is based.

(2) A payment is deemed to be made under subsection (1) (d) at the time that the expropriating authority tenders the amount of the payment to or to the order of the owner in cash or by cheque, draft, telegraphic or electronic transfer or any other prescribed method.

(3) The appraisal report must be prepared by a person who has been accredited by an institute or body prescribed by the Lieutenant Governor in Council, must be reasonably detailed and must include

(a) a description of the land,

(b) the date of the valuation, which date must be within 6 months of the date of the endorsement by the registrar under section 7 (1),

(c) factual data necessary for the value estimate and the reasoning on which the estimate is based,

(d) the zoning, the highest and best use of the land and any provisions of an official community plan under the Local Government Act that are relevant to a determination of the highest and best use, and

(e) the final estimate of the value of the land.

(4) If, 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 or her interest, it may apply to the court for

(a) a determination respecting the state of title to the land, and

(b) 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) is to be distributed.

(5) The expropriating authority must serve a copy of the application on all persons who it considers would be affected by the application.

(6) After hearing an application under subsection (4), 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 must be made, or

(b) that money be paid into court to be paid out as the court may subsequently direct.

(7) On complying with an order made under subsection (6), the expropriating authority is deemed to have complied with subsection (1).

(8) To assist the expropriating authority in making payment under this section, an owner must, on the authority's request, provide the authority with any information relevant to estimate the compensation to which the owner is or will be entitled.

(9) An owner who withholds relevant information may be penalized by the court in costs and interest to which he or she would otherwise be entitled.

(10) 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.

(11) The 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 within which the payment is required to be made under that subsection.

(12) The expropriating authority may, at any time before 10 days before the beginning of a hearing to determine compensation, increase the amount of its advance payment made under subsection (1).

#### Divesting after expropriation

21 (1) If, within 2 years after filing the vesting notice under section 23, the expropriating authority determines that the land is no longer required for its purposes, the authority must not, without the approval of the approving authority, dispose of the land without first offering it to the owner from whom the land was taken, or his or her successor.

(2) If an owner referred to in subsection (1) wishes to re-acquire the land expropriated, but cannot agree with the expropriating authority on the purchase price, the court must summarily determine the market value of the land as at the time of making the summary determination, and that amount is the purchase price.

(3) The costs of proceedings under this section must be borne by the parties, unless the court, in special circumstances, orders the expropriating authority or the owner to bear the costs of the other.

(4) Part 7 of the Land Title Act applies to a re-acquisition under this section.

#### Injunction for harmful activity

22 If, on the application of the expropriating authority, the court determines that an owner or tenant of land that is to be expropriated, or any other person acting on behalf of the owner or tenant, is doing anything on or to the land that the court considers will harm the condition of the land or anything on it with respect to the purposes for which the expropriating authority is expropriating it, the court may grant an injunction restraining the harmful activity.

#### Vesting and possession

23 (1) The expropriating authority must, within 30 days after it has complied with section 20 (1) or an order under section 20 (6), file in the land title office, in accordance with the requirements of the Land Title Act, a vesting notice in the prescribed form, and, on filing the notice, the authority must serve a copy of it on the owner.

(2) If a fee simple interest is expropriated, the registrar must file the vesting notice, and, on filing, the land expropriated vests in the expropriating authority free and clear of all charges, as defined in the Land Title Act, that are registered or endorsed against the lands covered by the order or notice filed under section 7 (1) other than

(a) the subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the government,

(b) a registered charge in respect of an interest in

(i) minerals, as defined in the Mineral Tenure Act,

(ii) coal,

(iii) petroleum, as defined in the Petroleum and Natural Gas Act, and

(iv) gas or gases, and

(c) a charge, specified in the vesting notice, that the expropriating authority directs the registrar not to cancel.

(3) If an estate, right, title or interest less than the fee simple is expropriated,

(a) the estate, right, title or interest in the land covered by the order or notice filed under section 7 (1) vests in the expropriating authority with priority over all charges, as defined in the Land Title Act, that are registered or endorsed against the land, and

(b) the registrar must register the estate, right, title or interest of the expropriating authority against the land that is affected by it.

(4) If the order or notice filed under section 7 (1) refers to land that is intended to become a highway, an indefeasible title must not be registered for the land covered by the order or notice, and the title to that land ceases to be registered under the Land Title Act.

