

2014

Hfx. No. 431696

**SUPREME COURT OF NOVA SCOTIA**

Between:

**MUNICIPALITY OF THE DISTRICT OF GUYSBOROUGH**

Court Administration

SEP 26 2014

Halifax, N.S.

**APPLICANT**

and

**THE HEIRS AT LAW OF JOSEPH FOGARTY, JAMES P. FOGARTY and  
FRANK FOGARTY**

**RESPONDENTS**

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**BRIEF OF THE APPLICANT**

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## **FACTS**

1. This matter is an Application in Court pursuant to s. 17 of the *Expropriation Act*, R.S.N.S., c. 156 (the "*Act*") to clarify the state of title to two properties that have been expropriated. These properties, appear to represent an older single property that was bisected by a provincial right of way. The properties appear to be owned by descendants of Joseph Fogarty and are hereafter referred to as the "Fogarty Properties".
2. It is not MODG's purpose to advocate for or against any of the interests that may be claimed by any of the named or potential parties to this Application. MODG's sole interest is in ensuring that the title to the Fogarty Properties is clarified prior to any offers or payment of compensation. The *Act* provides some procedural directions which differ from the standard templates set out in *Civil Procedure Rule* 5. Accordingly, the Applicant, the Municipality of the District of Guysborough ("MODG"), has taken the liberty of filing this brief for the assistance of the Court at the upcoming motion for directions.
3. Although s. 17 of the *Act* provides for the first motion for date and directions to be heard on an *ex parte* basis, MODG has named the two individuals that have been identified as Respondents.

### **The State of Title of the Fogarty Properties – Affidavit of Marion Bryson**

4. Two title searches are contained in the Affidavit of Marion Bryson.
5. Exhibit A to the Affidavit of Marion Bryson contains a title search for PID 35214014, which is the waterfront portion of the land. Exhibit B contains a title search for PID 35044056, which is the land-locked portion of the lands. The two parcels are bisected by a right of way. The most recent deed recorded for both parcels is a warranty deed from Michael Fogarty (who received the land from the Crown) to his son, Joseph Fogarty. The deed to Joseph Fogarty was registered at the Registry of Deeds on October 3, 1913.
6. The parcels are bisected by a provincial right-of-way, which has been acquired by the MODG. This right-of-way is of no relevance in this proceeding, other than the fact that it has severed the original land grant into two separate parcels.
7. On or about November 28, 2013, expropriation documents for the Fogarty Properties were filed with the Guysborough County Land Registration office.

8. The state of title the Fogarty Properties is uncertain. The Applicant has minimal information on the identity and whereabouts of the potential heirs at law to Joseph Fogarty.

#### **Genealogical Search – Affidavit of Betty Dobson**

9. The MODG retained Betty Dobson to conduct genealogical research on the Fogarty family tree. The updated report at Exhibit B to her affidavit lists the myriad of Fogarty descendants. Adding up number of children in each generation, denoted by lower case Roman numerals, gives the following summary of Joseph Fogarty's descendants:
  - (a) Joseph Fogarty and his wife Catherine had 9 children, see "Generation 1";
  - (b) At present, 53 grandchildren of Joseph Fogarty have been identified by name, see "Generation 2";
  - (c) At present, 89 great grandchildren of Joseph Fogarty have been identified by name; see "Generation 3"
  - (d) At present, 8 great-great grandchildren of Joseph Fogarty have been identified by name; see "Generation 4."
10. Ms. Dobson's efforts to contact descendants of Joseph Fogarty and obtained some specific contact information for some of the descendants of Joseph Fogarty, see Exhibit C of Ms. Dobson's Affidavit.
11. The size of this family is illustrated in part by a family tree graphic, spanning 5 pages, showing all of the children and grandchildren of Michael Fogarty, see Exhibit D of Ms. Dobson's Affidavit. Michael Fogarty was just one of Joseph Fogarty's 9 children.

#### **Publicity Surrounding this Matter – Affidavit of Barry Carroll**

12. In addition to the usual material contained in an affidavit requesting a motion for date and directions, the Affidavit of Barry Carroll contains various details regarding communication with some members of the Fogarty family, and the publicity that the expropriation has received.
13. The Applicant has written to the Respondent, James P. Fogarty and requested his assistance in identifying the possible descendants of Joseph Fogarty who may have an interest in the property. However, to date Mr. Fogarty has not responded, see paragraph 12 and Exhibit A of the Affidavit of Barry Carroll.

