The Expropriation Procedure Act

being

Chapter E-16 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan*, 1979, c.25; 1979-80, c.M-32.01 and 92; 1980-81, c.76; 1983-84, c.6; 1984-85-86, c.45; 1989-90, c.53 and 54; 1993, c.55; 1998, c.P-12.1 and c.P-42.1; 2000, c.L-5.1; 2004, c.L-16.1; and 2014, c.E-13.1 and c.19.

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-16

An Act respecting the Procedure for Expropriating Lands and for Determining Compensation for Expropriated Lands

SHORT TITLE

Short title

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

INTERPRETATION

Interpretation

2 In this Act:

(a) **"board"** means the Public and Private Rights Board continued by section 6;

(b) **"court"** means Her Majesty's Court of Queen's Bench for Saskatchewan;

(c) **Repealed.** 1979-80, c.92, s.29.

(d) **"expropriate"** means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers;

(e) **"expropriating authority"** means the Crown or an association or person empowered to acquire land by expropriation;

(f) **"judge"** means a judge of the court;

(g) **"land"** includes any estate, term, easement, right or interest in, to, over or affecting land;

(g.1) **"local registrar"** means a local registrar of the Court of Queen's Bench;

(h) **"owner"** means a person who has an estate, term, easement, right or interest in, to, over or affecting land;

(i) **"public improvement"** means anything for the purpose of which an authority may expropriate land;

(j) **"registered owner"** means a registered owner as defined in *The Land Titles Act, 2000* unless another person has purchased the land pursuant to an agreement for sale and registered an interest based on the agreement against the title in the Land Titles Registry, in which case it means that other person;

(k) **"serve"** means the person to be served:

(i) personally or by registered letter addressed to him at his last known address;

(ii) where that person is unknown or if his address is unknown, by publication once a week for three weeks in a newspaper having general circulation in the locality in which the land concerned is situated; or

(iii) where that person is deceased, by serving his legal personal representative personally or by registered letter addressed to him at his last known address.

R.S.S. 1978, c.E-16, s.2; 1979-80, c.92, s.29; 1980-81, c.76, s.7; 2000, c.L-5.1, s.257.

APPLICATION OF ACT

Application

3(1) Where a provision of this Act conflicts with the provision of any other Act the provision of this Act governs.

(2) Unless otherwise agreed between the parties, this Act does not apply in a case where an expropriating authority in the exercise of its statutory powers of expropriation acquired title to or possession of land prior to the coming into force of this Act.

(3) This Act does not apply to *The Crown Minerals Act, The Surface Rights Acquisition and Compensation Act* or regulations made under those Acts, or to any expropriation where a city, town, village, rural municipality, municipal district, school board or conseil scolaire is the expropriating authority.

R.S.S. 1978, c.E-16, s.3; 1979-80, c.M-32.01, s.12; 1984-85-86, c.45, s.2; 1989-90, c.53, s.3; 1993, c.55, s.175; 2014, c.19, s.39.

Crown bound

4 The Crown is bound by this Act.

R.S.S. 1978, c.E-16, s.4.

RESTRICTION ON EXPROPRIATION

Duty of expropriating authority to negotiate for purchase of land before expropriating

5(1) Except where land is required only for the purpose of removing therefrom earth, clay, stones, gravel, sand or other material required for a public improvement or where an easement only in land is required, no action, proceeding or step to expropriate the land shall be taken unless the expropriating authority has first made a reasonable endeavour to acquire the land by purchase from the registered owner.

(2) Nothing in subsection (1) relieves an expropriating authority from any condition of entry or obligation imposed before entry that is imposed by any other Act.

(3) Failure to comply with subsection (1) does not render the expropriation invalid but, where, in an action for compensation, the designated judge finds that the expropriating authority has not complied with subsection (1), he may order that the expropriating authority pay to the registered owner mentioned in subsection (1):

(a) any actual costs, expenses and disbursements that he considers proper, in addition to any other costs payable under this Act;

(b) an amount, in addition to any amount ordered to be paid under clause (a), by way of penalty, of not more than ten per cent of the value of the land expropriated.

R.S.S. 1978, c.E-16, s.5; 1979, c.25, s.3.

PUBLIC AND PRIVATE RIGHTS BOARD

Continuation, powers and duties, etc.

6(1) The Public and Private Rights Board consisting of one member to be appointed by the Lieutenant Governor on the recommendation of the Legislative Assembly and who shall perform the duties assigned to the board under this Act, is continued.

(2) The person appointed pursuant to subsection (1) shall be appointed for a term of five years and he shall be entitled to such remuneration as may be determined by the Lieutenant Governor in Council.

(3) The board shall, in January in each year, transmit to the President of the Executive Council a report for the year ending on the thirty-first day of December of the immediately preceding year, showing:

(a) the number of investigations made by the board and the nature of each;

(b) the number of claims negotiated by the board and the nature of each;

(c) particulars of amendments that in the opinion of the board ought to be made to any Act relating to the expropriation of land; and

(d) such other information as the President may require.

(4) The report shall be laid before the Legislative Assembly in accordance with section 13 of *The Executive Government Administration Act*.