(5) If the order or notice filed under section 7 (1) refers to land that is intended to become a park or a public square, subsection (4) applies unless the expropriating authority requests subsection (2) to apply.

(6) Subject to an agreement between the owner and the authority, if subsection (2) or (3) has been complied with, the expropriating authority is entitled to possession of the land, whether or not it has served a copy of the vesting notice on the owner.

(7) Despite subsection (6), the court may,

(a) on application by the expropriating authority made after it has complied with section 6 (1), or

(b) on the application of an owner made at any time after he or she is notified under section 5 (4) or 18 but before the 30 day period in subsection (1) has expired,

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

(8) If the expropriating authority is entitled to possession under this section and the owner of the land denies possession to the expropriating authority, the authority may apply to the court for an order for possession.

## Correction of errors

24 If an omission, misstatement or error has occurred in a plan contained in the order or notice filed under section 7 (1), the expropriating authority may

- (a) register in the land title office a plan replacing or amending the original, or
- (b) have the plan corrected under section 106 of the Land Title Act.

## Part 5 — Compensation Procedures

### Owner deemed to have accepted payment

25 If an application is not made to the court to determine compensation within one year after payment is made under section 20, the owner whose land was expropriated is deemed to have accepted that payment in full settlement of his or her claim for compensation, and proceedings to determine compensation must not be brought by that owner.

### Jurisdiction and decision

26 (1) The court must determine

- (a) compensation to be paid in respect of every agreement under section 3 (1),
- (b) compensation to be paid under sections 9 (3), 19 (4), 30 and 40, and
- (c) [Repealed 2004-61-13.]
- (d) compensation payable in respect of applications under section 41 (3).

(2) [Repealed 2004-61-13.]

(3) The court must make an order for the amount payable, together with interest, if the court determines that an owner is entitled to compensation in excess of

- (a) the amount paid under section 20, or
- (b) any other amount paid by the expropriating authority on account of compensation.

(4) to (7) [Repealed 2004-61-13.]

### Practice and procedure

27 (1) The Lieutenant Governor in Council may, by regulation, make rules governing the court's practice and procedure in a proceeding under this Act.

(2) If there is any inconsistency or conflict between a rule made under subsection (1) and a rule made under the Court Rules Act, the rule made under subsection (1) prevails.

Repealed

28 [Repealed 2004-61-15.]

## Part 6 — Basis For Compensation

### Definition

29 In this Part, "date of expropriation" means the date the vesting notice is filed in the land title office under section 23.

### Right to compensation

30 (1) Every owner of land that is expropriated is entitled to compensation, to be determined in accordance with this Act.

(2) If the amount of compensation determined under this Act is less than

(a) the amount paid under section 20, or

(b) any other amount paid by the expropriating authority on account of compensation,

the court must order the amount of the difference as payable to the expropriating authority by the owner to whom the overpayment was made.

(3) Nothing in this Part affects the limitations on compensation provided for by section 121 of the Forest Act.

### Basic formula

31 (1) The court must award as compensation to an owner the market value of the owner's estate or interest in the expropriated land plus reasonable damages for disturbance but, if the 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 under section 34, and

(b) the market value of the land based on its highest and best use at the date of expropriation.

(2) If not included in the market value of land determined in accordance with section 32, the following must be added to that market value:

(a) the value of a special economic advantage to the owner arising out of his or her occupation or use of the land;

(b) the value of improvements made by an owner occupying a residence located on the land.

(3) If there is more than one separate interest in the land expropriated, the value of each interest must, if practical, be established separately.

#### Definition of market value

32 The 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.

#### Exclusions from market value

33 In determining the market value of land, account must not 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 the 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 the land resulting from improvements made to the land after the expropriation notice under section 6 (1) (a) or order under section 5 (4) (a) has been served, but not including improvements that are necessary to preserve the value or state of the land,

(d) an increase or decrease in the value of the 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 the land resulting from any expropriation or prospect of expropriation,

(f) an increase or decrease in the value of the land due to development of other land that forms part of the development for which the expropriated land is taken, or

(g) any increase or decrease in value of the land that results from the enactment or amendment of a zoning bylaw, official community plan or analogous enactment made with a view to the development in respect of which the expropriation is made.

