

**CONSOLIDATION OF EXPROPRIATION ACT**  
R.S.N.W.T. 1988,c.E-11

*(Current to: August 2, 2007)*

**AS AMENDED BY NORTHWEST TERRITORY STATUTES:**

R.S.N.W.T. 1988,c.8(Supp.)

In force July 19, 1993: SI-008-93

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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## EXPROPRIATION ACT

### INTERPRETATION

#### Definitions

1. In this Act,

"Court" means the Supreme Court; (*tribunal*)

"expropriated" means taken by an expropriating authority under this Act; (*exproprié*)

"expropriated interest" means a right, estate or interest that is lost, in whole or in part, by the registration of a notice of confirmation under subsection 16(2); (*intérêt exproprié*)

"expropriating authority" means

- (a) the Commissioner,
- (b) a municipal corporation, or
- (c) a person empowered to acquire land by expropriation;  
(*autorité expropriante*)

"hearing officer" means a hearing officer appointed under subsection 9(2) or (6); (*enquêteur*)

"judge" means a judge of the Supreme Court; (*juge*)

"land" includes buildings, structures and other things in the nature of fixtures, but does not include mines and minerals; (*bien-fonds*)

"notice of confirmation" means a notice of confirmation referred to in subsection 16(1); (*avis de confirmation*)

"notice of intention" means a notice of intention referred to in section 5; (*avis d'intention*)

"objection" means an objection served on an expropriating authority under section 8; (*opposition*)

"offer" means an offer of compensation in respect of an expropriated interest made under section 19; (*offre*)

"owner", in relation to an expropriated interest, includes the owner of a leasehold interest; (*propriétaire ou titulaire*)

"register" includes file or deposit; (*enregistrer*)

"Registrar" means a Registrar of Land Titles or other officer with whom the title to or interest in land is registered, recorded or kept. (*registrateur*)  
R.S.N.W.T. 1988,c.8(Supp.),s.209.

#### Service on person

- 2.** (1) For the purposes of this Act, where a notice or other document or a copy of a notice or other document is required or authorized to be sent to a person other than an expropriating authority, the document or copy
- (a) must be
    - (i) sent to the person by registered mail addressed to the person at his or her last known address, or
    - (ii) if the address of the person is unknown, published in at least one issue of a publication in general circulation within the area in which the land to which the document relates is situated; and
  - (b) shall be deemed to have been sent to the person at the time when it was mailed or first published in accordance with paragraph (a).

#### Service on expropriating authority

- (2) Where an objection or other document is to be served on an expropriating authority,
- (a) the document must be left at or sent by registered mail to the office of the expropriating authority in order to effect service; and
  - (b) service of a document by registered mail under paragraph (a) shall be deemed not to be effected until the document is received at the office of the expropriating authority.

## PART I

### ACQUISITION AND ABANDONMENT OF LAND

#### Authority to expropriate

- 3.** Any interest in land, including any interest referred to in subsection 5(3), that
- (a) in the opinion of the Legislature is required by the Government of **the Northwest Territories** for a public work or other public purpose, or
  - (b) in the opinion of an expropriating authority, other than the Commissioner, is required for the lawful purposes of the authority,
- may be expropriated by the Commissioner or other expropriating authority, as the case may be, in accordance with this Act.

#### Interests required by expropriating authority

- 4.** (1) All of the interests to which a notice of intention relates or a more limited interest only to which a notice of confirmation relates shall be deemed to be an interest that, in the opinion of the expropriating authority, is required by the expropriating authority for a purpose in respect of which the power to expropriate may be exercised.

### Interests not required by expropriating authority

(2) An interest stated in a notice of abandonment to be abandoned or the remainder of the interest shall be deemed to be an interest that, in the opinion of the expropriating authority, is not or is no longer required by the expropriating authority for a purpose in respect of which the power to expropriate may be exercised.

### Notice of intention to expropriate

**5.** (1) Where, in the opinion of an expropriating authority, an interest in land is required by the expropriating authority for any of the purposes described in paragraph 3(a) or (b), the expropriating authority may register in the office of the Registrar for the registration district in which the land is situated

- (a) a notice of intention to expropriate the interest; and
- (b) a plan of the land to which the notice relates.

### Contents of notice of intention

(2) A notice of intention must set out

- (a) a description of the land;
- (b) the nature of the interest intended to be expropriated and whether the interest is intended to be subject to any existing interest in the land;
- (c) an indication of the work for which the interest is required; and
- (d) a statement that the expropriating authority intends to expropriate the interest.

### Nature of interest to be expropriated

(3) A notice of intention may set out as the nature of the interest intended to be expropriated, any estate or interest in land including

- (a) an interest limited as to time or by condition or otherwise;
- (b) an easement, profit or servitude;
- (c) any right to, over or in respect of land that might be conferred by the owner of the land, whether or not the right, if conferred by the owner, could be asserted against a subsequent owner of the land;
- (d) any restriction on the use of land that might be assumed by covenant or other agreement, whether or not the restriction, if assumed by the owner of the land, could be asserted against a subsequent owner of the land; and
- (e) the exclusive possession of land for a limited time or for a definite or indefinite period, subject to the conditions or limitations specified in the notice.

### Correction of notice of intention or plan

**6.** (1) If a notice of intention or plan registered under subsection 5(1) contains an omission or misstatement, a corrected notice of intention or plan may be registered.

#### Deeming provision

(2) A corrected notice of intention or plan registered under subsection (1) shall be deemed to relate back to the day on which the original notice of intention or plan was registered.

#### Plan

(2.1) A plan referred to in paragraph 5(1)(b) or subsection (1) must be satisfactory to the Registrar.

#### Validity of notice of intention

(3) A notice of intention is not invalid by reason only that it does not comply with paragraph 5(1)(b).