(5) The person appointed pursuant to subsection (1) may be removed for cause by the Legislative Assembly and may, when the Assembly is not in session, be suspended for cause by the Lieutenant Governor in Council for a period expiring not later than the day on which the next ensuing session of the Legislative Assembly ends.

(6) Where for any reason the person appointed pursuant to subsection (1) is unable to act or is suspended and the Legislative Assembly is not then in session, the Lieutenant Governor in Council may appoint another person for a term expiring not later than the day on which the next ensuing session of the Legislative Assembly ends.

(7) A person appointed under subsection (6) shall, during his term of office, have the same power, authority and duties as if he had been appointed pursuant to subsection (1).

(8) The board may appoint or employ such professional and technical personnel and officers as may be required for the purposes of this Act and may determine their salaries and other remuneration.

(9) The board may employ such other staff as it requires for the administration of its activities.

(10) For the purposes of giving effect to the employment of employees and determining the duties, powers and conditions of employment and remuneration of persons employed pursuant to this section:

(a) the board is deemed to be a department within the meaning of *The Public Service Act, 1998*; and

(b) the board's employees are deemed to be members of the public service within the meaning of *The Public Service Act, 1998*.

(11) *The Public Service Superannuation Act* applies to persons employed under subsection (9).

(12) A person appointed as the board under this section or an employee of the board is not a compellable witness in any action under this Act.

R.S.S. 1978, c.E-16, s.6; 1998, c.P-42.1, s.42; 2014, c.E-13.1, s.62.

Investigation by board

7(1) Where land is or is to be expropriated for the purpose of a public improvement any owner of the land may apply in writing to the board for a review by the board of the route, situation or design of the public improvement or the proposed public improvement.

(2) Upon receipt by the board of an application under subsection (1) the board may, if it sees fit to do so, give notice of the application to the expropriating authority together with the substance of the complaint and may thereafter conduct an investigation into the complaint.

(3) An investigation under subsection (2) may, in the discretion of the board, be conducted by means of a public hearing or a private inquiry or partly by means of a public hearing and partly by means of a private inquiry and shall, in any case, be conducted in an informal manner.

(4) All proceedings before the board shall be informal.

(5) Upon the request of the board the expropriating authority shall furnish to the board such information and plans respecting the public improvement or the proposed public improvement as the board may require for the purpose of the investigation.

R.S.S. 1978, c.E-16, s.7.

Review by board of compensation offered for expropriated land

8(1) At any time after an offer of compensation is served upon a person pursuant to subsection (2) of section 20, that person may apply in writing to the board for a review of the amount of compensation offered.

(2) Upon receipt by the board of an application under subsection (1) the board may take such action with respect thereto as it deems expedient and may, if it sees fit to do so, make or cause to be made, without cost to the applicant, an appraisal of the land expropriated.

(3) Where the board, after reviewing the matter to which the application relates and taking such action with respect to the matter as it deems expedient, finds that the applicant and the expropriating authority have not agreed upon the amount of compensation to be paid in respect of the expropriated land, the board shall endeavour to arrange a settlement of the matter in dispute.

(4) Subsections (3) and (4) of section 7 apply, *mutatis mutandis*, for the purpose of carrying out the provisions of this section.

R.S.S. 1978, c.E-16, s.8.

ENTRY ON LAND PRIOR TO EXPROPRIATION

Rights, duties and liability of expropriating authority

9(1) Notwithstanding section 11, where an expropriating authority may enter upon any land and survey and take levels of the land, or take such samples and borings and sink such trial pits as the expropriating authority deems necessary for any public improvement, the expropriating authority shall, before entering upon the land, give notice of intention to do so in form A to the occupier of the land by delivering the notice to the occupier personally or posting it in a conspicuous place at the residence of the occupier or sending it to him by mail.

(2) Where for any reason subsection (1) cannot be complied with the expropriating authority shall give the notice mentioned in that subsection to the person assessed in respect of the land by the municipality in which the land is situated or upon the registered owner of the land, and subsection (1) applies *mutatis mutandis* with respect to the manner in which the notice shall be given.

(3) Where in doing any of those things mentioned in subsection (1) an expropriating authority causes damage to land, the expropriating authority is liable for the amount of those damages.

R.S.S. 1978, c.E-16, s.9.

PROCEDURE AND EFFECT OF EXPROPRIATION

Expropriation of land

10(1) Where an expropriating authority desires to expropriate land that is shown as a parcel on a plan and for which title has issued, the expropriating authority shall apply to the Registrar of Titles for registration of a transfer of title.

(2) An application pursuant to subsection (1) must be accompanied by a declaration of expropriation in Form B and signed:

(a) where the expropriating authority is Her Majesty in right of Saskatchewan, by the member of the Executive Council presiding over the department of the Government of Saskatchewan that has charge of the matter with respect to which the land is required, or by an officer of that department authorized in that behalf by the Lieutenant Governor in Council;

(b) where the expropriating authority is a person other than Her Majesty in right of Saskatchewan, by that person; and

(c) where the expropriating authority is an association or corporation, by the duly authorized officers under the seal of the association or corporation.