#### Disturbance damages generally

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

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

(a) 6 months after the owner has operated the business from the other land, and

(b) one year after the date of the expropriation.

(4) If the court determines that it is not feasible for an owner to relocate his or her business, there may be included in the compensation that is otherwise payable, an additional amount not exceeding the value of the goodwill of the business.

Limited market — churches, hospitals, schools, etc.

35 (1) Unless an owner elects to be paid compensation in accordance with the other provisions of this Part, the market value of the owner's estate or interest in the land is deemed to be the reasonable cost of equivalent reinstatement if, at the date of expropriation,

(a) the land is used for a church, hospital, school or similar use for which there is no general demand or market, and

(b) the owner undertakes with the expropriating authority that it will relocate and continue the same use on other land.

(2) In determining the reasonable cost of equivalent reinstatement under subsection (1), depreciation of a building on the expropriated land must not be taken into account if the building was being used for the particular use referred to in subsection (1) on the date the expropriation notice under section 6 (1) (a) or order under section 5 (4) (a) was served.

(3) For the purposes of this section, the reasonable cost of equivalent reinstatement must be determined as of the date that the owner obtains, through purchase or construction, reasonably equivalent lands and improvements, but in no case later than one year after the date of expropriation.

## Frustration of leases

36 (1) A lease is deemed to be frustrated if, at the date of expropriation,

(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), if part of the interest or estate in land of a lessee is expropriated, the obligation of the lessee to pay rent under the lease is, to the extent of the interest or estate expropriated, abated.

(3) If there is an inconsistency between a provision of a lease and subsection (1) or (2), that subsection prevails.

## Market value of security interests

37 If land subject to a security interest is expropriated, compensation must be determined in the manner and amounts prescribed.

## Occupiers and lessees

38 (1) If expropriated land includes a residence that is

(a) occupied by a person who, in respect of that residence, would be entitled to a grant under the Home Owner Grant Act, and

(b) not being offered for sale by him or her on the date the expropriation notice under section 6 (1) (a) or order under section 5 (4) (a) was served on him or her,

the person is entitled to be paid, in addition to the amount required to be paid to him or her under section 34, an amount equivalent to 5% of the market value of his or her estate or interest in that part of the land, not exceeding 0.5 ha, that is used personally by him or her for residential purposes.

(2) If expropriated land includes a rental unit as defined in the Residential Tenancy Act or a manufactured home site as defined in the Manufactured Home Park Tenancy Act, a person who leases or occupies the unit or site under an agreement that has a term of less than one year is entitled to be paid

(a) an amount that is equivalent to 3 months' rent for the rental unit or manufactured home site, and

(b) reasonable moving costs.

## Disturbance damages for lessees

39 If land that is subject to a lease having a term greater than one year is expropriated, the lessee, whether or not he or she is an occupant of the land, is entitled to reasonable disturbance damages in an amount to be determined by the court by having regard to

- (a) the length of the term of the lease,
- (b) the length of the unexpired term of the lease,
- (c) any rights to renew or the reasonable prospect of renewal,
- (d) the nature of the business, if any, carried out on the land under the lease, and
- (e) the extent of the lessee's investment in the land that the lessee cannot reasonably recover.

#### Partial takings

40 (1) Subject to section 44, if part of the land of an owner is expropriated, he or she is entitled to compensation for

- (a) the market value of the owner's estate or interest in the expropriated land, and
  - (b) the following if and to the extent they are directly attributable to the taking or result from the construction or use of the works for which the land is acquired:
    - (i) the reduction in the market value of the remaining land;
    - (ii) reasonable personal and business losses.
- (2) If a person claims business losses under subsection (1), the losses must not, unless the person and the expropriating authority otherwise agree, be determined until at least 6 months after the loss was sustained.
- (3) If part of the land is expropriated, the amount of compensation payable in respect of the matters referred to in subsection (1) (a) and (b) (i) may be established by determining the market value of the area of all of the land before the date of expropriation and subtracting from it the market value of the land remaining after the expropriation occurs, but in no case, subject to section 44, must compensation be less than the amount determined by multiplying the ratio of the area of the land taken to the area of all of the land before it was taken, times the value of the land before it was taken with the appropriate reduction if the interest expropriated is an easement, right of way or similar interest less than the fee simple interest.
- (4) For the purposes of the second calculation referred to in subsection (3), the value of the land before it was taken is the value of the land only, having no regard to improvements on the land.
- (5) If, in the case of a partial taking, the character and use, or potential use, of the land before it was taken varies such that the land that was taken was, before the taking, more valuable or less valuable

than the average value of the land that was not taken, the court may, after making a determination under subsection (3), make an adjustment to reflect that value accordingly.

