



CHAPTER 93

An Act respecting expropriation

[Assented to, the 14th of April, 1937]

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

1. This act may be cited as *Expropriation Act*. Short title.

TITLE I

Preliminary Provisions

2. In this act:

- a. "court" or "Superior Court" means the Superior Court sitting in the district wherein is situate the immoveable or the real right which is the object of an expropriation; Interpretation :
"Court";
- b. "judge" designates a judge of such court exercising his functions in the district wherein such immoveable or real right is situate; "Judge";
- c. "expropriated party" designates the party against whom an application for expropriation is brought or is granted; "Expropriated party";
- d. "compensation" means the compensation contemplated under section 15. "Compensation".

3. The provisions of this act shall apply:

- a. to the exclusion of all others, in all cases of expropriation authorized by laws of the Legislature now in force, saving the case provided for by the act 1 Edward VIII (2nd Session), chapter 23; Application to:
All expropriation cases ;
Exception;

- Future expropriations; Exception; Cases where mode not fixed.
- b.** in all cases of expropriation authorized by laws which this Legislature may adopt in future, unless they provide for a different mode of expropriation;
- c.** in all other cases of expropriation lawfully authorized and the mode whereof is not fixed.

TITLE II

Procedure

- Serving of notice upon adverse party containing :
Description of immoveable, etc.;
Why expropriation sought;
Offer for indemnity, etc.
Notification of application to court;
- 4.** Whenever there be occasion for expropriation, the party seeking same must cause to be served upon the adverse party a notice containing:
- a.** a description of the immoveable or of the real right which he wishes to acquire;
- b.** a statement of the purposes for which he seeks expropriation;
- c.** a declaration of the amount which he offers for the indemnity and the compensation;
- d.** a notification to the effect that he will apply to the court for the recognition of his right of expropriation and to fix the indemnity which he must pay for such immoveable or such real right if his offer be not accepted within ten days from the service of such notice;
- Indication of presentation.
- e.** an indication of the date when and the place where he will file the proceedings and the documents mentioned in section 6:
- Filing of documents.
- The party seeking expropriation must, under penalty of nullity of the service of the notice, file in the office of the court, on or before the day of such service, all the documents establishing the right which he possesses in respect of the expropriation; he must, in the notice, make mention of such filing and of its date.
- Delay for presentation.
- The presentation of such application cannot be made prior to the fifth day following the expiration of the delay provided under paragraph *d.*
- Provisions applicable to service of notice.
- 5.** The provisions of Chapter XII of the Third Part of the Code of Civil Procedure shall apply, *mutatis mutandis*, to the service of the notice upon the expropriated party.

- If offer not accepted, filing in court of:
- 6.** Failing acceptance of his offer, the expropriating party must, on the day mentioned in the notice, or,

if such day be a holiday, on the next juridical day, file in the office of the court:

1. The original of the notice with the return of ser-Original of vice thereof or, as the case may be, proof of the publica-notice, etc.; tion of the notice in the newspapers;

2. A petition briefly stating the facts relating to the Petition. application and praying for the right to expropriate and for the fixing of the indemnity by the court.

A duplicate of such documents must be deposited Depositing in the office of the court for the use of each adverse of duplicates. party.

7. An expropriation case may be inscribed by either Inscribing of of the parties for proof and hearing after the expira-expropria- tion of the six days following the filing of the documents tion case. specified in section 6.

A notice of at least six days of the date fixed for the Notice to proof and hearing must be given to every adverse party. adverse par- ty.

8. The expropriated party must file in the office Filing of de- of the court, before the trial, a declaration setting forth claracion by the amount he claims for indemnity and for compensa- expropriated tion; if he does not file such declaration, the case shall party. proceed *ex parte*.

9. Within the delay provided in the last paragraph Furnishing of section 7, the expropriated party may apply to a of security judge for an order to oblige the expropriating party for costs. to furnish security for the costs which may be adjudged against him; the judge may order the latter to give, within such delay as the said judge may fix, such security as he may determine.