(3) Notwithstanding any other Act, on registration of the transfer of title mentioned in subsection (1):

(a) the land vests in the expropriating authority; and

(b) the Registrar of Titles shall issue title to the land to the expropriating authority, clear of all registered interests.

(4) Where an expropriating authority desires to expropriate land for which title has issued but that is not shown as a parcel on a plan, the expropriating authority shall submit a plan to the Controller of Surveys for approval in accordance with *The Land Surveys Act, 2000*.

(5) Where the Controller of Surveys approves a plan submitted pursuant to subsection (4):

(a) the land shown on the plan as being expropriated vests in the expropriating authority; and

(b) the expropriating authority shall apply to the Registrar of Titles to have title to the expropriated land issued to it.

(6) An application pursuant to clause (5)(b) must be accompanied by a declaration of expropriation in Form B and signed in accordance with subsection (2).

(7) Notwithstanding any other Act, on registration of the transfer of title mentioned in clause (5)(b), the Registrar of Titles shall issue title to the land to the expropriating authority, clear of all registered interests.

2000, c.L-5.1, s.258.

Land vests in expropriating authority

11(1) Where an expropriating authority is by statute empowered, without title first being vested in the expropriating authority or compensation first determined, to enter on land and to take possession or to dedicate land, the expropriating authority may enter on the land or dedicate the land in the manner prescribed by the statute authorizing the entry or dedication.

(2) Where an expropriating authority enters on land or dedicates land in accordance with subsection (1), the expropriating authority shall apply to the Registrar of Titles to register an interest based on a notice of possession or dedication.

(3) An application pursuant to subsection (2) must be accompanied by a notice of possession or dedication that includes:

(a) a description of the parcel on which the possession or dedication occurred;

(b) a general description of the nature and extent of the interest expropriated; and

(c) an address to which inquiries may be directed.

(4) Where an interest has been registered and possession taken or dedication made pursuant to this section, the expropriating authority shall, within one year of the possession or dedication, expropriate the land in accordance with section 10.

(5) Notwithstanding this Act or any other Act, a registered interest based on an easement created pursuant to *The Public Utilities Easements Act* or pursuant to *The Pipelines Act, 1998* or any former *Pipe Lines Act* with respect to a pipeline does not vest in the expropriating authority unless:

(a) the declaration of expropriation submitted with an application to the Land Titles Registry pursuant to section 10 expressly states that the registered interest based on the easement is expropriated; or

(b) the notice of possession or dedication submitted with an application to the Land Titles Registry pursuant to this section expressly states that the registered interest based on the easement is expropriated.

2000, c.L-5.1, s.258.

Expropriation of land for limited time or of limited estate

12(1) Where an expropriating authority desires to expropriate land for a limited time only or for a limited estate, right or interest, and that land is shown as a parcel on a plan and title has issued for that parcel, the expropriating authority shall apply to the Registrar of Titles for registration of a transfer of title.

(2) An application pursuant to subsection (1) must be accompanied by a declaration of expropriation in Form B:

(a) signed in accordance with subsection 10(2); and

(b) setting out the limited time for which the land is to be taken or the limited estate, right or interest that is to be taken.

(3) Notwithstanding any other Act, on registration of the transfer of title mentioned in subsection (1):

(a) the land vests in the expropriating authority; and

(b) the Registrar of Titles shall issue title to the land to the expropriating authority, clear of all registered interests.

2000, c.L-5.1, s.258.

Special provision respecting expropriation of earth, clay, stones, gravel, etc.

13(1) Where an expropriating authority is empowered to take from any land only earth, clay, stones, gravel, sand or other material required for a public improvement, sections 10, 11 and 12 do not apply and the expropriating authority may at any time enter upon the land and remove and use the earth, clay, stones, gravel, sand or other material that it so requires.

(2) Subject to section 20 which applies *mutatis mutandis* to this section, where an expropriating authority enters upon land under subsection (1) it shall within thirty days after the date of such entry serve notice thereof on the persons required by section 20 to be served after a declaration of expropriation has been submitted to the Land Titles Registry.

R.S.S. 1978, c.E-16, s.13; 2000, c.L-5.1, s.259.

Correction of declaration of expropriation

14(1) Where there is an omission, mis-statement or error in a declaration of expropriation submitted pursuant to section 10 or 12, the expropriating authority may submit a new declaration to the Land Titles Registry to replace or amend the original declaration.

(2) A new declaration submitted pursuant to subsection (1) is deemed to replace the original declaration and has effect as if it had been submitted at the time the original declaration was submitted.

(3) Where an amending declaration is submitted pursuant to subsection (1), the original declaration has effect as if it had been submitted in its amended form.

2000, c.L-5.1, s.260.

Evidence of declaration of expropriation

15 Where a declaration of expropriation purports to have been signed by an expropriating authority, a copy thereof, certified by the Registrar of Titles, is *prima facie* evidence of the original and of the due execution thereof by the expropriating authority without proof of the signature or official character of the person or persons by whom it purports to have been signed.

R.S.S. 1978, c.E-16, s.15; 2000, c.L-5.1, s.261.

