

The Expropriation Act

being

Chapter E-15 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan, 1979-80, c.92; 1983, c.66; 1983-84, c.63; 1989-90, c.20; 2000, c.L-5.1; and 2016, c.28.*

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER E-15

An Act respecting the Expropriation of Certain Lands

SHORT TITLE

Short title

- 1 This Act may be cited as *The Expropriation Act*.

INTERPRETATION

Interpretation

- 2 In this Act:

- (a) **“applicant”** includes a person who is authorized pursuant to *The Water Power Act* or the regulations made pursuant to that Act to take and use any land required to carry out any undertaking and an area authority that is authorized pursuant to *The Conservation and Development Act* or the regulations made under that Act to take land required for the works of the area authority;
- (a.1) **“court”** means Her Majesty’s Court of Queen’s Bench for Saskatchewan;
- (b) **“lands”** means the lands, the acquiring, taking or using of which is authorized by any of the Acts mentioned in clause (a), and includes real property, messuages, lands, easements and hereditaments of any tenure and any easement, servitude, right, privilege or interest in, to, upon, under, over or in respect of the same;
- (c) **“minister”** means the Minister of Agriculture;
- (d) **“opposite party”** includes the owner of land to be taken under this Act and a person having a registered interest in or right or privilege with regard to the land;
- (e) **“undertaking”** means an undertaking as defined in *The Water Power Act*;
- (f) **“works”** means works as defined in *The Conservation and Development Act*.

R.S.S. 1978, c.E-15, s.2; 1979-80, c.92, s.28;
1983-84, c.63, s.4.

APPLICATION OF ACT

Application of Act

3 This Act applies only to the taking of land or any interest in or right or privilege with regard to land, and to the payment of compensation therefor and for damages to land arising out of the construction or maintenance of works and undertakings and the construction of such works and undertakings under *The Water Power Act* or *The Conservation and Development Act*.

R.S.S. 1978, c.E-15, s.3; 1983-84, c.63, s.4.

PRELIMINARY PROCEDURE

Notice of expropriation

4 Before proceeding to arbitration to fix compensation or damages, the applicant shall serve upon the opposite party a notice, which shall contain:

- (a) a description of the lands to be taken, or of the powers intended to be exercised with regard to any lands therein described;
- (b) a declaration of readiness to pay a certain sum or rent, as the case may be, as compensation for such lands or for such damages; and
- (c) a notification that, if within ten days after the service of the notice, or, where the notice is served by publication, within one month after the first publication thereof, the party to whom the notice is addressed does not give notice to the applicant that he accepts the sum offered, either he or the applicant will be entitled to apply to have the compensation fixed by arbitration as provided in this Act.

R.S.S. 1978, c.E-15, s.4.

Certificate of surveyor

5 The notice shall be accompanied by the certificate of a Saskatchewan land surveyor who is not interested in the land or in the amount of compensation or damages, which certificate shall state:

- (a) that the land, if the notice relates to the taking of land, is required by the applicant under *The Water Power Act* or *The Conservation and Development Act*;
- (b) that he knows the land, or the amount of damage likely to arise from the exercise of the powers; and
- (c) what sum is, in his opinion, a fair compensation for the land and damages.

R.S.S. 1978, c.E-15, s.5; 1983-84, c.63, s.4.

Service by publication

6(1) If the opposite party is absent from the district in which the lands lie, or is unknown, an application for service by advertisement may be made to a judge of the court sitting at the judicial centre nearest to which the lands lie.

(2) The application shall be accompanied by the certificate mentioned in section 5, and by an affidavit of the applicant or his agent that the opposite party is so absent or that, after diligent inquiry, the person on whom the notice ought to be served cannot be ascertained.

(3) The judge shall order a notice, but without such certificate, to be inserted three times in the course of one month in a newspaper published at the judicial centre nearest to which the land is situated or, if there is no newspaper published at that judicial centre, in the newspaper published nearest to the land and in such other newspaper, if any, as he deems proper.

R.S.S. 1978, c.E-15, s.6; 1979-80, c.92, s.28.

Power to abandon notice or vary description of lands

7(1) Where the notice given improperly describes the lands intended to be taken, or where the applicant decides not to take the lands mentioned in the notice, he may abandon the notice and all proceedings thereunder, but shall be liable to the person notified for all damages suffered and costs incurred by him in consequence of the notice and abandonment, and such damages shall be fixed and such costs taxed by the judge, or as he directs.

(2) The applicant after payment of the damages and costs, if any, may, notwithstanding the abandonment of any former notice, give to the same or any other person notice for other lands or for lands otherwise described.