14. The Respondent, Frank Fogarty, has identified himself to the MODG as an heir, see paragraph 14 and Exhibit B of the Affidavit of Barry Carroll.
15. The Chronicle Herald has run an in depth article about this expropriation, which was the subject of several press releases in response by the MODG, see paragraphs 14-17 and Exhibits C, D, and E of the Affidavit of Barry Carroll.
16. It appears that members of the Fogarty family have created a variety of online responses to the expropriation of the Fogarty Properties. These responses include: two Face Book pages, a website, and a Twitter page; see paragraph 18 and Exhibits F, G, H and I to the Affidavit of Barry Carroll.
17. The two Face Book pages, "Save Fogarty's Cove" and "Black Point – Fogarty's Cove Quarry Environmental Concerns" and the Twitter page, "@BlackPtQuarry", are all open to the public. The "Black Point Quarry Project" website contains posts to which a person can leave a comment in response.
18. The Fogarty Properties have been appraised as having a market value of \$140,000, see Exhibit J to the Affidavit of Barry Carroll.

## **LAW AND ANALYSIS**

19. The *Act* provides explicit directions for an application made under s. 17:

*17 (1) Where the expropriating authority, at any time after the registration of the expropriation document at the appropriate office of the registrar of deeds, is in doubt as to the persons who had any right, estate or interest in the land to which the expropriation document relates, or as to the nature or extent thereof, it may apply to the Court to make a determination respecting the state of the title to the land or any part thereof and to order who had a right, estate or interest in the land at that time and the nature and extent thereof.*

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

*(a) the persons who are to be served, the notice of the hearing, the contents of the notice and the manner of service thereof;*

*(b) the material and information to be submitted by the expropriating authority or any other person; and*

*(c) such other matters as the Court considers necessary.*

*(3) After the hearing the Court shall either judge for the purposes of this Act what persons had any right, estate or interest in the land expropriated and the nature and extent thereof or direct an issue or issues to be tried for the purpose of enabling the Court to make such an adjudication.*

*(4) An adjudication made by the Court for the purposes of this Act shall be deemed to be a final judgment of the Court and, subject to variation on appeal, if any, shall finally determine for all purposes of this Act what persons had any right, estate or interest in the land expropriated and the nature and extent thereof.*

*Expropriation Act, R.S.N.S., 1989 c. 156, Tab 1*

**Doubt as to the state of title**

20. Pursuant to s. 11 of the *Act*, the Fogarty Lands are vested in the MODG by virtue of the expropriation documents filed late last year.
21. However, as a result of the facts that the Fogarty Properties have not been migrated to the land registration system, and that the most recent deed registration is over 100 years old, MODG is left in a state of doubt regarding the title to the Fogarty Properties.
22. Doubt as to the state of title is compounded by the passage of time and by the sheer size of the Fogarty family. For example, one of Joseph Fogarty's nine children, Michael Fogarty, had 16 children of his own.
23. The *Intestate Succession Act* provides that

*Surviving spouse*

*4 (1) If an intestate dies leaving a surviving spouse and issue, the intestate's estate, where the net value does not exceed fifty thousand dollars, shall go to the surviving spouse. ....*

*(6) If a child has died leaving issue and the issue is alive at the date of the intestate's death, the surviving spouse shall take the same share of the estate as if the child had been living at that date.*

*(7) If an intestate dies leaving issue, the intestate's estate shall be distributed, subject to the right of the surviving spouse, if any, per stirpes among the issue.*

*Intestate Succession Act, R.S.N.S., 1989 c. 236 ("ISA") Tab 2*

24. Assume for the sake of argument that the *ISA* applies to all the relevant estates and that the entirety of the interest in the Fogarty Properties was held by Mrs. Catherine Fogarty at the time of her death. In this scenario, the land would have been divided among the children of Joseph Fogarty, with each child receiving a 1/9<sup>th</sup> interest. As it appears that

all of the children of Joseph Fogarty and their spouses are now deceased, their 1/9<sup>th</sup> interests would eventually passed to their children and been further subdivided.

