



## CHAPTER 71

An Act respecting expropriation

[Assented to, the 30th of May, 1940]

**HIS MAJESTY**, with the advice and consent of the  
Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

**1.** The Code of Civil Procedure is amended by inserting therein, after Chapter XLVI thereof, the following chapter: C. C. P., arts. 1066a-1066z, added.

### "CHAPTER XLVIA

#### EXPROPRIATION

##### SECTION I

##### *Application*

**"1066a.** The provisions of this chapter shall apply to all expropriations authorized by the law of the Province and shall prevail over any contrary provisions which may be found therein, save the expropriations provided by the Municipal Code. Application. Exception.

##### SECTION II

##### *Procedure*

**"1066b.** Whenever there be occasion for expropriation, the party seeking same must cause to be served upon the party being expropriated a notice containing: Serving of notice upon adverse party containing:

- Description;**     *a.* a description of the immoveable or of the real right which he wishes to acquire;
- Grounds;**       *b.* a statement of the grounds justifying the expropriation;
- Offer;**           *c.* a declaration of the indemnity which he offers;
- Notification of application to court.**     *d.* a notification to the effect that he will apply to the court for the recognition of the right of expropriation and to fix the indemnity, if his offer be not accepted within ten days from the service of such notice, and an indication of the place where the application will be made.
- Attaching of plan, description and estimate.**     “**1066c.** There must be attached to the notice a plan and a description of the immoveable or real right, signed by a surveyor, as well as an estimate of valuation.
- Service.**        “**1066d.** The notice is served as in the case of a writ of summons. If the immoveable be charged with a usufruct, the service may be made upon the usufructuary and, if there be substitution, upon the institute.
- Return.**        If the offer be not accepted, the notice, after the expiration of the delay, shall be filed in the office of the Superior Court of the district in which the expropriated land is situate in the manner provided for the return of a writ.
- Default.**        The notice so filed shall be introductory of suit. If the party being expropriated does not appear, the party seeking expropriation may proceed by default.
- Contestation.**   “**1066e.** No party being expropriated may file any plea against the notice save to contest the right of expropriation. In the latter case, the issue is joined and the cause is tried and adjudged in the ordinary manner on that sole question.
- Reference to Board.**   “**1066f.** If the notice be uncontested or if the contestation be dismissed, the judge shall, on a mere motion, refer the record to the Provincial Transportation and Communication Board as arbitrator to fix the indemnity.
- Declaration stating amount claimed.**   “**1066g.** Prior to the trial before the Board, the expropriated party shall file a declaration stating the amount which he claims; if he fails so to do, the proceedings shall be *ex parte*.
- Trial before Board.**   The trial before the Board shall be held according to the law and rules of practice of the Board after notice

to the parties. The evidence shall be taken by stenographer, if so required by one of the parties; and, if not, no appeal shall lie.

“**1066h.** If it appear that a construction situated on land which is the object of an expropriation may be moved with advantage to the expropriated party and that such removal would have the effect of reducing the cost of the expropriation, the Board shall adjourn the trial and order the expropriated party to remove the construction to such place and within such delay as it may determine. Moving of construction.

If the expropriated party fail to carry out such order, a judge may authorize the expropriating party to do so. Failure to do so.

After the removal of the construction, the Board shall terminate the trial and fix the indemnity according to the value of the immoveable, the amount of the expenses necessarily incurred by the expropriated party in removing and reinstalling the construction, and the damages suffered by him. Indemnity for moving construction.

“**1066i.** The Board’s decision shall fix the indemnity and adjudge as to costs. It shall be rendered by an ordinance, stating the grounds and containing the details of the indemnity. An authentic copy of the ordinance shall be transmitted, with the record, to the prothonotary. Fixing of indemnity. Adjudging costs.

“**1066j.** Upon a mere petition of one of the parties, the decision shall be homologated by the Superior Court of the district in which the expropriated land is situate or by a judge of that court. Decision homologated.