#### Extent of notice of intention

(4) If a notice of intention does not set out

- (a) the nature of the interest intended to be expropriated, the interest intended to be expropriated includes all the interests in the land to which the notice of intention relates; or
- (b) whether the interest intended to be expropriated is intended to be subject to an existing interest in the land to which the notice relates, the interest intended to be expropriated is not subject to that existing interest.

R.S.N.W.T. 1988,c.8(Supp.),s.210.

#### Service and publication of notice of intention

7. (1) Where a notice of intention is registered, the expropriating authority shall
- (a) cause a copy of the notice of intention
    - (i) to be published in at least one issue of a publication in general circulation within the area in which the land is situated, within 30 days after the registration of the notice of intention, and
    - (ii) to be sent by registered mail to each person, at his or her last known address, who appears to have any right, estate or interest in the land, as far as can be reasonably ascertained; and
  - (b) without delay after complying with subparagraph (a)(ii), cause the notice of intention to be published in the *Northwest Territories Gazette*.

#### Deeming provision

(2) A notice of intention shall be deemed to be given on the day on which it is published in the *Northwest Territories Gazette* under paragraph (1)(b).

#### Corrected publication

(3) Where a notice of intention published under paragraph (1)(b) contains an omission or misstatement, a corrected notice of intention may be published in the

*Northwest Territories Gazette* and the corrected notice of intention shall be deemed to relate back to the day on which the original notice of intention was published.

#### Notice of right to object

(4) A notice of intention or copy of a notice of intention published or sent under subsection (1) must include a statement of the provisions of section 8 as that section applies to the intended expropriation of the interest to which the notice relates.

#### Objection

**8.** Any person who objects to the intended expropriation of an interest in land to which a notice of intention relates may, within 30 days after the day on which the notice of intention is given, serve on the expropriating authority a written objection stating

- (a) the name and address of the person;
- (b) the nature of the objection;
- (c) the grounds on which the objection is based; and
- (d) the nature of his or her interest in the intended expropriation.

#### Public hearing

**9.** (1) If an expropriating authority is served with an objection, it shall, without delay after the expiration of the 30 days referred to in section 8, order that a public hearing be conducted with respect to the objection and any other objection to the intended expropriation that has been or may be served on the expropriating authority.

#### Appointment of hearing officer

(2) Where a public hearing is ordered under subsection (1), the expropriating authority shall appoint a suitable person as a hearing officer to conduct the hearing.

#### Remuneration and expenses

(3) A hearing officer shall be paid the remuneration and expenses as may be fixed by the expropriating authority.

#### Duties of hearing officer

(4) A hearing officer shall

- (a) as soon as possible and not later than seven days after his or her appointment, fix a suitable time and place for the public hearing and cause notice of the time and place to be
  - (i) published in at least one issue of a publication in general circulation within the area in which the land is situated,
  - (ii) sent to each person referred to in subparagraph 7(1)(a)(ii), and
  - (iii) sent to each person who served an objection on the expropriating authority;
- (b) make an inspection of the land that the hearing officer considers necessary;

- (c) receive and consider written representations filed with the hearing officer before or at the hearing by any person who served an objection;
- (d) at the time and place fixed for the public hearing, provide an opportunity to be heard
  - (i) to each person appearing at the hearing who served an objection, or
  - (ii) to as many of the persons referred to in subparagraph (i) as the hearing officer considers necessary in order to report to the expropriating authority on the nature and grounds of the objections; and
- (e) within 30 days after his or her appointment, prepare and submit to the expropriating authority a written report on the nature and grounds of the objections made.

#### Extension of time

(5) At the request of a hearing officer, the expropriating authority may extend, for a period not exceeding 30 days, the time referred to in paragraph (4)(e).

#### Appointment of another hearing officer

(6) Where a hearing officer fails to hold a public hearing or prepare and submit to the expropriating authority the report required by paragraph (4)(e), the expropriating authority shall appoint another hearing officer for that purpose.

#### Conduct of hearing

**10.** Subject to section 9, a public hearing held under section 9 shall be conducted in the manner determined by the hearing officer.

#### Right to counsel

**11.** A person who may be heard at a public hearing held under section 9 may be represented by counsel at the hearing.

#### Costs

**12.** An expropriating authority, on the recommendation of the hearing officer, may pay the amount that it considers reasonable in respect of the costs incurred by any person in asserting an objection.

#### Confirmation or abandonment of intention

- 13.** (1) Where a notice of intention is given, the expropriating authority may
- (a) confirm the intention to expropriate the interest in the land, in accordance with section 16,
    - (i) if no objection is served within the 30-day period referred to in section 8, at any time after the expiration of that period, or
    - (ii) if an objection is served within the 30-day period referred to in section 8, at any time after receiving and considering

- the report of a hearing officer submitted under  
paragraph 9(4)(e); or
- (b) at any time abandon the intention to expropriate the interest in the land.

#### Deeming provision

(2) If the expropriating authority has not confirmed the intention to expropriate an interest in land in accordance with section 16 within 120 days after giving the notice of intention, the expropriating authority shall be deemed to have abandoned the intention.

#### More limited interest

(3) If at the time of confirming an intention to expropriate an interest in land, the expropriating authority is of the opinion that a more limited interest only is required, it may confirm the intention to expropriate the more limited interest, in which case it shall be deemed to have abandoned the intention to expropriate the remainder of the original interest.

#### Notice of abandonment of intention

**14.** (1) Where an expropriating authority abandons an intention to expropriate an interest in land other than by confirming an intention to expropriate a more limited interest in the land under subsection 13(3), it shall without delay cause a notice of abandonment of the intention to be

- (a) sent to each person referred to in subparagraph 7(1)(a)(ii);
- (b) sent to each person who served an objection; and
- (c) registered in the office of the Registrar where the notice of intention was registered.