(6) For the purposes of this section, expropriation of part of the land of an owner occurs only if

(a) he or she retains land contiguous to the expropriated land, or

(b) he or she owns land close to the land that was expropriated, the value of which was enhanced by unified ownership with the land expropriated.

Injurious affection if no land taken

41 (1) In this section, "injurious affection" means injurious affection caused by an expropriating authority in respect of a work or project for which the expropriating authority had the power to expropriate land.

(2) The repeal of the Expropriation Act, R.S.B.C. 1979, c. 117, and the amendments and repeals in sections 56 to 128 of the Expropriation Act, S.B.C. 1987, c. 23, are deemed not to change the law respecting injurious affection if no land of an owner is expropriated, and an owner whose land is not taken or acquired is, despite those amendments or repeals, entitled to compensation to the same extent, if any, that the owner would have been entitled to had those enactments not been amended or repealed.

(3) An owner referred to in subsection (2) who wishes to make a claim for compensation for injurious affection must make his or her claim by applying to the court, and the court must hear the claim and determine

(a) whether the claimant is entitled to compensation, and

(b) if entitled to compensation, the amount of the compensation.

(4) Without limiting any other provision of this section, the BC Transportation Financing Authority has no greater liability to compensate an owner for injurious affection than does the minister responsible for the administration of the Transportation Act.

Limitation

42 (1) A claim for compensation under section 41 (3) must be made in writing to the court by the person suffering the damage, with particulars of the claim, within one year after the damage

(a) was sustained, or

(b) became known to the person.

(2) If a claim referred to in subsection (1) is not made in accordance with that subsection, the right to compensation is forever barred.

## Substituted land

43 If an expropriating authority and an owner whose land is expropriated agree, the expropriating authority may grant to that owner, in complete or partial satisfaction of the owner's claim for compensation,

(a) other land, or

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

## Work or use benefiting claimant

44 (1) If part of the land of an owner is expropriated, and the expropriation or the construction or use of works by the expropriating authority are of special benefit to that owner or to his or her remaining land beyond any general benefit to any other owner benefited by the expropriation or the construction or use, there must be deducted from the amount of compensation payable to that owner the estimated value of the benefit.

(1.1) If part of the land of an owner is expropriated, and the expropriation or the construction or use of the works for which the expropriated land was acquired are of any benefit to that owner, the estimated value of the benefit must be deducted from the amount of compensation otherwise payable to that owner, under section 40 (1) (b) (i), for the reduction in the market value of the remaining land, whether or not any other owner is benefited by the expropriation of the expropriated land or by the construction or use of the works.

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

## Legal and appraisal costs

45 (1) If there is an inquiry, the inquiry officer may order the expropriating authority to pay a participant the reasonable costs, to be set by the inquiry officer, incurred by the participant for the purpose of participating in the inquiry.

(2) An appeal lies to the court from an order under subsection (1).

(3) Subject to subsections (4) to (6), a person whose interest or estate in land is expropriated is entitled to be paid costs necessarily incurred by the person for the purpose of asserting his or her claim for compensation or damages.

(4) If the compensation awarded to an owner, other than for business losses, is greater than 115% of the amount paid by the expropriating authority under section 20 (1) and (12) or otherwise, the authority must pay the owner his or her costs.

(5) If the compensation awarded to an owner is 115% or less of the amount paid by the expropriating authority under section 20 (1) and (12) or otherwise, the court may award the owner all or part of his or her costs.

(6) On a claim under section 41 (3), the court may award, in its discretion, costs to the claimant or the expropriation authority.

(7) The costs payable under subsection (3), (4), (5) or (6) are

(a) the actual reasonable legal, appraisal and other costs, or

(b) if the Lieutenant Governor in Council prescribes a tariff of costs, the amounts prescribed in the tariff and not the costs referred to in paragraph (a).