“**1066k.** The judgment homologating the decision shall be a final judgment of the Superior Court. It shall be subject to appeal to the Court of King’s Bench if the amount in controversy be at least five hundred dollars. Judgment of Superior Court, final. Appeal in certain case.

### SECTION III

#### *Indemnity*

“**1066l.** The indemnity shall be fixed according to the value of the immoveable or real right which is the object of expropriation and the damages occasioned to the expropriated party and resulting directly from the expropriation. How indemnity to be fixed.

Plus value.

When a portion only of an immoveable is expropriated, if the facts motivating the expropriation give an increased value to the remainder of the immoveable, such increased value, to the extent thereof, shall be offset as against the damages suffered by the expropriated party.

#### SECTION IV

##### *Taking Possession After the Judgment*

Ownership  
established  
upon:

**"1066m.** The expropriating party shall become owner of the immoveable or of the real right expropriated, by the registration, in the office of the division wherein the immoveable is situate, of a copy of the final judgment fixing the indemnity and of documentary evidence establishing:

Payment,  
etc., of costs,  
etc.;

*a.* the payment or legal tender, to the party entitled thereto, of the amount of the indemnity, and of the costs, if any; or

Certain  
deposit.

*b.* the deposit of such amount under article 1066r of this Code or under section 58 of the Treasury Department Act (Revised Statutes, 1925, chapter 20).

Writ of pos-  
session.

**"1066n.** In the case of any resistance, the expropriating party, on filing a certificate of such registration, may obtain upon *fiat* a writ of possession.

#### SECTION V

##### *Prior Possession*

Obtaining of  
prior pos-  
session upon  
petition.

**"1066o.** At any time before final judgment, the expropriating party may obtain possession of the immoveable, the expropriation whereof he is prosecuting, on a petition accompanied by affidavit and a notice of at least three days to the expropriated party.

Furnishing of  
security.

**"1066p.** The expropriating party must furnish security for such amount as the judge may determine but which must not be less than double the amount of the offer.

How furnish-  
ed, etc.

Such security shall be furnished as on an appeal and shall guarantee payment of the indemnity and the costs.

## SECTION VI

*Failure to pay the Indemnity*

**"1066q.** The expropriating party cannot, without the consent of the expropriated party, renounce the judgment fixing the indemnity. Consent required to renounce judgment.

If he has not satisfied the judgment within two months, the expropriated party may, upon a petition, obtain the cancellation of the judgment save as to costs, and a condemnation for the damages which may result therefrom. Annulment of judgment upon petition.

Such petition must be served upon the expropriating party with at least three days' notice. Service, etc., of petition.

## SECTION VII

*Confirmation of Title*

**"1066r.** When there are registered real rights in favour of third parties affecting the immoveable expropriated, the expropriating party may deposit the indemnity, with one year's interest, in the office of the court. Depositing of amount in case of certain registered real rights.

The registration of a receipt for such deposit shall free the expropriated immoveable from all real rights encumbering it. Freeing of property expropriated.

The hypothecary and privileged claims shall be conserved upon the amount deposited and according to their respective rank. The claim of the expropriated party shall be assimilated to that of a vendor. Conserving and rank of claims.

**"1066s.** The prothonotary shall, by registered letter, give notice of the deposit to the secretary-treasurer of the municipal and school corporations within the territory whereof the expropriated immoveable is situate, and shall procure from the registrar a certificate in accordance with article 771, paying the cost thereof out of the amount deposited. Prothonotary to give notice of deposit, etc.

**"1066t.** The distribution of the indemnity shall be proceeded with by a report of distribution such as that after a sale upon execution. Report of distribution.

## SECTION VIII

*Expropriation by the Crown*

**"1066u.** The provisions of this chapter shall likewise govern expropriations by the Government of this Province. Application to Crown.

Deposit, by  
Minister of  
plan, etc.