#### Compensation

(2) Where an expropriating authority abandons an intention to expropriate an interest or remainder of an interest in land, the expropriating authority shall pay compensation in accordance with this Act to the person who was the owner of the interest or remainder of an interest when the notice of intention was registered.

#### Copy of report and reasons

**15.** Where, after receiving and considering the report of a hearing officer submitted under paragraph 9(4)(e), an expropriating authority confirms an intention to expropriate an interest in land or a more limited interest in the land in the manner provided in section 16, it shall, at the written request of the person who served the objection, provide that person with

- (a) a copy of the report of the hearing officer; and
- (b) where effect was not given to the objection, a statement of the reasons of the expropriating authority for not giving effect to the objection.

### Notice of confirmation

**16.** (1) An expropriating authority may confirm an intention to expropriate an interest in land to which a notice of intention relates or a more limited interest in the land by signing a notice of confirmation, stating

- (a) if the interest to be expropriated is the same as the interest to which the notice of intention relates, that the intention to expropriate the interest is confirmed; or
- (b) if the interest to be expropriated is a more limited interest than the interest to which the notice of intention relates, that the intention to expropriate the interest to which the notice of intention relates is confirmed except as expressly specified in the statement.

### Registration of notice of confirmation and plan

(2) A notice of confirmation shall be registered in the office of the Registrar where the notice of intention was registered and if the land to which the notice of confirmation relates is more limited in area than the land described in the notice of intention, the expropriating authority shall cause a revised plan of the land to which the notice of confirmation relates to be registered with the notice of confirmation.

### Plan

(2.1) The plan referred to in subsection (2) must be satisfactory to the Registrar.

### Proper registration

(3) A document purporting to be a notice of confirmation that is registered in the office of the Registrar where the notice of intention to expropriate an interest in the land was registered shall be deemed to be a notice of confirmation of that registered in accordance with this Act. R.S.N.W.T. 1988,c.8(Supp.),s.211.

### Effect of registration

**17.** On the registration of a notice of confirmation

- (a) the interest confirmed to be expropriated is absolutely vested in the expropriating authority; and
- (b) any other right, estate or interest is, as against the expropriating authority or a person claiming through or under the expropriating authority, lost to the extent that the right, estate or interest is inconsistent with the interest confirmed to be expropriated.

### Right to physical possession

**18.** (1) Notwithstanding section 17, an expropriating authority is entitled to take physical possession or make use of land to which a notice of confirmation relates to the extent of the interest expropriated only

- (a) at the time of the registration of the notice of confirmation, if at that time no other person who was the owner of an interest in the land immediately before the registration of the notice of confirmation is in actual occupation of the land;

- (b) at such time after the registration of the notice of confirmation as physical possession or use of the land to the extent of the interest expropriated is given up to the expropriating authority without any notice under paragraph (c) having been sent to the persons referred in that paragraph; or
- (c) in any case not referred to in paragraph (a) or (b), at such time after the registration of notice of confirmation as the expropriating authority
  - (i) has sent a notice
    - (A) to each person referred to in subparagraph 7(1)(a)(ii), or
    - (B) where an application has been made under section 21 and has been finally disposed of, to each person adjudged to have had an interest in the land immediately before the registration of the notice of confirmation,

and the period referred to in the notice has expired or physical possession or use has been given up to the expropriating authority before the expiration of that period, and

- (ii) has made an offer under section 19 to each person then entitled to compensation under this Act in respect of an interest in the land.

#### Contents of notice

(2) The notice referred to in subparagraph (1)(c)(i) must state that physical possession or use is required by the expropriating authority on and after the expiration of the period specified in the notice, which must not be less than 90 days after the sending of the notice.

#### Offer

- 19.** (1) Where a notice of confirmation is registered, the expropriating authority shall
- (a) without delay after the registration of the notice of confirmation, cause a copy of it to be sent to
    - (i) each person referred to in subparagraph 7(1)(a)(ii), and
    - (ii) each person who served an objection; and
  - (b) within 90 days after the registration of the notice of confirmation or, if before the expiration of the 90 days an application is made under section 21, within the later of
    - (i) 90 days after the registration of the notice of confirmation, or
    - (ii) 30 days after the final disposition of the application,
- make a written offer of compensation to each person who is entitled to compensation under this Act in respect of an expropriated interest to which the notice of confirmation relates.

#### Amount of compensation

(2) An offer of compensation to a person under paragraph (1)(b) must be in an amount estimated by the expropriating authority to be equal to the compensation to which that person is then entitled under this Act in respect of the expropriated interest and

- (a) not conditional on the provision by that person of any release or releases; and
- (b) without prejudice to the right of that person, if he or she accepts the offer, to claim additional compensation in respect of the expropriated interest.

#### Delay

(3) Where it is not practicable for the expropriating authority to make an offer of compensation within the period required by paragraph (1)(b), the expropriating authority shall make the offer

- (a) as soon as practicable after the expiration of that period; and
- (b) before any compensation is adjudged by the Court to be payable under this Act in respect of the expropriated interest.

#### Payment of interest

(4) Where an offer of compensation is made under subsection (3), the expropriating authority shall pay the interest described in subsection 47(4), in addition to any other interest payable under section 47, to the person entitled to compensation in respect of that compensation.

#### Appraisal

(5) An offer shall be based on a written appraisal of the value of the expropriated interest and a copy of the appraisal shall be sent to the person entitled to compensation when the offer is made.

#### Payment of amount of offer

**20.** Where a person accepts an offer, the expropriating authority shall, without delay, pay the full amount of the offer to that person.

#### Application to Court

**21.** (1) Where, after the registration of a notice of confirmation, the expropriating authority is in doubt as to the persons who had a right, estate or interest in the land to which the notice relates or the nature or extent of the right, estate or interest, the expropriating authority may apply to the Court

- (a) to determine the state of the title to all or part of the land immediately before the registration of the notice of confirmation; and
- (b) to adjudge the persons who had a right, estate or interest in the land immediately before the registration of the notice of confirmation and the nature and extent of the right, estate or interest.