10. The proof and hearing shall be had before the Proof and court. hearing.

Saving incompatibility with this act, the rules of the Rules appli- Code of Civil Procedure relating to the prosecution and cable there- hearing of suits before the Superior Court shall apply to. to the prosecution and hearing of suits for expropria- tion.

The court shall decide the right of expropriation, Fixing of fix, if need there be, the indemnity and the compensa- indemnity, etc., by tion, and adjudicate upon the costs according to the court. rules of section 12.

Taking of depositions.

11. The depositions at the trial shall be taken by stenography, unless the parties agree to proceed otherwise; but in such latter case no appeal shall lie.

Costs.

12. The costs shall be borne by the expropriating party if there be no contestation of the application.

When application deemed contested.

The application is contested when the expropriated party has filed the declaration contemplated under section 8 and has made proof at the hearing.

Costs in case of contestation.

If there be contestation the losing party must pay the costs, unless, for special reasons, the court mitigates them, offsets them or orders otherwise. However, even in such case, the costs of all proceedings effected by the expropriating party prior to the contestation shall remain a charge upon him.

Appeal upon :
Right to expropriate.
Amount adjudged, etc.

13. An appeal shall lie to the Court of King's Bench from a judgment rendered under section 10:

1. upon the right to expropriate, in all cases;
2. upon the amount adjudged for the indemnity and the compensation, when it is at least five hundred dollars.

Final judgment.

In all other cases, the judgment of the Superior Court shall be final.

Restriction in certain case.

Whenever there be an appeal upon the right to expropriate in a case where the amount adjudged is less than five hundred dollars, the Court of King's Bench shall decide only upon the right and cannot revise or alter the amount of the judgment.

Delays, etc., applicable.

The delays and the rules of the Code of Civil Procedure respecting appeals to the Court of King's Bench shall apply to the appeals taken under this section.

Final judgment.

The judgment of the Court of King's Bench shall be final.

TITLE III

Indemnity and Compensation

How indemnity to be fixed.

14. The indemnity shall be fixed according to the value of the immovable or real right which is the object of expropriation and the damages occasioned to the expropriated party.

Expropriation of portion only of

When a portion only of an immovable is expropriated, if the facts motivating the expropriation give an

increased value to the remainder of the immoveable, the court shall offset, to the extent thereof, such increased value as against the damages suffered by the expropriated party.

15. The expropriated party shall be entitled, from the mere fact of the expropriation, to additional compensation equal to fifteen per cent of the indemnity contemplated under section 14. Such compensation shall be added to the amount of the indemnity.

TITLE IV

Taking Possession After the Judgment

16. The expropriating party shall become owner of the immoveable or of the real right expropriated counting from 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:

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

b. the deposit of such amount under section 23 of this act, or

c. the deposit of such amount under section 58 of the Treasury Department Act (Revised Statutes, 1925, chapter 20), in the cases provided for in the said section.

If the expropriating party is unable to obtain the possession of such immoveable or the enjoyment of such right through any resistance or opposition, he may apply to the judge for an order addressed to the sheriff or to a bailiff to execute the judgment and to have him put in possession. The officer executing such order shall employ the necessary assistance for such purpose.

TITLE V

Prior Possession

17. At any time before judgment, the expropriating party may obtain possession of the immoveable, the expropriation whereof he is prosecuting, on a petition

to a judge, accompanied by affidavit establishing the necessity for such possession.

Service of petition.

Such petition must be served upon the expropriated party with at least three days' notice of the date and hour of its presentation.

Furnishing of security.

In order to obtain such possession, the expropriating party must furnish security for such sum as the judge may determine, but which must not be less than treble the amount offered, as a guarantee for the payment of the indemnity, the compensation and the costs.

Composition of security.

Such security may, as the judge decides, be a pledge of money or of securities of the Government of Canada or of the Province of Quebec, a deposit of money in a bank chosen by the judge or a hypothecary guarantee.

Costs.

18. The costs on such petition shall be borne by the expropriating party.

TITLE VI

Failure to pay the Indemnity

Consent required to renounce judgment.

19. The expropriating party cannot, without the consent of the expropriated party, renounce the judgment fixing the indemnity.

Effect of judgment.