**"1066v.** The Minister having charge of public works for which the expropriation is requisite may cause to be deposited in the registry office of the division, in which is situated the immoveable or real right which he wishes to expropriate, the plan, with description and valuation, contemplated in article 1066c, together with a certificate of the Provincial Treasurer attesting that he holds available for payment of the indemnity a sum equal to double the valuation.

Expro-  
priation for  
purposes of  
Roads' Act.

When the expropriation is required for the purposes of the Roads' Act (Revised Statutes, 1925, chapter 91), the Minister may merely deposit a general plan affecting a number of immoveables, together with an aggregate estimate of the total amount of the indemnities and a certificate of the Provincial Treasurer attesting that he holds available for payment of such indemnities a sum equal to double the amount of the said estimate.

Effect of such  
deposit.

Such deposit shall convey to the Government of this Province the immoveable or real right so described, free from any encumbrance other than the obligation to pay the indemnity which may be awarded, upon which alone all the real rights affecting the immoveable may be exercised and shall be conserved. From the date of such deposit, the Minister may take possession of the immoveable or of the real right and take the required steps to cause all resistance to cease.

Amended  
plan, etc.

If need there be, the Minister may, and with the same effect, deposit an amended plan and description.

In certain  
case, notice  
given by  
Attorney-  
General, etc.

**"1066w.** Failing agreement with the expropriated party, the Minister must transmit a plan, a description and an estimate of valuation in conformity with article 1066c to the Attorney-General who shall cause the notice contemplated in article 1066b to be given to the expropriated party. Upon failure so to do within sixty days from the date of the deposit, the expropriated party may make the motion provided for in article 1066f.

Failure to  
give notice.

Construc-  
tions to be  
removed, etc.

**"1066x.** The Minister may, in the description of the expropriated immoveable, or by written notice to the expropriated party, declare that he does not intend to acquire certain constructions which are on the land required, but intends to oblige the expropriated party to remove them. The expropriated party must, in such case, effect the removal within thirty days from the notice given to him by registered letter, unless,

upon petition, the Board order otherwise. If the work of removal be not undertaken within fifteen days from the notice or not terminated within the required delay, the Minister may cause it to be done and the constructions to be placed on the expropriated party's land at the place deemed most convenient.

"**1066y.** The signature of the Deputy-Minister, <sup>Conclusive proof.</sup> of the secretary or of an engineer of the Department on the documents contemplated under article 1066v, or the notice provided for under article 1066x, shall be conclusive proof that any immoveable or real right described therein is required by the Minister and that the latter has ordered the deposit of the documents or the removal of the constructions, as the case may be.

"**1066z.** The Minister may offer as partial in- <sup>Land offered as indemn-</sup> demnity any land adjacent to the expropriated im- <sup>nity.</sup> moveable and capable of serving to reëstablish the expropriated party's position.

At any time before the payment of the indemnity, <sup>Expro-</sup> the Minister may declare in writing that any expro- <sup>riated im-</sup> priated immoveable is not required in whole or in part, <sup>moveable not required.</sup> and, by the deposit of such declaration in the registry office, the immoveable not required again becomes the property of the expropriated party, and the indemnity must be fixed accordingly."

**2.** Every expropriation in which the trial had not <sup>Application</sup> been begun at the date of the sanctioning of this act <sup>of act.</sup> shall be tried and decided under the foregoing provisions.

The provisions of the second paragraph of article <sup>Idem.</sup> 1066z of the Code of Civil Procedure as enacted by this act shall apply to every immoveable of which the Government of this Province has become owner by expropriation before the coming into force of this act.

**3.** The acts <sup>1 Geo. VI, chapter 89, are repealed.</sup> 1 George VI, chapter 93. and 3 George <sup>1 Geo. VI, c. 89, rec. 93; 3 Geo. VI, c. 89, repealed.</sup>

**4.** This act shall come into force on the day of its <sup>Coming into force.</sup> sanction.