(8) If an expropriating authority and a person referred to in subsection (3) agree on the amount of compensation or damages, but do not agree on the amount of costs to be paid, the costs must be determined by a registrar of the court.

(9) If the court determines the amount of compensation or damages to which a person is entitled, the amount of costs must be determined by a registrar of the court.

(10) In a determination of costs under subsection (8) or (9), the following considerations must 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 20 (1) and (12) or otherwise;

(c) the manner in which the case was prepared and conducted.

(11) and (12) [Repealed 2004-61-17.]

#### Interest

46 (1) The expropriating authority must pay interest on any amount awarded in excess of any amount paid by the expropriating authority under section 20 (1) or (12) or otherwise, to be calculated annually,

(a) on the market value portion of compensation, from the date that the owner gave up possession, and

(b) on any other amount, from

(i) the date the loss or damages were incurred, or

(ii) any other date that the court considers reasonable.

(2) Interest is 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 must be calculated at the interest rate under subsection (2) as at January 1, and during the last 6 months, interest must be calculated at the interest rate under subsection (2) as at July 1.

(4) If the amount of the payment under section 20 (1) or (12) or otherwise is less than 90% of the compensation awarded, excluding interest and business loss, the court must 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 of compensation.

#### Interest penalties for delay

47 If, in the opinion of the court, an unreasonable delay in proceedings under this Act has been caused by an owner or the expropriating authority, the court may penalize

(a) the owner, by depriving the owner, in whole or in part, of the interest to which he or she is entitled, or

(b) the expropriating authority, by increasing, by not more than double, the interest it is required to pay.

#### Advance payment of costs

48 (1) An owner may, from time to time after an expropriation notice or an order under section 5 (4) (a) has been served on the owner but before the hearing has begun, submit a written bill to the expropriating authority consisting of the reasonable legal, appraisal and other costs that have been incurred by the owner up to the time the bill is submitted.

(2) On receiving a bill under subsection (1), the expropriating authority must either promptly pay the bill or apply to have the bill reviewed by a registrar of the court.

(3) If the expropriating authority fails to comply with subsection (2), the owner who submitted the bill may apply to a registrar of the court to have the bill reviewed.

(4) [Repealed 2004-61-18.]

(5) At a review under subsection (2) or (3), the person conducting the review must, after taking into account all relevant circumstances, assess the reasonableness of the bill and may make an order with respect to its payment, accordingly.

(6) Section 45 (7) applies to reviews under this section.

(7) If the amount of costs paid under this section exceeds the amount of costs awarded under section 45, the expropriating authority may

- (a) deduct the amount of the difference from any amounts of compensation then outstanding, and
- (b) if all compensation has been paid, recover the excess by action against the owner.

## Part 7 — General

### Service

49 (1) Subject to section 6 (5), if 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 the person's last known address, or if the person or his or her address is unknown, by publication once in a newspaper having general circulation in the area in which the land is located.

(2) Service is deemed to have been effected

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

### Extension and abridgment of time

50 (1) The court may, on the application of an interested party, extend or abridge the time periods referred to in sections 9 (4), 10 (3) (c), 12 (1) and (2), 16 (3), 17, 18 (3), 20 (1), 23 (1), 34 (2) and (3) and 35 (3), subject to conditions the court considers just.

(2) The court may make an order under subsection (1) even though the application for the extension or the order granting the extension is made after the expiry of the period of time in respect of which the application to extend is made.

### Limitation

51 (1) Legal proceedings to challenge the validity of an expropriation must not be brought after land vests under section 23.

(2) Subject to subsection (1), an application under the Judicial Review Procedure Act must be brought within 30 days after the order or determination subject to review is made.

### Liability for taxes

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

#### Inquiry officer compensation

53 Inquiry officers must 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 remuneration for their services and serve in accordance with other terms and conditions as the minister may order.

#### Repealed

53.1 [Repealed 2004-61-20.]

#### Power to make regulations

54 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations

(a) respecting the practice, procedure or any other similar matters, that the Lieutenant Governor in Council considers necessary or advisable for the better carrying out of Parts 3 and 4, and

(b) prescribing a tariff of costs for the purposes of sections 45 and 48.

#### Repealed

55 [Repealed 2004-61-20.]