25. In practical terms, a 1/9<sup>th</sup> interests in the property valued at \$140,000 would be worth \$15,555.55. That amount decreases substantially with each further division of the interest in the property.
26. As the above example indicates, there is considerable doubt about the state of title to the Fogarty Properties. Until such time as this uncertainty is resolved, the proportionate entitlement of any persons holding a right, estate or interest in the Fogarty Properties entitling them to compensation as a result of the expropriation cannot be determined.
27. MODG proposes that the first motion for date and directions be used to set parameters for notice to any other potential interest holders, as required by s. 17 of the *Act*.

**Section 17(2): The persons who are to be served, and the method of service**

28. The MODG is not aware of any case law interpreting the notice provisions set out in s. 17(2). MODG submits that s. 17(2) should be interpreted as requiring reasonable efforts to notify unknown persons of these proceedings.
29. Only two potential interest holders, the Respondents James P. Fogarty and Frank Fogarty have had some correspondence with the Applicant. To date Mr. James Fogarty has not responded to MODG's request for assistance to identify the other potential heirs at law.
30. The most current genealogical information regarding the descendants of Joseph Fogarty indicates that the family is strongly connected to Nova Scotia.
31. MODG submits that it would be reasonable to take the following steps to give notice of the proceeding:
  - (a) notify any individual identified by Mr. James Fogarty or Mr. Frank Fogarty as a potential heir;
  - (b) notify the individuals whose contact information listed in Exhibit "C" to Ms. Dobson's affidavit;
  - (c) post a notice on the social media pages identified in the Affidavit of Barry Carroll; and

- (d) advertise the expropriation of the Fogarty lands in local, provincial, and national newspapers.

**Section 17(2): The contents of the notice**

32. MODG submits that this notice should read as follows:

*Fogarty Expropriation, Black Point, Nova Scotia*

*Hfx. No. \_\_\_\_\_*

*Take Notice that a court proceeding is being held in the Supreme Court of Nova Scotia Hfx. No. \_\_\_\_\_ to determine title to two pieces of land in Guysborough County bearing PIDs 35044056 and 35214014, belonging to the heirs at law of Joseph Fogarty. Any person with an interest in these lands should contact Robert G. Grant of Stewart McKelvey at PO Box 997, 1959 Upper Water Street, Suite 900, Halifax, Nova Scotia B3J 2X2 or appear at the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia, B3J 1S7 on \_\_\_\_\_.*


**CONCLUSION**

33. In the circumstances of this case, it is submitted that the following steps would be appropriate to give notice to the persons with potential interest in the expropriation of the Fogarty Lands:

- (a) Providing notice to individuals identified at the motion for date and directions by Mr. James P. Fogarty and Mr. Frank Fogarty, if any.
- (b) Notifying all individuals whose contact information can be found in Exhibit "C" to the affidavit Betty Dobson;
- (c) Where possible, posting a copy of the notice on the social media pages identified in the Affidavit of Barry Carroll.
- (d) Publishing a copy of the advertisement referred to above on the MODG's website.
- (e) Placing an advertisement in the Royal Gazette, Chronicle Herald (both provincial and metro editions), Cape Breton Post, the Guysborough Journal, the Reporter and the Casket once a week for a period of two consecutive weeks;
- (f) Placing an advertisement in one national newspaper, such as the Globe and Mail or National Post, providing the above information once a week for a period of two consecutive weeks;



ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of September, 2014.



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## INDEX OF LEGAL AUTHORITIES

Tab	Description
1.	<i>Expropriation Act</i> , R.S.N.S., c. 156
2.	Intestate Succession Act, R.S.N.S., 1989 c. 236





# Expropriation Act

CHAPTER 156

OF THE

REVISED STATUTES, 1989

amended 1992, c. 11, s. 36; 1995-96, c. 19; 2001, c. 6, s. 106;  
2006, c. 16, s. 7

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**NOTE - This electronic version of this statute is provided by the Office of the Legislative Counsel for your convenience and personal use only and may not be copied for the purpose of resale in this or any other form. Formatting of this electronic version may differ from the official, printed version. Where accuracy is critical, please consult official sources.**

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## An Act Respecting Expropriation

PART I

SHORT TITLE

### Short title

1 This Act may be cited as the Expropriation Act. *R.S., c. 156, s. 1.*

PURPOSE OF ACT

### Purpose of Act

2 (1) It is the intent and purpose of this Act that every person whose land is expropriated shall be compensated for such expropriation.

(2) Further, it is the intent and purpose of this Act that where a family home is expropriated the position of the owner in regards to compensation shall be such that he will be substantially in the same position after the expropriation as compared with his position before the expropriation.