### Directions of Court

(2) An application under subsection (1) shall in the first instance be made *ex parte* and the Court shall fix a time and place for the hearing of the persons concerned and give directions as to

- (a) the persons who are to be served with the notice of the hearing, the contents of the notice and the manner of service of the notice;
- (b) the material and information to be submitted by the expropriating authority or other persons; and
- (c) any other matters that the Court considers necessary.

### Adjudication

(3) After the hearing referred to in subsection (2), the Court shall

- (a) adjudge for the purposes of this Act what persons had a right, estate or interest in the land to which the notice of confirmation relates immediately before the registration of the notice of confirmation and the nature and extent of the right, estate or interest; or
- (b) direct an issue or issues to be tried to enable the Court to make the adjudication referred to in paragraph (a).

### Effect of adjudication

(4) Subject to variation on appeal, an adjudication made by the Court under subsection (3) finally determines for all purposes the matters referred to in paragraph (3)(a).

### Notice of abandonment

**22.** (1) Where, before any compensation is paid in respect of an expropriated interest, the expropriating authority is of the opinion that the interest is not or is no longer required, the expropriating authority may give notice that it intends to abandon the interest or the remainder of the interest by causing a copy of the notice to be sent to each person referred to in paragraph 18(1)(c).

### Election

(2) A person referred to in paragraph 18(1)(c) may, within 30 days after the day on which a copy of the notice referred to in subsection (1) was sent to the person, serve on the expropriating authority written notice that the person elects to

- (a) accept the abandonment and have the interest or remainder of the interest revert in him or her to the extent that the abandonment would operate to revert it in him or her; or
- (b) reject the abandonment.

### Confirmation of abandonment

(3) Where each person to whom a copy of a notice is sent under subsection (1) elects under subsection (2) to accept the abandonment, the expropriating authority may

- (a) cause a notice of abandonment of the expropriated interest or the remainder of the expropriated interest to be sent to each of those persons; and
- (b) confirm the abandonment by causing the notice of abandonment referred to in paragraph (a) to be registered in the office of the Registrar where the notice of confirmation was registered.

#### Effect of confirmation of abandonment

- 23.** Where a notice of abandonment is registered under paragraph 22(3)(b),
- (a) the interest expropriated on registration reverts in the persons from whom it was taken or the persons entitled to claim through or under them; or
  - (b) if the expropriating authority retains a more limited interest in the land, the land on registration reverts in the persons referred to in paragraph (a), subject to the more limited interest in the land retained by the expropriating authority.

#### Signature of expropriating authority

**24.** A document purporting to be signed by an expropriating authority shall be deemed to have been signed by the expropriating authority.

**25.** (1) **Repealed, R.S.N.W.T. 1988,c.8(Supp.),s.212.**

#### Document certified by Registrar

(2) A document purporting to be certified by a Registrar to be a true copy of a notice or plan registered under this Act at a time stated in the certificate is, without proof of the official character or signature of the Registrar, evidence of the facts stated in the document and of the registration of the notice or plan at the time stated in the certificate. R.S.N.W.T. 1988,c.8(Supp.),s.212.

## PART II

### COMPENSATION

#### CALCULATION OF COMPENSATION

#### Definitions

**26.** (1) In this Part,

"market value", in relation to an expropriated interest, means the amount that would have been paid for the interest if, at the time of its taking, it had been sold in the open market by a willing seller to a willing buyer and fully paid for in cash; (*valeur marchande*)

"security interest" means an interest in land held by the owner of the interest as security only. (*sûreté*)

### Interpretation

(2) For the purposes of this Part, the time of the taking of an expropriated interest is,

- (a) where an election has been made under subsection 27(3) by the owner of the expropriated interest, the time specified by the owner in the election; or
- (b) in any other case, the time when the notice of confirmation is registered.

### Payment of compensation

**27.** (1) An expropriating authority shall pay compensation to each person who, immediately before the registration of a notice of confirmation, was the owner of a right, estate or interest in the land to which the notice relates, to the extent of his or her expropriated interest.

### Amount of compensation

(2) The amount of compensation referred to in subsection (1) shall be equal to the aggregate of

- (a) the value of the expropriated interest at the time of its taking; and
- (b) the amount of any decrease in value of the remaining property of the owner, as determined under section 34.

### Election

(3) Where no copy of a notice of confirmation was sent

- (a) to a person referred to in subparagraph 7(1)(a)(ii), or
- (b) to a person who served an objection,

until more than 90 days after the registration of the notice of confirmation, the person may, before any compensation is paid to him or her in respect of any expropriated interest of which he or she was the owner immediately before the registration of the notice of confirmation, elect to have the value of the expropriated interest determined at the time when

- (c) the notice of confirmation was registered, or
- (d) the copy of the notice of confirmation was sent to the person,

as specified by the person in the election.

### Determination of value

**28.** (1) Subsection (2) and sections 29 to 33 shall be applied in determining the value of an expropriated interest.

### Market value

(2) Subject to sections 29 to 33, the value of an expropriated interest is the market value of the expropriated interest.

### Where owner required to give up occupation

**29.** (1) Where the owner of an expropriated interest was in actual occupation of land at the time the notice of confirmation was registered and, as a result of the expropriation,

had to give up occupation of the land, the value of the expropriated interest is the greater of

- (a) the market value of the expropriated interest; and
- (b) the aggregate of
  - (i) the market value of the expropriated interest determined on the basis that the use to which the expropriated interest was being put at the time of its taking was its highest and best use, and
  - (ii) the costs, expenses and losses arising out of or incidental to the disturbance of the owner, including moving to other premises,

plus the value to the owner of any element of special economic advantage to the owner arising out of or incidental to his or her occupation of the land, to the extent that no other provision is made by this paragraph for the inclusion of that in determining the value of the expropriated interest.