(3) Where the amount of compensation payable under the notice has been referred to arbitration, the applicant may, in lieu of abandoning the notice pursuant to subsection (1), give to the opposite party and to the arbitrator a notice varying the description of the lands to be taken or the powers intended to be exercised by the applicant, which subsequent notice shall also contain:

(a) a declaration of readiness to pay a certain sum or rent, as the case may be, as compensation for such lands or as damages for such powers, and damages suffered and costs incurred by the opposite party in consequence of the former notice;

(b) a notification that if, within eight days after the service of the notice, the party to whom it is addressed does not give notice to the applicant that he accepts the sum offered, the arbitrator may proceed to fix the compensation for the lands or powers described in the subsequent notice.

(4) Where the arbitration proceeds pursuant to the subsequent notice, all evidence taken and proceedings had under the former notice shall, insofar as applicable, be used in the arbitration upon the subsequent notice and the proceedings on both notices shall be deemed one arbitration; but the applicant shall be liable to pay all damages suffered and costs incurred by the opposite party by reason of the applicant having failed to demand by the original notice the lands or powers as described in the subsequent notice.

R.S.S. 1978, c.E-15, s.7.

ARBITRATION

Application and notice

8(1) If within ten days after the service of such notice, or, where service is made by advertisement, within one month after the first publication thereof, the opposite party does not give notice to the applicant that he accepts the sum offered, either party may apply to a judge of the court sitting at the judicial centre nearest to which the lands lie to determine the compensation to be paid.

(2) Ten days' notice of the application shall be given by the applicant to the opposite party, or *vice versa*.

(3) If the opposite party is absent from the district in which the lands lie, or is unknown, service of the ten days' notice may be made by advertisement. The judge may dispense with, shorten or lengthen the time for the publication of the notice in any case in which he thinks it proper.

R.S.S. 1978, c.E-15, s.8; 1979-80, c.92, s.28.

Arbitrator

9(1) The judge shall, upon the application being made, become the arbitrator for determining the compensation; provided that where he is personally interested in the land or in the amount of the compensation or damages in question, or where for any other reason it is necessary, either party may on six days' notice to the opposite party, apply to a judge of the court sitting at the judicial centre next nearest to the land, and such judge shall then become the arbitrator.

(2) The arbitrator shall proceed to ascertain the compensation in such way as he deems best, and, subject to section 20, his award shall be final and conclusive.

R.S.S. 1978, c.E-15, s.9; 1979-80, c.92, s.28.

METHOD OF DETERMINING COMPENSATION

Procedure to be adopted

10(1) The arbitrator, in deciding on such compensation or damages shall take into consideration the increased value, beyond the increased value common to all lands in the locality, that will be given to any lands of the opposite party by reason of the construction and maintenance of authorized works or undertakings, and shall set off the increased value against the inconvenience, loss or damage that might be suffered or sustained by reason of the applicant taking possession of or using the said lands.

(2) The date with reference to which compensation or damages shall be ascertained shall be the date on which notice of readiness to pay compensation is given; provided that if the applicant does not actually acquire title to the lands within one year from the said date, then the date of such acquisition shall be the date with reference to which compensation or damages shall be ascertained.

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(3) The arbitrator may include in the award an allowance for interest on the compensation or damages from the date on which notice of readiness to pay compensation is given or for such shorter time as he deems proper.

R.S.S. 1978, c.E-15, s.10.

Applicant may offer easement, etc.

11(1) In mitigation of any injury or damage caused or likely to be caused to any lands by the exercise of the applicant's powers, the applicant may, by notice of expropriation or by subsequent notice filed with the arbitrator, and served upon the opposite party, prior to the close of the hearing before the arbitrator, undertake to abandon or grant to the owner of the above mentioned lands or the party interested therein any portion of the applicant's lands, or the lands being taken, or any easement, servitude or privilege over or in respect of the same, or to construct and maintain any work for the benefit of such owner or person interested.

(2) If the owner or person interested, by writing filed with the arbitrator, consents to accept what is so undertaken, or if the arbitrator approves thereof in the award, the undertaking shall be binding upon the applicant, and the compensation or damages shall be fixed in view thereof, and in the case of breach of the undertaking damages may be recovered for such breach in any court of competent jurisdiction.

R.S.S. 1978, c.E-15, s.11.

COSTS OF ARBITRATION

Costs, how disposed of

12(1) The costs of arbitration shall be in the discretion of the arbitrator and shall be paid by the party against whom he allows the costs, and the arbitrator shall state in his award whether the whole or any part of the costs are allowed and by whom the same are to be paid.