(3) Recognizing that strict market value is not in all cases a true compensation for a family home that is expropriated since it may not provide equivalent accommodation to the owner of the family home, this Act shall be interpreted broadly in respect of the expropriation of a family home so that effect is given to the intent and purpose set forth in subsection (2).

(4) The protection given by subsections (2) and (3) shall not extend to any person whose land is a money asset or investment and not a family home. *R.S., c. 156, s. 2.*

## INTERPRETATION

### **Interpretation of Act and service of documents**

3 (1) In this Act,

(a) "appraisal report" is a written report which follows and would meet the requirements and standards adopted by The Appraisal Institute of Canada for such reports;

(aa) "Board" means the Nova Scotia Utility and Review Board;

(b) "Court" or "Supreme Court" means the Trial Division of the Supreme Court and includes a judge thereof whether sitting in court or in chambers;

(c) "expropriate" means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers but does not include a reservation under Section 13 of the Public Highways Act or a designation under Section 106 of the Environment Act;

(d) "expropriating authority" means Her Majesty in right of the Province and in all other cases any person or body empowered by statute to expropriate land;

(e) "expropriation documents" means those documents required to be deposited in the office of a registrar of deeds pursuant to Section 11;

(f) "family home" means the home which is the home of the owner held by him in fee simple or to which he holds the equity of redemption and is used by him for his family residence together, with the land immediately appurtenant thereto, not exceeding one and one-half acres, and any immediately appurtenant outbuildings;

(g) "former Expropriation Act" means Chapter 96 of the Revised Statutes, 1967;

(h) "injurious affection" means

(i) where a statutory authority acquires part of the land of an owner,

(A) the reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction of the works thereon or by the use of the works thereon or any combination of them, and

(B) such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute,

(ii) where the statutory authority does not acquire part of the land of an owner,

(A) such reduction in the market value of the land of the owner, and

(B) such personal and business damages, resulting from the construction and not the use of

the works by the statutory authority, as the statutory authority would be liable for if the construction were not under the authority of a statute,

and for the purposes of subclause (i), part of the land of an owner shall be deemed to have been acquired where the owner from whom land is acquired retains land contiguous to that acquired or retains land of which the use is enhanced by unified ownership with that acquired;

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

(j) "owner" includes a mortgagee, tenant, registered judgment creditor, a person entitled to a limited estate or interest in land, a guardian or trustee of an incompetent person or of a person incapable of managing his affairs, and a guardian, executor, administrator or trustee in whom land is vested;

(k) "prescribed" means prescribed by the regulations made under this Act;

(l) "purchase-money mortgage" means a mortgage given by a purchaser of land to the vendor of the land or his nominee as security for the payment of all or part of the consideration for the sale;

(m) "registered judgment creditor" means a creditor who has obtained a judgment and registered it in accordance with the provisions of the Registry Act or the Land Registration Act;

(n) "registered owner" means an owner of land whose interest in the land is defined and whose name is specified in an instrument in the registry of deeds office, and includes a person shown as a tenant of land on the last revised assessment roll and also includes a person shown as the owner of any registered interest in the parcel register established pursuant to the Land Registration Act;

(o) "security holder" means a person who has an interest in land as security for the payment of money and includes a vendor under an agreement of purchase and sale;

(p) "statutory authority" means Her Majesty in right of the Province or any person or body empowered by statute to expropriate land or cause injurious affection;

(q) "tenant" includes a lessee or occupant occupying premises under any tenancy whether written, oral or implied.

(2) Any document required by this Act to be served may be served personally or by registered mail addressed to the person to be served at his last known address, or, if that person or 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 situate and service shall be deemed to be made,

(a) in the case of service by registered mail, on the fifth day after the day of mailing; and

(b) in the case of service by publication, on the date of the third publication. *R.S., c. 156, s. 3; 1992, c. 11, s. 36; 1995-96, c. 19, s. 1; 2001, c. 6, s. 106; 2006, c. 16, s. 7.*

### **Application of Act and conflict with other Acts**

4 (1) Notwithstanding any general or special Act, where land is expropriated or injurious affection is caused by a statutory authority, this Act applies.

(2) The provisions of any general or special Act providing procedures with respect to the expropriation of

land or the compensation payable for land expropriated or for injurious affection shall be deemed to refer to this Act and not to the Act in question.