#### Costs, expenses and losses

(2) If the costs, expenses and losses referred to in subparagraph (1)(b)(ii) cannot practicably be estimated or determined, a percentage of the market value determined under subparagraph (1)(b)(i), not exceeding 15%, may be allowed in place of the costs, expenses and losses.

#### Specially designed structure

(3) Notwithstanding subsections (1), (2) and (6), where a parcel of land to which a notice of confirmation relates has a building or other structure erected on it that was specially designed for use as a school, hospital or religious institution or for any similar purpose and that use of the building or structure by the owner is rendered impracticable as a result of the expropriation, the value of the expropriated interest, if it was and, but for the expropriation, would have continued to be used for that purpose and at the time of its taking there was no general demand or market for the interest for that purpose, is the greater of

- (a) the market value of the expropriated interest; and
- (b) the aggregate of
  - (i) the cost of any reasonably alternative interest in land for that purpose, and
  - (ii) the cost, expenses and losses of the owner arising out of or incidental to moving to and re-establishment on other premises,

minus the amount by which the owner has improved, or may reasonably be expected to improve his or her position through re-establishment on other premises.

#### Costs, expenses and losses

(4) If the costs, expenses or losses referred to in subparagraph (3)(b)(ii) cannot be practicably estimated or determined, a percentage of the cost determined under subparagraph (3)(b)(i), not exceeding 15%, may be allowed in place of the costs, expenses or losses.

#### Additional factors

(5) For the purposes of subparagraphs (1)(b)(ii) and (3)(b)(ii), consideration shall be given to

- (a) the time and circumstances in which a former owner was allowed to continue in occupation of the land after the expropriating authority became entitled to take physical possession or make use of the land; and
- (b) any assistance given by the expropriating authority to enable the former owner to seek and obtain alternative premises.

#### Additional compensation

(6) Where an expropriating authority has taken physical possession or made use of the land referred to in subsection (1) or (3) on the expiration of a period of notice to the owner that is less than the 90 days referred to in subsection 18(2), an amount of 10% of the value of the expropriated interest, as calculated under this section and sections 30 to 33, shall be added to that value.

#### Expropriation of land used as residence

**30.** Where, immediately before the registration of a notice of confirmation, an expropriated interest was used by the owner as his or her residence and the value of the expropriated interest otherwise determined under section 29 and sections 31 to 33 is less than the minimum amount sufficient to enable the owner to relocate his or her residence in or on premises reasonably equivalent to the premises expropriated at the earlier of

- (a) the time of payment to the owner of any compensation in respect of the expropriated interest, otherwise than under an offer made to the owner, or
- (b) the time when the expropriating authority became entitled to take physical possession or make use of the land to the extent of the expropriated interest,

there shall be added to the value of the expropriated interest otherwise determined under section 29 and sections 31 to 33 the amount by which that minimum amount exceeds the value.

#### Expropriation of leasehold interest

**31.** Where, immediately before the registration of a notice of confirmation, an expropriated interest was owned by the owner as a leasehold interest, there shall be substituted for the amount determined under subparagraph 29(1)(b)(ii) or 29(3)(b)(ii) or section 30, the part of that amount as is appropriate having regard to

- (a) the length of the term of the leasehold interest and the portion of the term remaining at the time at which the determination is relevant;
- (b) any right or reasonable prospect of renewal of the term that the owner of the leasehold interest had; and
- (c) any investment in the land by the owner of the leasehold interest and the nature of any business carried on by the owner on the land.

#### Where expropriated interest subject to security interest

**32.** (1) Where, immediately before the registration of a notice of confirmation, an expropriated interest was subject to a security interest, the value of the expropriated interest is the aggregate of

- (a) the value of the expropriated interest otherwise determined under sections 29 to 31 and section 33 as though it had not been subject to any security interest, and
- (b) the amount of any loss or anticipated loss to the owner of the expropriated interest resulting from a difference in rates of interest during the remainder of the period for which any principal amount payable under the terms of the security was advanced, to the extent that no other provision is made by sections 29 to 31 and section 33 for the inclusion of an amount in respect of the loss or anticipated loss in determining the value of the expropriated interest,

less the value of each security interest to which the expropriated interest was subject, determined in accordance with subsection (3) but excluding the amount included under paragraph (3)(b).

#### Calculation of rate of interest

(2) The difference in rates of interest referred to in paragraph (1)(b) shall be calculated on the basis of an assumed rate of interest not in excess of the prevailing rate of interest for an equivalent security.

#### Value of security interest

(3) The value of the security interest referred to in subsection (1) is the aggregate of

- (a) the principal amount outstanding under the terms of the security and the interest due or accrued under the terms of the security at the time of the registration of the notice of confirmation; and
- (b) an amount equal to three times the interest element, calculated as a monthly amount, of any payment of interest or of principal and interest payable under the terms of the security at the rate in effect under the terms of the security immediately before the registration of the notice of confirmation.

#### Value of several security interests

(4) Where the expropriated interest referred to in subsection (1) was subject to more than one security interest, the value of

- (a) each security interest shall be determined in the order of its priority; and
- (b) any security interest to which an expropriated interest was subject shall not exceed the value of the expropriated interest otherwise determined under this section, sections 29 to 31 and section 33 as though it had not been subject to any security interest, less the value of each other security interest, the value of which is required by this section to be determined in priority to it.

## Expropriation of part interest

(5) Where part only of an interest that was subject to a security interest is expropriated, the value of the security interest is the difference between

- (a) that proportion of the value of the security interest otherwise determined under this section as though the whole of the interest subject to the security interest had been expropriated, that the value of the part only of the interest otherwise determined under this section as though it had not been subject to a security interest is of the value of the whole of the interest otherwise determined under this section as though it had not been subject to any security interest, and
- (b) the same proportion determined under paragraph (a) of the interest element of payments made under the terms of the security,

between the time of

- (c) the registration of the notice of confirmation, and
- (d) payment of any compensation in respect of the security interest, except pursuant to an offer made to the owner of the security interest.