MINES AND MINERALS

16 Repealed. 2000, c.L-5.1, s.262.

Expropriation of mines and minerals

17 Where an expropriating authority empowered to expropriate mines and minerals desires to expropriate any or all mines and minerals, it shall do so in accordance with section 10.

2000, c.L-5.1, s.263.

18 Repealed. 2000, c.L-5.1, s.264.

Order of judge vesting mines and minerals in expropriating authority in certain cases

19(1) At any time within two years after an expropriating authority has, pursuant to section 20, served a notice of compulsory acquisition, the expropriating authority or the owner of the mines and minerals within, upon or under the land expropriated may apply to a judge of the Court of Queen's Bench for an order vesting the mines and minerals, or a specified interest therein, in the expropriating authority; and upon such an application the judge may, if satisfied that the use by the expropriating authority of the expropriated land interferes substantially with the rights of the owner of the mines and minerals, make an order vesting the mines and minerals, or such part thereof or interest therein as he deems just, in the expropriating authority subject to the payment by the expropriating authority of compensation for the mines and minerals or any interest in the mines or minerals so vested.

(2) Where the expropriating authority and the person entitled to payment of compensation are unable to agree as to the amount of compensation under subsection (1), the provisions of this Act apply *mutatis mutandis* for the purpose of determining the amount of the compensation.

R.S.S. 1978, c.E-16, s.19.

COMPENSATION

Notice of expropriation

20(1) After applying to the Registrar of Titles pursuant to section 10, 11 or 12, the expropriating authority shall serve:

(a) on the registered owner of the land expropriated a notice of compulsory acquisition in Form C setting out:

(i) a description of the land;

(ii) the interest in the land;

(iii) the purpose for which the land or interest is required;

(iv) the day on which possession was taken or is required;

(v) the address to which claims may be forwarded; and

(vi) the time within which an action for compensation must be commenced; and

(b) on each person who appears by the records of the Land Titles Registry to have, or who is known to the expropriating authority to have, an interest in the land, a copy of the notice served on the registered owner pursuant to clause (a).

(2) The expropriating authority shall, not later than four months after the date of possession, dedication or vesting of land, whichever occurs first, or within four months of entry upon the land for removing earth, clay, stones, gravel, sand or other material, serve upon the persons mentioned in clauses (a) and (b) of subsection (1) a copy of the offer in writing stating the amount of compensation offered for all interests in the land.

R.S.S. 1978, c.E-16, s.20; 2000, c.L-5.1, s.265.

Expropriation of easement

21 Notwithstanding anything in this Act, where the expropriating authority is the Crown in right of the province or an agent of the Crown and desires to acquire by expropriation an easement only with regard to the land, the expropriating authority may enter upon and use the land and thereupon the provisions of subsections 11(1), (2) and (3) and section 20 apply *mutatis mutandis* to this section.

R.S.S. 1978, c.E-16, s.21; 2000, c.L-5.1 s.266.

Duty of expropriating authority to furnish evaluation report respecting expropriated land

22(1) An owner of land may, at any time after the service of an offer of compensation under section 20, by notice in writing served on the expropriating authority require the expropriating authority to furnish him with an evaluation report respecting the land.

(2) The expropriating authority shall forthwith after the service of a notice under subsection (1) furnish the owner with the evaluation report showing all the facts taken into account by the expropriating authority in arriving at the amount of compensation offered and, without limiting the generality of the foregoing, the report shall also show:

(a) the value assigned by the expropriating authority to the land or interest taken by expropriation exclusive of the improvements or things grown thereon;

(b) the value assigned by the expropriating authority to the improvements or things grown on the land expropriated;

(c) the estimated amount of the damage to the remaining property of the owner; and

(d) the estimated expense of any moving necessitated by the expropriation.

(3) Where in an action for compensation under this Act the designated judge before whom the action is tried finds that the expropriating authority failed to comply with subsection (2) or that the evaluation report furnished was inadequate for the purpose contemplated by subsection (2) he may, notwithstanding section 43, order the expropriating authority to pay the costs of the action.

R.S.S. 1978, c.E-16, s.22.

Tender where compensation not accepted and payment into and out of court

23(1) The expropriating authority may tender by cheque or otherwise the amount offered as compensation to the owner and may, if the tender is not accepted, pay the amount into court at the judicial centre nearest to the land to which the notice under section 20 relates.

(2) Where money is paid into court under subsection (1) the owner may apply to a judge acting at the judicial centre mentioned in subsection (1) for payment out of the sum paid into court and upon such an application the judge may make such order as he deems just.

R.S.S. 1978, c.E-16, s.23.

Acceptance of amount tendered or paid into court not bar to action for balance claimed

24 Acceptance by the owner of the amount tendered or paid into court under section 23 does not bar an action by him for the amount of the difference between the amount claimed by him as compensation and the amount accepted.

R.S.S. 1978, c.E-16, s.24.

Procedure respecting tender where whereabouts of owner unknown

25 Where, after exercising all reasonable efforts to find the owner, an expropriating authority is unable to locate him, the authority may proceed as if it had tendered payment of the amount offered as compensation and the offer was refused by the owner; and in such a case sections 23 and 24 apply *mutatis mutandis.*

R.S.S. 1978, c.E-16, s.25.