(3) Where there is conflict between a provision of this Act and provisions of any other general or special Act, the provision of this Act prevails. *R.S., c. 156, s. 4.*

### **Act binds Crown**

5 This Act binds Her Majesty in right of the Province. *R.S., c. 156, s. 5.*

## **PART II**

### **EXPROPRIATION**

#### **Acquisition and Abandonment of Land**

#### **Expropriation by statutory authority**

6 Where a statutory authority desires to expropriate land, it shall be expropriated in accordance with the provisions of this Part but only for the purposes authorized by its statute and to the extent set forth therein. *R.S., c. 156, s. 6.*

#### **Approval by approving authority**

7 (1) Notwithstanding Section 6, an expropriating authority shall not expropriate land without the approval of the approving authority.

(2) Any expropriation of land without the approval of the approving authority shall be null and void.

(3) Notwithstanding subsection (2), nothing herein contained prevents an expropriating authority from expropriating anew land forming part of an expropriation that is null and void so long as the new expropriation is in accord with this Act.

(4) The Governor in Council may make regulations concerning the requirements of approval by the approving authority and the documents necessary to evidence the same. *R.S., c. 156, s. 7.*

#### **"approving authority" defined**

8 For the purposes of this Act, "approving authority" means

(a) the Governor in Council in respect of land expropriated by

(i) Her Majesty in right of the Province,

(ii) the Nova Scotia Power Corporation,

(iii) Maritime Telegraph and Telephone Company Limited,

(iv) the Halifax-Dartmouth Bridge Commission;

- (b) the municipal council in respect of land expropriated by a municipality;
- (c) the town council in respect of land expropriated by a town;
- (d) the village commissioners in respect of land expropriated by a village;
- (e) the appropriate city council in respect of land expropriated by
  - (i) the City of Halifax,
  - (ii) the City of Dartmouth,
  - (iii) the City of Sydney;
- (f) the city council of Halifax in respect of land expropriated by the Halifax Water Commission;
- (g) the elected political body to which it is responsible in respect of land expropriated by any corporation, commission or body not coming within the above clauses, except that in the case of Her Majesty in right of the Province, the Governor in Council; and
- (h) any case not provided for herein, the Attorney General. *R.S., c. 156, s. 8.*

### **Expropriation by Crown**

9 (1) Notwithstanding any special or general Act, where Her Majesty in right of the Province desires to expropriate land a request shall be made to the Governor in Council for approval of the expropriation by the appropriate Minister or person requesting the same and, upon approval by the Governor in Council, the Attorney General shall be the expropriating authority.

(2) The Governor in Council may make regulations setting forth the nature, type and amount of information required to consider a request for expropriation under subsection (1). *R.S., c. 156, s. 9.*

### **Power of Crown to expropriate**

10 (1) Her Majesty in right of the Province may expropriate land

- (a) for any purpose for which a Minister or the Governor in Council is authorized under a specific Act or the former Expropriation Act to expropriate lands;
- (b) to implement or carry out or effect an agreement entered into between the Province and the Government of Canada or a city, town or municipality or any combination thereof if the agreement is financed from public funds;
- (c) for any public work;
- (d) for any purpose that is a public purpose.

(2) For the purpose of this Section, "public work" includes highways, roads and bridges, public buildings, and all other works and property, whether or not of the kind hereinbefore mentioned, belonging to the Province, and also all other works and property acquired, constructed, extended, enlarged, repaired,



equipped or improved at the expense of the Province or for the acquisition, construction, repair, extension, enlargement or improvement of which any public money is appropriated by the Legislature, and every work required for any such purpose but not any work for which money is appropriated as a subsidy only. *R.S., c. 156, s. 10.*

### **Expropriation document**

11 (1) Where a statutory authority has authority to expropriate land and it is desired to expropriate the same, the expropriating authority shall deposit at the office of the registrar of deeds for the registration district in which the land is located a document or documents setting forth