## Calculation of value of expropriated interest

**33.** In determining the value of an expropriated interest, no account shall be taken of

- (a) any use to which the expropriating authority has or may put the land after the expropriation;
- (b) any value established or claimed to be established by or by reference to a transaction or agreement involving the sale, lease or other disposition of the interest or part of the interest, where the transaction or agreement was entered into after the registration of the notice of intention;
- (c) any increase or decrease in the value of the interest or in the demand or market for the interest for a particular purpose, resulting from
  - (i) its anticipated or actual expropriation, or
  - (ii) any anticipated or actual use of the interest for any purpose for which it is or may be lawfully required by the expropriating authority; or
- (d) any increase in the value of the interest resulting from its having been put to a use that was contrary to law.

## Decrease in value of remaining property

**34.** (1) The amount of any decrease in value of the remaining property of an owner is the value of all of his or her interests in land immediately before the time of the taking of the expropriated interest, as determined under sections 29 to 33, minus the aggregate of

- (a) the value of the expropriated interest; and
- (b) the value of all the remaining interests of the owner in the land immediately after the time of the taking of the expropriated interest.

### Value of remaining property

(2) For the purpose of paragraph (1)(b), the value of the remaining interests of the owner in the land shall be determined as provided in sections 29 to 33, except that in determining the value, account shall be taken of any increase or decrease in the value of any remaining interest in the land of the owner that immediately before the registration of the notice of confirmation was held by the owner together with the expropriated interest, resulting from the construction or use or anticipated construction or use of any work on the land to which the notice relates or from the use or anticipated use of that land for any lawful purpose.

### Interpretation

**35.** (1) In relation to compensation payable under subsection (3), the reference in paragraph 40(1)(a) to "the registration of the notice of confirmation" shall be read and construed as a reference to the confirmation of the abandonment of the intention.

### Additional factors

(2) In determining the amount of compensation to be paid to any person for an expropriated interest, account shall be taken, in connection with all other circumstances of the case, of the fact of

- (a) an abandonment or reversion under this Act of an interest or remainder of an interest in land; or
- (b) any undertaking given on behalf of the expropriating authority or by any other person within the scope of its authority, to make any alteration, construct any work or grant or convey any other land or interest in land.

### Abandonment of intention to expropriate

(3) Where an intention to expropriate an interest or remainder of an interest in land is abandoned, the compensation payable by the expropriating authority to the owner of the interest is the amount of any actual loss sustained by the owner after the notice of intention was registered and before the abandonment of the intention or the intention to expropriate a more limited interest was confirmed by the registration

- (a) of the notice of intention, where the intention to expropriate the interest was abandoned; or
- (b) of the notice of intention relating to the remainder of the interest, where the intention to expropriate the remainder was abandoned.

### Costs

**36.** An expropriating authority shall pay to each person entitled to compensation under this Act an amount equal to the legal and appraisal costs reasonably incurred by that person in asserting a claim for compensation, except costs incurred after the institution of proceedings under section 40.

## PAYMENT OF COMPENSATION

## Definitions

**37.** In sections 38 and 39,

"negotiator" means a negotiator appointed under paragraph 38(1)(a); (*conciliateur*)

"notice to negotiate" means a notice to negotiate served under subsection 38(2); (*avis de négociier*)

"owner" means a person to whom an offer has been made. (*propriétaire*)

## Appointment of negotiators

**38.** (1) The expropriating authority, with the approval of the Commissioner if the Commissioner is not the expropriating authority, may

- (a) appoint one or more persons who are not employed in the public service to act as negotiators for the purposes of this section; and
- (b) fix and authorize payment of the remuneration and expenses to be paid to the negotiators.

## Notice to negotiate

(2) Where after an offer is made to an owner, the owner and the expropriating authority are unable to agree on the amount of compensation to which the owner is then entitled, the owner or the expropriating authority may, within 60 days after the making of the offer, serve on the other a notice to negotiate settlement of the compensation to which the owner is then entitled.

## Effect on other proceedings

(3) Where notice to negotiate is served under subsection (2), proceedings under section 40 shall not be commenced or if commenced, proceeded with by or on behalf of the owner or the expropriating authority in respect of the expropriation until 60 days after the serving of the notice, unless before that time the negotiator to whom the matter is referred

- (a) makes a report to the expropriating authority that he or she is unable to effect a settlement; and
- (b) sends a copy of the report referred to in paragraph (a) to the owner.

## Reference to negotiator

(4) Where a notice to negotiate is served on an expropriating authority or an owner, the expropriating authority shall without delay refer the matter to a negotiator.

## Duties of negotiator

(5) Where a matter is referred to a negotiator under subsection (4), the negotiator shall, on reasonable notice to the owner and the expropriating authority,

- (a) meet with them or their authorized representatives;

- (b) make an inspection of the land that the negotiator considers necessary;
- (c) receive and consider appraisals, valuations or other written or oral evidence submitted to the negotiator on which the owner or the expropriating authority relies for his or her estimation of the amount of the compensation payable, whether or not the evidence would be admissible in proceedings before a court; and
- (d) endeavour to effect a settlement of the compensation payable.

#### Report of negotiator

(6) A negotiator shall, within 60 days after the service of the notice to negotiate, report to the expropriating authority his or her success or failure in the negotiation and upon that send a copy of the report to the owner.

#### Use of statement or admission

**39.** Evidence of anything said or of any admission made in the course of a negotiation under section 38 is not admissible in any proceedings before a court for the recovery or determination of the compensation payable to the owner.