Judgment where amount of compensation paid exceeds amount awarded

26 Where an action for compensation is commenced and the expropriating authority, whether before or after the action is commenced:

(a) pays an amount as compensation into court pursuant to subsection (1) of section 23; or

(b) pays an amount as compensation to the owner that the owner accepts subject to section 24;

and the amount so paid exceeds the amount of compensation awarded in the action for compensation, the expropriating authority is entitled to a judgment against the owner in the amount by which the amount paid under clause (a) or (b), as the case may be, exceeds the amount awarded in the action as compensation.

R.S.S. 1978, c.E-16, s.26.

ACTIONS FOR COMPENSATION

Limitation of time for bringing action for compensation

27(1) For the purpose of applying *The Limitations Act* to an action for compensation, the day on which the act or omission on which the claim is based takes place is the day on which notice of compulsory acquisition is served on the registered owner.

(2) A judge sitting at the judicial centre nearest to the land may upon application, having regard to all the circumstances of the case, enlarge the time limited by subsection (1) for bringing an action.

R.S.S. 1978, c.E-16, s.27; 1979-80, c.92, s.29; 2004, c.L-16.1, s.49.

Presumption respecting sum offered if no action brought

28 Subject to subsection 27(2), if no action for compensation is brought within the limitation period established by *The Limitations Act*, the sum offered pursuant to subsection 20(2) is deemed to have been accepted.

2004, c.L-16.1, s.49.

Actions at judicial centre nearest to land

29 Every action for compensation is to be brought at the judicial centre nearest to which the land is situated.

1979-80, c.92, s.29.

30 Repealed. 1979-80, c.92, s.29.

31 Repealed. 1979-80, c.92, s.29.

Uniting of two or more claims in one action

32 There may be united in an action for compensation the claims of two or more owners relating to the same expropriation.

R.S.S. 1978, c.E-16, s.32.

Joinder of claimant as party to action

33 Where a claim of an owner that might, under section 32, have been united in an action for compensation is not so united, that owner may, at any time before the trial of the action, serve on each of the parties to the action a statement setting out the particulars of his claim in the manner required by subsection (3) of section 35 and file a copy of the statement in the office of the local registrar at the judicial centre at which the action is pending; and thereupon he shall be deemed to be joined as a party to the action.

R.S.S. 1978, c.E-16, s.33; 1979-80, c.92, s.29.

Order for separate trials

34 Notwithstanding sections 32 and 33, where two or more claims are united in an action a judge may at any time order that the claims be tried separately.

1979-80, c.92, s.29.

Commencement of action to determine compensation

35(1) An owner may commence an action for the determination of the amount of compensation to be paid by serving on the expropriating authority a statement of claim in accordance with subsection (3) and shall file a copy thereof, with proof of service, in the office of the local registrar acting at the judicial centre nearest to the land to which the action relates.

(2) Within twenty-one days after the service of the statement of claim, or within such further period as may be agreed to by the parties to the action, or as may be allowed by the judge sitting at the judicial centre at which the action is pending, the expropriating authority shall serve on each of the other parties to the action a statement of particulars in accordance with subsection (3) and file a copy of the statement with proof of service in the office of the local registrar acting at the said judicial centre.

(3) There shall be set forth in the statement of claim and in the statement of particulars the material facts on which the party intends to rely at the trial of the action with respect to the following matters where applicable:

(a) the best use that can be made of the expropriated land;

(b) any zoning laws applicable to the expropriated land;

(c) designation of land that may be claimed to be comparable to the expropriated land the sale of which could form a basis for an opinion of the value of the expropriated land;

(d) damage caused by the severance of the expropriated land from the other land;

(e) the cost of replacing the land, less depreciation, and the rate of depreciation where depreciation is considered as a factor in fixing the cost of replacement;

(f) capitalization of income attributable to the expropriated land where such income is considered as a factor in valuing the expropriated land;

(g) the fair market value of the parcel of land from which the expropriation was made, both before and after expropriation;

(h) the sum or each of the several sums claimed by the owner as damages.

R.S.S. 1978, c.E-16, s.35; 1979-80, c.92, s.29.

Notice that action ready for trial

36 A party to the action may at any time after the statement of particulars is filed or after the expiration of the time allowed for filing the statement of particulars, file in the office of the local registrar a notice that the action is ready for trial.

R.S.S. 1978, c.E-16, s.36; 1979-80, c.92, s.29.

Notice of trial

37 Upon the filing of a notice under section 36 the local registrar shall transmit all the records, papers and documents in his office relating to the action to the judge sitting at the judicial centre at which the action is pending, and the judge shall thereupon cause each of the parties to the action to be given such notice as he deems sufficient of the time and place of the trial of the action.

R.S.S. 1978, c.E-16, s.37; 1979-80, c.92, s.29.

Application of rules of court

38 Except where inconsistent with any of the provisions of this Act or where special provision is made by this Act, the practice and procedure prescribed by the applicable rules of court shall apply with respect to an action brought under this Act.

R.S.S. 1978, c.E-16, s.38.