20. Such judgment shall be executory, against the moveable and immoveable property of the expropriating party, for the amount of the indemnity, the compensation and the costs adjudged to the expropriated party or to his attorney, as in the case of a judgment in an ordinary action and according to the same rules.

Annulment of judgment upon petition.

21. However, the expropriated party, instead of exercising the recourse contemplated under section 20, may, at any time after the expiration of the two months following such judgment and before the expropriating party has voluntarily executed it, obtain, by a petition to the court, the annulment of the judgment and the restoring of the parties to the same state in which they were before the service of the notice mentioned in section 4.

Service, etc., of petition.

Such petition must be served upon the expropriating party with a notice of at least three days of the date and hour of its presentation.

22. Notwithstanding the annulment of the judgment, the execution contemplated under section 20 may be had for the costs adjudged to the expropriated party or to his attorney, and the expropriated party may also claim from the expropriating party such damages as he may have suffered through the expropriation proceedings.

Execution notwithstanding annulment of judgment.

TITLE VII

General Provisions

23. Whenever there are registered real rights affecting the expropriated immovable, the expropriating party may deposit the amount of the indemnity and of the compensation in the office of the court.

Depositing of amount in case of registered real rights.

The registration of a receipt for such deposit and of a copy of the final judgment fixing the indemnity shall free the property expropriated from all such real rights.

Freeing of property expropriated from real rights.

The registrar shall make mention of such registration in the margin of each entry recording a real right extinguished in virtue of this section.

Mention of certain registration.

The hypothecary and privileged claims upon the said immovable shall be conserved upon the amount deposited and shall be collocated according to their respective rank in the manner prescribed in the Civil Code. The claim of the expropriated party shall be assimilated to that of a vendor of an immovable.

Conserving and collocating of hypothecary etc., claims.

24. The prothonotary shall prepare a scheme of collocation or distribution of the amount deposited.

Preparing of scheme of collocation, etc.

For such purpose, he shall procure from the registrar a certificate according to article 771 of the Code of Civil Procedure, except that the real rights contemplated under section 23 must be therein mentioned notwithstanding the cancellation which may have been made under the said section 23. The prothonotary shall pay the cost of such certificate out of the amount deposited.

Procedure therefor.

Articles 772 to 777 and 790 to 831 of the Code of Civil Procedure shall apply, *mutatis mutandis*, to the deposit made under section 23 and to the collocation and distribution of the amount deposited.

Provisions applicable thereto.

Adjourning
of trial and
ordering of
removal of
certain cons-
truction.

25. When at the trial the court finds that a construction on the land which is the object of expropriation proceedings may be removed with advantage to the expropriated party and that such removal would have the effect of lessening the cost of the expropriation, it shall adjourn the trial and order the expropriated party to remove the construction to such place and within such delay as the court may determine.

If order not
carried out.

Upon the failure by the expropriated party to carry out such order, a judge may authorize the expropriating party to do so.

Terminating
of trial and
fixing of in-
demnity.

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

Provisions
applicable to
indemnity.

On determining the indemnity under the immediately preceding paragraph, the court shall apply the provisions of section 15.

TITLE VIII

Expropriation by the Crown

Application
to Crown.

26. This act shall apply to expropriations made by the Crown in the rights of the Province.

If security,
etc., requir-
ed.

However, whenever any provision of this act calls for security or a deposit of money in court, it shall be sufficient for the Government to file a certificate signed by the Provincial Treasurer stating that he holds the amount of the security or of the deposit at the disposal of the court.

TITLE IX

Final Provisions

Q. P. S. C.
and applica-
tions for ex-
propriation.

27. Any application for expropriation submitted to the Quebec Public Service Commission or to any of its members and in which the trial was not begun at the 3rd of April, 1937, shall be proceeded with and adjudicated upon under the authority of this act.

Transmit-
ting of re-
cords.

The record connected with each such application shall be transmitted to the court by such person as the

Attorney-General may designate and such record shall take the place of the documents mentioned in section 6 and of the proceedings contemplated in the sections which precede it.

28. The Expropriation Act (Revised Statutes, 1925 R. S., c. 263, chapter 263) is repealed. repealed.

29. This act shall come into force on the day of its Coming into sanction. force.