#### Proceedings to recover compensation

**40.** (1) Subject to section 38, a person entitled to compensation in respect of an expropriated interest may,

- (a) after the registration of the notice of confirmation, if the person has not accepted an offer, or
- (b) within one year after the person has accepted an offer,

commence proceedings in the Court by statement of claim for the recovery of the amount of the compensation to which the person is then entitled.

#### Motion by expropriating authority

(2) Subject to section 38, an expropriating authority may, after the registration of the notice of confirmation, whether or not proceedings under subsection (1) have been commenced, file a motion in the matter in the Court setting out

- (a) the particulars of the expropriation in relation to any parcel of land to which the notice of confirmation relates;
- (b) the names, so far as they have been ascertained, of each person entitled to compensation in respect of an expropriated interest;
- (c) the names of the persons who are to be parties to the proceedings;
- (d) the amount of any offer made to any person who is to be a party to the proceedings; and
- (e) any further facts that appear to be relevant.

#### Commencement of action

(3) A motion filed under subsection (2) shall be deemed to commence an action or suit involving the persons stated in the motion to be parties to the proceedings for the final determination of the compensation payable, or any other matter or issue arising out of the registration of the notice of confirmation.

#### Statement of claim

(4) Each person named to be a party in a motion filed under subsection (2) shall, within 30 days after the notice is served on him or her or within the further time that the Court or a judge may allow either before or after the expiration of the 30 days, serve on the expropriating authority and file in the Court a statement of claim in the proceedings.

#### Statement of defence

(5) An expropriating authority shall serve on each person referred to in subsection (4) and file in the Court a statement of defence or answer to the statement of claim

- (a) within 30 days after
  - (i) the statement of claim is served on it under subsection (4),  
or
  - (ii) if more than one statement of claim is served on it under subsection (4), the latest day on which a statement of claim is served on it; or
- (b) within a further time that the Court or a judge may allow before or after the expiration of the 30 days referred to in paragraph (a).

#### Stay of other proceedings

**41.** Where an application is made under section 21 and the application has not been finally disposed of at the time any proceedings arising out of the expropriation to which the application relates are commenced under subsection 40(1), the proceedings shall be stayed until the final disposition of the application.

#### Procedure

**42.** Subject to sections 40, 41 and 43, an action or suit commenced under subsection 40(3) shall be proceeded with

- (a) in accordance with the Rules of the Supreme Court; and
- (b) as if the proceedings had been commenced by a statement of claim filed by a person stated to be a party to the proceedings in a motion filed under subsection 40(2).

#### Further claims

**43.** (1) A judgment, whether by consent, default or otherwise, in a proceeding under section 40 bars all further claims of the parties to the proceedings and of persons claiming through or under them, including any claim in respect of dower or dower not yet open or a mortgage or other rights or encumbrance.

#### Order for compensation

(2) In a judgment referred to in subsection (1), the Court shall declare the amount of compensation payable and make the order that is necessary for the distribution, payment or investment of any compensation money and the securing of the rights of all persons interested.

## Effect of payment of compensation

**44.** Any compensation agreed to be payable or adjudged by the Court under this Part to be payable

- (a) in respect of an expropriated interest, stands in the stead of the expropriated interest; and
- (b) in respect of a security interest shall, for all purposes as between the owner of the interest subject to the security interest and the owner of the security interest, be deemed
  - (i) to discharge any liability under the terms of the security of the owner of the interest subject to the security interest, to the extent of the compensation agreed or adjudged to be payable, and
  - (ii) where an amount or proportion of an amount referred to in paragraph 32(3)(b) is included in the compensation, to be in full satisfaction of any notice or bonus required under the terms of the security in respect of the prepayment of the security resulting from the expropriation.

## Other claims

**45.** Where an expropriating authority pays any compensation in respect of an expropriated interest to a person whose right to claim compensation the expropriating authority had notice of at the time of payment, no compensation is payable to another person, whether the right or interest of the other person is derived from the person to whom compensation has been paid or otherwise, if the right or interest giving rise to the claim to compensation of the other person would have been void or unenforceable against the expropriating authority had the expropriating authority at the time the notice of intention was registered been a purchaser of the interest.

## Set-off and recovery

**46.** Where any compensation is paid to a person pursuant to an offer,

- (a) the amount paid to that person shall be deducted from the amount of the compensation adjudged by the Court under this Part to be payable to the person in respect of the expropriated interest; and
- (b) where the amount paid exceeds the amount adjudged by the Court to be payable to the person, the excess constitutes a debt due to the expropriating authority and may be recovered by the expropriating authority in any court of competent jurisdiction.

## INTEREST

## Definitions

**47.** (1) In this section,

"basic rate" means a rate determined in the manner specified in an order of the Governor in Council under section 36 of the *Expropriation Act* (Canada), being not less than the

average yield, determined in the manner specified in the order, from Government Canada Treasury Bills; (*taux de base*)

"compensation" means the amount of the compensation adjudged by the Court under this Part to be payable in respect of an expropriated interest; (*indemnité*)

"date of possession" means the day on which the expropriating authority is entitled to take physical possession or make use of the land to which a notice of confirmation relates; (*date de la possession*)

"date of the offer" means the day on which an offer is accepted. (*date de l'offre*)

#### Interest

(2) Interest is payable by the expropriating authority at the basic rate on the compensation from the date of possession to the date judgment is given, except where an offer has been accepted.

#### Calculation of interest

(3) Where an offer has been accepted, interest is payable by the expropriating authority from the date of the offer to the date judgment is given

- (a) at the basic rate on the amount by which the compensation exceeds the amount of the offer, and
- (b) at the rate of 5% per year on the compensation, if the amount of the offer is less than 90% of the compensation,

and where an offer has been accepted after the date of possession, interest is payable at the basic rate on the compensation from the date of possession to the date of the offer.