Transfer of action

39 Notwithstanding anything in this Act, the parties may at any time before the matter is set down for trial, or with the approval of the court at any other time, agree in writing that the action shall be transferred to some other judicial centre; and the local registrar shall, upon the filing of the agreement to change the venue, forward all papers and proceedings in the action to the judicial centre named and thereupon reference in this Act to the court nearest to which the land is situated shall be deemed to be reference to the judicial centre agreed upon between the parties.

R.S.S. 1978, c.E-16, s.39; 1979-80, c.92, s.29.

Power of judge to allow interest

40(1) The judge trying an action for compensation may allow interest on all or a specified portion of the compensation allowed at the rate of six per cent per annum from a date fixed by him.

(2) Where the judge is of opinion that any delay in determining the compensation is attributable in whole or in part to a person claiming compensation, the judge may refuse to allow that person interest for the whole or a specified part of the time in respect of which he might otherwise be entitled to interest or the judge may allow interest at such rate less than six per cent per annum as he deems reasonable.

R.S.S. 1978, c.E-16, s.40; 1979-80, c.92, s.29.

Procedure where division of compensation not agreed upon

41 Where the persons interested or appearing to be interested in the compensation awarded or accepted under this Act fail to agree as to the disposition of the compensation among themselves, the expropriating authority shall pay the amount of the compensation into court at the judicial centre at which the action was tried or, if no action was tried, nearest to the land affected and, upon the application of any of those persons, the judge sitting at the judicial centre at which the money was paid into court shall determine to whom the compensation or any portion of it shall be paid and shall order and direct payment of the compensation in accordance with that determination.

1979, c.25, s.4; 1979-80, c.92, s.29.

Compensation to stand instead of land, etc.

42 The right to compensation and the compensation agreed upon or awarded in respect of any land acquired or taken by an expropriating authority in the exercise of its statutory powers of expropriation shall stand in the stead of the land; and any claim to or charge or encumbrance upon the land shall be deemed to be converted into a claim for the amount of compensation or to a proportionate part thereof.

R.S.S. 1978, c.E-16, s.42.

Costs of action

43 Where the amount of the compensation awarded in an action under this Act does not exceed the amount offered by the expropriating authority the costs of the action shall be in the discretion of the judge trying the action; but where the amount of the compensation awarded exceeds the amount offered, the costs of the action shall be paid by the expropriating authority.

R.S.S. 1978, c.E-16, s.43; 1979-80, c.92, s.29.

Appeal from judgment or order

44(1) An appeal lies to the Court of Appeal from any judgment or order in an action under this Act.

(2) Where an expropriating authority appeals from a judgment for $5,000 or less the owner's costs in respect of the appeal shall be paid by the expropriating authority.

R.S.S. 1978, c.E-16, s.44.

Appointment of representative where owner unknown or under disability, etc.

45 Where an owner of land is unknown, is under a disability or for any other reason is not represented, a judge may appoint a person to represent that owner for any of the purposes of this Act; and any act of a person so appointed is binding on the person he represents.

R.S.S. 1978, c.E-16, s.45.

Procedure where compensation awarded to certain unrepresented persons

46(1) Where a judge awards compensation to a person under disability who is not represented or to a person who is absent or unknown or whose whereabouts are unknown, the judge shall order the expropriating authority to pay into court the amount awarded to that person.

(2) Money paid into court pursuant to an order under subsection (1) shall be dealt with in accordance with an order made by a judge upon an application by a person claiming to have an interest in the money.

R.S.S. 1978, c.E-16, s.46; 1979-80, c.92, s.29; 1982-83, c.16, s.18.

MISCELLANEOUS

Suppression of resistance to expropriating authority

47(1) Where any person resists, opposes or obstructs or threatens to resist, oppose or obstruct an expropriating authority or any person authorized to act for the expropriating authority in the exercise of any of the rights of the expropriating authority in respect of the expropriated land, the expropriating authority may apply *ex parte* to a judge for a warrant directing a sheriff to put down the resistance, opposition or obstruction and to take such steps as may be necessary to enable the expropriating authority to exercise its rights; and upon such an application the judge shall, if satisfied that the expropriating authority is entitled to the rights sought to be exercised, issue the warrant.

(2) The sheriff shall take with him sufficient assistance for the purpose of executing the warrant and shall put down the resistance, opposition or obstruction, as the case may be, and take such steps as may be necessary to enable the expropriating authority to exercise its rights, and shall forthwith make a return to the court of the warrant and of the action taken pursuant to the warrant.

R.S.S. 1978, c.E-16, s.47.

Abandonment of expropriated land

48(1) In this section, **"former owner"** means the owner from whom the land was expropriated and those entitled to claim under him or her.

(1.1) Where, at any time before the trial of an action for compensation, the land to which the action relates is no longer required for the purposes of the expropriating authority, and where that land is shown as a parcel on a plan and title has issued for that parcel, the expropriating authority may:

(a) apply to the Registrar of Titles to transfer title in favour of the former owner; and

(b) serve a notice on the former owner declaring that the land is not required and is abandoned by the expropriating authority.