(2) The amount of the costs, if not agreed upon, may be taxed by the proper taxing officer of the court at the judicial centre nearest to which the lands lie, and an appeal may be taken as in the case of the costs of an action.

(3) The arbitrator shall not be entitled to any fee or reward for his services as arbitrator, but shall be paid, as part of the costs of the arbitration, all his actual, necessary and reasonable travelling and other expenses incurred in or in connection with the arbitration.

R.S.S. 1978, c.E-15, s.12; 1979-80, c.92, s.28.

PROCEEDINGS OF ARBITRATOR

Examination by arbitrator

13 The arbitrator shall examine on oath or solemn affirmation such witnesses as appear before him, but no more than three expert or opinion witnesses shall be called in behalf of any party; provided that the arbitrator may by consent of the parties decide the matter upon view or inspection of the property without examining witnesses, but any party or his representative may in such case be permitted to point out and explain such things as seem material to the case.

R.S.S. 1978, c.E-15, s.13.

Powers of arbitrator

14(1) The arbitrator may:

- (a) enter upon and inspect any land, place, building, works or other thing, being the property of or under the control of the applicant or the opposite party, the entry or inspection of which appears to him requisite;
 - (b) require the production of all books, papers, plans, specifications, drawings and documents relating to the matter before him; and
 - (c) administer oaths, affirmations or declarations.
- (2) The arbitrator shall have the like power in summoning witnesses and enforcing their attendance and compelling them to give evidence and produce books, papers or things that they are required to produce as is vested in any court in civil case.
- (3) The persons attending and giving evidence shall be entitled to the like fees and allowances as if summoned to attend before a court.

R.S.S. 1978, c.E-15, s.14; 1983, c.66, s.8.

Notes evidence

- 15(1)** The arbitrator shall take down in writing the evidence brought before him, unless either party requires that it be taken by a stenographer; in which case a stenographer shall be named by the arbitrator, unless the parties agree upon one.
- (2) The stenographer shall be sworn before the arbitrator before entering upon his duties.
- (3) The expense of the stenographer, if not arranged by agreement between the parties, shall form part of the costs of the arbitration.

R.S.S. 1978, c.E-15, s.15.

Notice of award

16(1) After making the award, the arbitrator shall forthwith notify the parties that the award has been made, and shall forthwith deliver or transmit by registered mail the award and the depositions, exhibits and all other papers connected with the arbitration to the local clerk of the court, to be filed with the records of the court.

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(2) The notice of the making of the award may be given by registered letter addressed to the parties at their usual or last known post office addresses, or addressed in care of their representatives, if any, who appeared for them in the arbitration proceedings.

R.S.S. 1978, c.E-15, s.16.

PREVENTING DELAY

Arbitrator to proceed speedily

17 After the making of the application constituting him arbitrator, the arbitrator shall proceed with and complete the arbitration and award as speedily as possible, having regard to the interests of the parties, and he may give any directions respecting the proceedings that he deems proper to prevent delay.

R.S.S. 1978, c.E-15, s.17.

Death or inability of arbitrator

18(1) If the arbitrator dies before the award is made or is incapacitated or disqualified to act, either party may, on six days' notice to the opposite party, apply to any other judge of the court sitting at the judicial centre nearest to which the lands are situated, and that judge shall be arbitrator in the place of the arbitrator who died, or became incapacitated or disqualified.

(2) The proceedings shall not in any such case require to be recommenced or repeated.

(3) The cost of applications and proceedings under this section shall form part of the costs of the arbitration proceedings.

R.S.S. 1978, c.E-15, s.18; 1979-80, c.92, s.28.

IMPEACHING AWARD

Award not invalidated by want of form

19(1) No award shall be invalidated by reason of any want of form or other technical objection if the requirements of this Act have been substantially complied with and if the award states clearly the sum awarded and the lands or other property, right or privilege for which such sum is to be the compensation.

(2) The person to whom the sum is to be paid need not be named in the award.

R.S.S. 1978, c.E-15, s.19.

APPEAL FROM AWARD

Proceedings on appeal

20(1) Within one month after receiving from the arbitrator or from the opposite party a written notice of the making of the award, the applicant may, where the award exceeds \$600, and any other party may, where such party in his notice of appeal claims more than \$600 or objects to some easement or other thing approved by the arbitrator without his consent as hereinbefore provided, appeal from the award upon any question of law or fact, or upon any other ground of objection, to the Court of Appeal.