#### Additional interest

(4) Where an offer is not made until after the applicable period referred to in paragraph 19(1)(b), interest, in addition to interest payable under subsection (2) or (3), is payable by the expropriating authority at the rate of 5% per year on the compensation, from the expiration of that period to the day on which an offer is made.

#### Delay

(5) Where the Court is of the opinion that

- (a) any delay in the final determination of the compensation is in whole in part attributable to a person entitled to the compensation, or
- (b) a person entitled to the compensation has failed to deliver up possession within a reasonable time after demand,

the Court may, for all or part of any period for which the person would otherwise be entitled to interest, refuse to allow the person interest, except that the Court shall not refuse interest by reason only that an offer made to the person was not accepted.

## COSTS

### Costs

**48.** (1) Subject to subsection (2), the costs of and incidental to any proceedings in the Court under this Act are in the discretion of the Court or, in the case of proceedings before a judge, in the discretion of a judge, and the Court or judge may direct the expropriating authority or any party to the proceedings to pay all or part of the costs.

### Payment of costs by expropriating authority

(2) Where the amount of the compensation adjudged under this Part to be payable to a party to any proceedings under section 40 in respect of an expropriated interest exceeds the amount of any offer made to the party in respect of that expropriated interest, the Court shall direct the expropriating authority to pay all of the costs of the party arising from and incidental to the proceedings.

## PART III

### ENTRY AND POSSESSION

### Right of entry

**49.** (1) Where a notice of intention is registered, any person authorized in writing by the expropriating authority may, at any reasonable time on notice to a person in actual occupation of the land to which the notice relates, enter on the land for the purpose of making

- (a) any inspection of the land that the person is authorized to make under this Act; or
- (b) an appraisal of the value of the land or any interest in the land.

### Offence

(2) Every person who, without lawful excuse, prevents a person from or obstructs or hinders a person in doing anything that the person is authorized to do under subsection (1) is guilty of an offence punishable on summary conviction.

### Warrant for possession

**50.** (1) Where an expropriating authority or a person acting for it is prevented from entering on or taking physical possession or making use of land to the extent of an interest expropriated under this Act, a judge may

- (a) on proof of the expropriation and, when required, of the right of the expropriating authority to take physical possession or make use of the land, and
- (b) after notice to show cause given in the manner and to the persons who will be parties to the proceedings that the judge determines,

issue his or her warrant in the prescribed form to the Sheriff, directing the Sheriff to put the expropriating authority or a person authorized to act for it in physical possession of the land to the extent of the interest expropriated.

#### Execution of warrant

(2) The Sheriff shall without delay execute a warrant issued to the Sheriff under subsection (1) and shall make a return of the warrant to the Court, stating the manner in which it was executed.

#### Regulations

(3) The Commissioner, on the recommendation of the Minister, may make regulations prescribing the form of the warrant referred to in subsection (1).

### PART IV

#### USE OF LANDS

#### Powers of expropriating authority

**51.** An expropriating authority or any other person with its written consent may, in respect of a work for which land may be expropriated, on seven days notice sent to the owner of the land

- (a) enter into and on any land and survey and take levels of the land and make the borings or sink the trial pits that it considers necessary;
- (b) enter on any land and deposit on the land earth, stones, gravel, trees, bushes, logs, poles, brushwood or other material required for
  - (i) the work,
  - (ii) digging up, quarrying and carrying away earth, stones, gravel or other material, or
  - (iii) cutting down and carrying away trees, bushes, logs, poles, brushwood or other material from the land;
- (c) make and use temporary roads to and from timber, stones, clay, gravel or sand or gravel pits that are required by it for the convenient passing to and from the work during the construction, repair or maintenance of the work;
- (d) enter on any land to make proper drains to carry off water from the work or to keep the drains in repair;
- (e) divert or alter, temporarily or permanently, the course of a river or other watercourse or a railway, road, street or other way or raise or sink its level, in order to carry it over or under, on the level of or by the side of the work as it considers necessary for any purpose related to the work; or
- (f) for the purposes of the work, divert or alter the position of a water pipe, oil or gas pipe, sewer, drain or telegraph, telephone or electric wire, pole or tower.

#### Construction and repair

**52.** Whenever it is necessary in the construction, repair or maintenance of a work in respect of which land may be expropriated to take down or remove a wall or fence of an

owner or occupier of land adjoining the work or to construct a drain or ditch for carrying off water,

- (a) the wall or fence must be replaced as soon as the necessity that caused its taking down or removal has ceased; and
- (b) after a wall or fence has been replaced under paragraph (a) or when the drain or ditch is completed, the owner or occupier of the land shall maintain the wall, fence, drain or ditch to the same extent as the owner would be required to do by law if the wall or fence had never been taken down or removed or the drain or ditch had always existed.

Use of explosives

**53.** (1) Where

- (a) an expropriating authority contracts with a person for the construction or execution of any work, or
- (b) an officer, employee or agent of an expropriating authority is charged with the construction or execution of any work,

the expropriating authority may, if in its opinion it is necessary or expedient that any material be excavated or removed by blasting or the use of explosives, authorize the work to be performed in that manner, notwithstanding that the blasting or explosions may cause damage to land or other property or to the execution of an industry or work that is situated in the vicinity of the work or that may be affected by the blasting or explosives.

Compensation for damages

(2) If the construction or execution of a work is contracted for, the amount of compensation payable by the expropriating authority is chargeable to the contractor, unless the contract otherwise provides.

Recovery from contractor

(3) If the compensation referred to in subsection (2) is not paid by the contractor without delay on demand, it may be

- (a) recovered from the contractor by the expropriating authority as money paid to the use of the contractor; or
- (b) deducted from any money held by the expropriating authority belonging or payable to the contractor.

Compensation for loss or damage

**54.** An expropriating authority is liable to pay compensation to the owner of land for loss or damage sustained by the owner by reason of the exercise on the land of any powers under this Part.

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