(1.2) Where, at any time before the trial of an action for compensation, a portion of the land to which the action relates is no longer required for the purposes of the expropriating authority, and where title has issued for that land but the land is not shown as a parcel on a plan, the expropriating authority may:

(a) submit a plan to the Controller of Surveys for approval in accordance with *The Land Surveys Act, 2000*;

(b) after the plan has been approved by the Controller of Surveys, apply to the Registrar of Titles to have title issue in favour of the former owner respecting the new parcel of land; and

(c) serve a notice on the former owner declaring that the portion of land is not required and is abandoned by the expropriating authority.

(1.3) Where, at any time before the trial of an action for compensation, it is found that an interest only is required in the parcel of land to which the action relates, and where that land is shown as a parcel on a plan and title has issued for that parcel, the expropriating authority may:

(a) apply to the Registrar of Titles to transfer title in favour of the former owner;

(b) expropriate the interest in accordance with section 21; and

(c) serve a notice on the former owner advising that the expropriating authority only requires the interest that is mentioned in the notice.

(2) Where part only of the land or all of it except a limited estate or interest therein is abandoned, the fact of such abandonment and the damage, if any, resulting from the abandonment and expropriation and all other circumstances of the case shall be taken into account in determining the compensation for the part or the limited estate or interest that is not abandoned.

(3) Where the whole of the land is abandoned, the owner from whom it was expropriated is entitled to compensation for all damages sustained and all costs incurred by him as a result of the expropriation and abandonment, and the amount of compensation, if not agreed upon by the parties, shall be determined pursuant to this Act.

R.S.S. 1978, c.E-16, s.48; 2000, c.L-5.1, s.267.

Compensation by expropriating authority

49(1) An expropriating authority shall make due compensation to the owner of land expropriated by the expropriating authority in the exercise of its statutory powers beyond any special advantage that the owner may derive from any public improvement for which the land was expropriated.

(1.1) Subject to subsection (1), in an action for compensation the judge, in determining the value of the land expropriated, shall not take into account:

(a) any anticipated or actual use by the expropriating authority of the land expropriated at any time after expropriation; or

(b) any increase or decrease in the value of the land expropriated resulting from the anticipation of expropriation by the expropriating authority or from any knowledge or expectation, prior to the expropriation, of the purpose for which the land was expropriated.

(2) Compensation for land expropriated shall be ascertained as of the day on which the expropriating authority takes possession of the land or dedicates the land or the day on which the declaration of expropriation respecting the land is submitted to the Land Titles Registry pursuant to section 10 or 12, whichever is the earliest.

(3) Where land is expropriated under subsection (1) of section 48 of *The Wascana Centre Act,* no compensation shall be made or allowed for any improvement, as defined in that Act, that was made to the land after the thirty-first day of March, 1962, without the written approval of the Wascana Centre Authority.

(4) The expropriating authority may, before the compensation is agreed upon or determined, undertake to make alterations or additions or to construct any additional thing or to abandon part of the land expropriated or to grant other lands or rights or privileges, in which case any such undertaking shall be taken into account in determining the compensation; and where the undertaking has not already been carried out, the judge trying an action for compensation shall order that the owner is entitled to have such alterations or additions made or such additional thing constructed or such part of the land abandoned or such grant made to him in addition to the amount of compensation, if any, payable to him.

R.S.S. 1978, c.E-16, s.49; 1979, c.25, s.5; 1979-80, c.92, s.29.

Service of documents

49.1(1) Any person required by this Act to serve a document may serve it either personally or by mailing it by registered mail, postage prepaid, to the person to be served at his last known address.

(2) A document served by registered mail pursuant to subsection (1) is deemed to have been served three days after the day of its mailing.

1979, c.25, s.6.

Cost of administering Act

50 The cost of administering this Act shall be paid out of moneys appropriated by the Legislature for the purpose.

R.S.S. 1978, c.E-16, s.50.

Alteration and additions to forms

51 The Lieutenant Governor in Council may by regulation add to or vary any of the forms in this Act or may cause to be adopted any other form that he considers applicable to any special case or class of cases for which a form has not been provided.

R.S.S. 1978, c.E-16, s.51; 1989, c.54, s.7.

SCHEDULE

FORM A
[*Section 9(1)*]

NOTICE OF INTENTION TO ENTER UPON LAND

_____
(*date*)

To: _____
(*name of occupier, assessed owner or registered owner*)

Take notice that _____
(*name of expropriating authority*)

represented by _____
(*names of servants or agents*)

intends to enter upon _____
(*legal description of land*)

on or about _____ for the
(*state anticipated date of entry*)

purpose of _____
(*state purpose of entry*)

relative to _____
(*state public improvement*)

and that the estimated period required for effecting the said purpose is _____
(*state estimated period*)

A claim in respect of any damage caused by the entry may be made against

_____
(*name and address of expropriating authority*)

_____

_____
(*Signature of expropriating authority or person acting for expropriating authority. If signed by a person acting for expropriating authority, indicate capacity*).

Excerpts from *The Expropriation Procedure Act*:

(*Here set forth copies of subsections (1) of section 5, subsection (1) of section 6, all of section 7 and subsection (1) of section 9 of The Expropriation Procedure Act*).