(2) Where the award is less than \$600 the applicant or the opposite party may, within the time limited by this section, appeal from the award upon any question of law or upon any question of mistake appearing on the face of the proceedings, to the Court of Appeal, and upon the hearing of the appeal that court shall decide any question of fact upon the evidence taken before the arbitrator as in the case of original jurisdiction.

(3) The court may, where, from any other evidence it deems proper to admit, it is clearly satisfied that injustice has been done, set aside the award or remit it to the arbitrator for reconsideration with such directions as it deems proper.

(4) Upon such appeal the practice and proceeding shall be, as nearly as may be, the same as upon an appeal from a decision of the court to the Court of Appeal, subject to any general rules or orders from time to time made by the Court of Appeal.

(5) The decision of that court shall not, except where the amount awarded by or claimed in the appeal from such decision exceeds \$5,000, be subject to further appeal, and except as herein provided there shall be no appeal from or proceedings had to impeach or set aside any award made under this Act.

R.S.S. 1978, c.E-15, s.20; 1979-80, c.92, s.28.

PAYMENT OF MONEY INTO COURT, ETC.

Powers of applicant

21(1) If:

- (a) the applicant has reason to fear any claim, mortgage or encumbrance ;
- (b) a person to whom the compensation or annual rent, or any part thereof, is payable, refuses to execute a proper transfer;
- (c) the person entitled to claim the compensation or annual rent cannot be found, or is unknown to the applicant; or
- (d) for any other reason, the applicant deems it advisable;

the applicant may pay the compensation into court, with interest thereon for six months, and may deliver to the local registrar of the Court of Queen's Bench a true copy of the transfer, or of the award or agreement, if there is no transfer.

(2) Such transfer, or award or agreement, shall thereafter be deemed to be the title of the applicant to the land therein mentioned.

R.S.S. 1978, c.E-15, s.21; 1979-80, c.92, s.28.

Notice of payment

22(1) A notice of the payment and delivery, in such form and for such time as the court appoints, shall be inserted in a newspaper published at the judicial centre nearest to which the lands are situated, or, if there is no newspaper published at that judicial centre, then in *The Saskatchewan Gazette*, and also in the newspaper published nearest to the lands.

(2) Such notice shall state that the transfer, agreement or award constituting the title of the applicant is obtained under the authority of this Act, and shall call upon all persons claiming an interest in or entitled to the lands, or any part thereof, to file their claims to the compensation, or any part thereof.

R.S.S. 1978, c.E-15, s.22.

Compensation takes place of lands

23 The compensation for lands taken without the consent of the owner shall stand in the stead of the lands; and any claim to or encumbrance upon the lands, or any portion thereof, shall, as against the applicant, be converted into a claim to the compensation, or to a like proportion thereof; and the applicant shall be responsible accordingly, whenever he or it has paid compensation to a person not entitled to receive it, but shall have recourse against that person; but nothing herein shall prejudice any owner's right to a lien for unpaid purchase money unless such compensation is actually paid to the owner or paid into court pursuant to this Act.

R.S.S. 1978, c.E-15, s.23.

Adjudication of claims

24(1) All such claims shall be received and adjudicated upon by the court, and the adjudication thereon shall forever bar all claims to the land, or any part thereof, including any rights under *The Homesteads Act* or *The Homesteads Act, 1989*, or under any mortgage or encumbrance.

(2) The court shall make such order for the distribution, payment or investment of the compensation and for the security of the rights of all persons interested, as to right and justice and to law appertains.

(3) If the order for distribution, payment or investment is obtained within less than six months from the payment of the compensation into court, the court shall direct a proportionate part of the interest to be returned to the applicant.

(4) If from any error, fault or neglect of the applicant, such order is not obtained until after six months have expired, the court shall order the applicant to pay into court, as part of the compensation, the interest for such further period as is right.

(5) The costs of the proceedings, in whole or in part, including the proper allowances to witnesses, shall be paid by the applicant, or by any other person, as the court orders.

R.S.S. 1978, c.E-15, s.24; 1989-90, c.20, s.3.

RIGHT OF APPLICANT TO TAKE POSSESSION

Upon payment or tender

25 Upon payment or legal tender of the compensation or annual rent awarded or agreed upon to the person entitled to receive it, or upon the payment into court of the amount of such compensation, the award or agreement shall vest in the applicant the power forthwith to take possession of the lands, or to exercise the right, or to do the thing for which the compensation or annual rent has been awarded or agreed upon.

R.S.S. 1978, c.E-15, s.25.

PROCEEDINGS IN CASE OF RESISTANCE

Issue of warrant and execution thereof

26(1) If any resistance or forcible opposition is made by any person to the exercise by the applicant of his rights under section 25, a judge of the court sitting at the judicial centre nearest to which the lands lie shall, upon or without notice to the opposite party, as he deems proper, on proof to his satisfaction of the award or agreement and of payment or tender of the sum awarded or agreed upon, or of payment thereof into court, issue his warrant to the sheriff to put down the resistance or opposition, and to put the applicant in possession.

(2) The sheriff shall, in the execution of the warrant, take with him sufficient assistance for the purpose, and shall put down the resistance or opposition and put the applicant in possession.

R.S.S. 1978, c.E-15, s.26; 1979-80, c.92, s.28.

Warrant for immediate possession

27 A warrant shall also be granted by the judge without the award or agreement, on affidavit to his satisfaction that the immediate possession of the lands, or of the power to do the thing mentioned in the notice, is necessary for the construction or maintenance of some part of the works or undertaking with which the applicant is ready forthwith to proceed.

R.S.S. 1978, c.E-15, s.27.

Procedure on application for warrant

28(1) The judge shall not grant a warrant under section 27 unless:

- (a) ten days' previous notice of the time and place when and where the application therefor is to be made has been served upon the owner of the lands, or the person empowered to convey the lands or interested in the lands sought to be taken or which may suffer damage from the taking or from the exercise of the powers sought to be exercised, or the doing of the thing sought to be done by the applicant; and

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(b) the applicant gives security to his satisfaction, by payment into court of a sum in his estimation sufficient to cover the probable compensation and costs of the arbitration, and not less than fifty per cent above the amount offered by the applicant in the notice mentioned in section 4 or certified by the surveyor under section 5, whichever is larger, or, if the judge deems proper, pays the party in part and gives security for the balance.

(2) Where for any reason service of notice cannot be made, or cannot be made promptly, the judge may, on proof of his satisfaction of circumstances justifying it, order substituted or other service or dispense with the notice.

R.S.S. 1978, c.E-15, s.28; 2016, c28, s.11.

Costs

29 The costs of the application and hearing shall be borne by the applicant in case the compensation awarded is more than the applicant has offered to pay.

R.S.S. 1978, c.E-15, s.29.

Repayment of money paid in

30 No part of the money paid into court or of any interest thereon shall be repaid to the applicant or paid to the owner or party, without an order from the judge, which he may make in accordance with the terms of the award.

R.S.S. 1978, c.E-15, s.30.

VESTING OF TITLE

Execution of transfer of title

31(1) Where the power to take possession of lands becomes vested in an applicant pursuant to this Act, the registered owner or the person having power to execute a transfer of title for the lands shall, on demand by the applicant, execute and deliver a transfer of title to the applicant.

(2) Where the registered owner or the person having power to execute a transfer of title is incapable of doing so or refuses to do so, and the parcel of land being expropriated is shown as a parcel on a plan and has been titled, the applicant shall apply to the Registrar of Titles for a transfer of title.

(3) An application pursuant to subsection (2) must be accompanied by a notice, signed by the minister, that the land is required pursuant to this Act.

(4) On receipt of an application pursuant to subsection (2), the Registrar of Titles shall issue title in the name of the applicant in accordance with *The Land Titles Act, 2000*.

(5) Where the registered owner or the person having power to execute a transfer of title is incapable of doing so or refuses to do so, and the parcel of land being expropriated has been titled but is not shown as a parcel on a plan, the applicant shall submit a plan, approved by the minister, to the Controller of Surveys for approval in accordance with *The Land Surveys Act, 2000*.

(6) After the Controller of Surveys approves the plan submitted pursuant to subsection (5), the applicant shall apply to the Registrar of Titles for issuance of title respecting the new parcel of land.

(7) An application pursuant to subsection (6) must be accompanied by a notice, signed by the minister, that the land is required pursuant to this Act.

(8) On receipt of an application pursuant to subsection (6), the Registrar of Titles shall issue title in the name of the applicant in accordance with *The Land Titles Act, 2000*.

2000, c.L-5.1, s.255.

PROCEDURE

Procedure

32 Any proceeding under this Act relating to the ascertainment or payment of compensation or the delivery of possession of lands taken, or the putting down of resistance to the exercise of powers, shall be continued at the judicial centre at which it was commenced, and where there are different interests in the said lands all shall as far as possible be dealt with in one proceeding.

R.S.S. 1978, c.E-15, s.32; 1979-80, c.92, s.28.