R.S.S. 1978, c.E-16, Form A.

FORM B
[*Section 10(1)*]

DECLARATION OF EXPROPRIATION

_____
(*date*)

To the Registrar of Titles:

_____
(*Name and address of expropriating authority*)

hereby declares that _____
(*describe the nature of the interest or right that is being expropriated, e.g., easement, estate in fee simple or other interest or right, and set out the legal description of the land*)

excluding mines and minerals, is expropriated.
(*If mines and minerals are expropriated, or if any estate or interest in mines and minerals is expropriated, alter this form in such manner as may be necessary*).

(*If the expropriation is for a limited period, add the following*):

The expropriation is for a period ending on the ___ day of _____, 19 __ .

(*If the expropriation is in respect of an easement, add the following*):

The privileges and conditions of the easement and a description of the facilities are as follows:

(a) (*Indicate type and maximum number of above-ground structures to be affixed to land, e.g., poles, "H" frames, etc.*);

(b) (*Indicate underground facilities giving type, depth and size of each*).

The easement consists of the right of the expropriating authority, its employees, agents, licensees, successors and assigns to place, construct, inspect, maintain and replace the facilities on or under the land, to remove them therefrom and to enter upon and break up the land and to cut down or trim trees to the extent necessary for those purposes, subject to the following conditions:

(a) The expropriating authority shall exercise its rights with due care and attention with a view to avoiding any unnecessary damage to the land or to trees, crops, buildings or other property situated thereon;

(b) The expropriating authority shall pay to the owner, or other person entitled thereto, reasonable compensation for damage done to any buildings, fences, crops, timber or live stock on the land, arising out of or attributable to the exercise of its rights under the easement;

(c) No person shall, without the consent of the expropriating authority, cause or permit to be excavated, drilled, placed or constructed on or under the land any pit, well, trench, foundation, pavement, fence, building or other structure or installation that would cause or tend to cause damage to or interfere with the facilities, the use thereof or the right of access thereto;

(d) After the installation, repair or abandonment of the facilities the land shall, as far as it is practicable to do so, be restored to its former condition.

_____

(*Signature of expropriating authority*)

R.S.S. 1978, c.E-16, Form B; 2000, c.L-5.1, s.269.

FORM C
[*Section 20(1)*]

NOTICE OF COMPULSORY ACQUISITION

_____
(*date*)

To: _____
(*name of registered owner*)

Take notice that _____
(*name of expropriating authority*)

has submitted a Declaration of Expropriation in the Land Titles Registry expropriating

_____
(*describe the nature of the interest or right that is being expropriated, e.g., easement, estate in fee simple or other interest or right, and set out the legal description of the land*)

excluding mines and minerals.

(*If mines and minerals are expropriated, or if any estate or interest in mines and minerals is expropriated, omit the words "excluding mines and minerals" and describe the mines and minerals or the estate or interest, as the case may be.*)

(*If the expropriation is in respect of an easement, add the following*):

The Expropriation is for a period ending on the ___ day of _____ , 19 __ .

(*If the expropriation is in respect of an easement, add the following*):

The privileges and conditions of the easement and a description of the facilities are as follows:

(a) (*Indicate type and maximum number of above-ground structures to be affixed to land, e.g., poles, "H" frames, etc.*);

(b) (*Indicate underground facilities giving type, depth and size of each.*)

The easement consists of the right of the expropriating authority, its employees, agents, licensees, successors and assigns to place, construct, inspect, maintain and replace the facilities on or under the land, to remove them therefrom and to enter upon and break up the land and to cut down or trim trees to the extent necessary for those purposes, subject to the following conditions:

(a) The expropriating authority shall exercise its rights with due care and attention with a view to avoiding any unnecessary damage to the land or to trees, crops, buildings or other property situated thereon;

(b) The expropriating authority shall pay to the owner, or other person entitled thereto, reasonable compensation for damage done to any buildings, fences, crops, timber or live stock on the land, arising out of or attributable to the exercise of its rights under the easement;

(c) No person shall, without the consent of the expropriating authority, cause or permit to be excavated, drilled, placed or constructed on or under the land any pit, well, trench, foundation, pavement, fence, building or other structure or installation that would cause or tend to cause damage to or interfere with the facilities, the use thereof or the right of access thereto;

(d) After the installation, repair or abandonment of the facilities the land shall, as far as it is practicable to do so, be restored to its former condition.

The land is (*or* the mines and minerals are *or* the estate *or* interest in mines and minerals is) required for the purpose of _____ and possession
(*describe public improvement*)

is required on the _____ day of _____ , 19 _____ .

The time limit within which an action for compensation may be brought is two years after the date of service of this notice or such further time as a judge may upon application allow.

The address of the expropriating authority to which claims may be forwarded is

_____

_____

_____
(*Signature of expropriating authority*)

Excerpts from *The Expropriation Procedure Act*:

(*Here set forth copies of subsection (1) of section 5, subsection (1) of section 6 and all of section 8 of The Expropriation Procedure Act*.)

R.S.S. 1978, c.E-16, Form C; 2000, c.L-5.1, s.270.

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