- (a) a description of the land;
  - (b) a plan of the land;
  - (c) the nature of the interest intended to be expropriated and whether such interest is intended to be subject to any existing interest in the land;
  - (d) the statutory purpose for which the land is expropriated; and
  - (e) a certificate of approval executed by the approving authority or a true copy thereof.
- (2) Upon the documents being deposited at the office of the appropriate registrar of deeds
- (a) the land expropriated becomes and is absolutely vested in the expropriating authority; and
  - (b) any other right, estate or interest is as against the expropriating authority, or any person claiming through or under the expropriating authority, thereby lost to the extent that such right, estate or interest is inconsistent with the interest expropriated.
- (3) In the case of an omission, misstatement or erroneous description in an expropriation document deposited under this Section, the expropriating authority may deposit in the proper registry of deeds office a document replacing or amending the original document and signed by the expropriating authority, and a document registered under this subsection shall be marked to show the nature of the replacement or amendment and shall have the same force and effect as, and shall be in substitution for, the original document to the extent that such document is replaced or amended thereby.
- (3A) In the case of an interest registered pursuant to the Land Registration Act, documents shall be recorded at the land registration office in the parcel register of the interest being expropriated and the registrar shall establish a new register for the interest expropriated.
- (4) Where a document purports to have been signed by an expropriating authority under this Section, it shall be presumed to have been signed by the expropriating authority without proof of the signature or official character of the person appearing to have signed it, unless otherwise directed by a court or the Board.
- (5) At any time after the expropriating authority deposits the expropriation documents in accordance with subsection (1), it may in writing request the owner to provide it with all information of which the owner has knowledge relating to any interest in the land expropriated and if the owner does not provide such information within thirty days after the written request then the period for serving documents and offering compensation under Sections 13 and 15 shall be increased by one day for each two days delay on the part

of the owner without affecting the provisions contained in Section 13 for entering into possession.

(6) The Governor in Council may make regulations as to the form and the contents of the written request referred to in subsection (5).

(7) Notwithstanding Sections 13, 14 and 15, where the Attorney General is of the opinion that the physical possession or use of any land expropriated by an expropriating authority, including himself, is immediately required in the public interest, he may by order authorize the expropriating authority, including himself, to take physical possession of the land expropriated or to use the land to the extent specified in the order and as of the date specified in the order. *R.S., c. 156, s. 11; 2001, c. 6, s. 106.*

### **Agreement with owner**

12 A statutory authority has the authority to make and form an agreement with an owner in respect of any claim of the owner under this Act, including any costs of the owner. *R.S., c. 156, s. 12.*

### **Offer to registered owner if no agreement**

13 (1) In this Section, "registered owner" means a known registered owner.

(2) Where no agreement as to compensation has been made with the owner, the expropriating authority shall, within ninety days after the deposit of the expropriation document under Section 11 and before taking possession of the land, serve upon the registered owner

(a) a true copy of the expropriation documents;

(b) an offer of an amount in full compensation for his interest; and

(c) where the registered owner is not a tenant, a statement of the total compensation being offered for all interests in the land,

excepting compensation for business loss for which the determination is postponed under subsection (1) of Section 29.

(3) The expropriating authority shall base its offer of compensation made under subsection (2) upon a report appraising the market value of the lands being taken and damages for injurious affection, and shall serve a copy of the appraisal report upon the owner at the time the offer is made.

(4) The expropriating authority may, within the period mentioned in subsection (2) and before taking possession of the land, upon giving at least two days notice to the registered owner, apply to a judge for an order extending any time referred to in subsection (2), and a judge may in his order authorize the statutory authority to take possession of the land before the expiration of the extended time for serving the offer or statement under clause (a) of subsection (2) upon such conditions as may be specified in the order.

(5) If any registered owner is not served with the offer required to be served on him under subsection (2) within the time limited by subsection (2) or by an order of a judge under subsection (4) or by agreement, the failure does not invalidate the expropriation but interest upon the unpaid portion of any compensation payable to such registered owner shall be calculated from the date of the deposit in the registry of deeds of the expropriation document. *R.S., c. 156, s. 13.*

## **Offer to settle**

13A In addition to the offer referred to in subsection 13(2), an expropriation authority may make an offer to settle as defined in Section 52, and in making an offer to settle, the expropriating authority may have reference to such additional information as the expropriating authority considers necessary which may include, but which is not limited to, an amended appraisal report. *1995-96, c. 19, s. 2.*

## **Service of offer on unknown registered owner**

14 (1) Where the registered owner is unknown or his address is unknown, the expropriating authority shall, within ninety days after the deposit of the expropriation document under Section 11, serve the registered owner by publication as provided for in subsection (2) of Section 3 and may take possession of the land immediately upon the third publication of the notice in the newspaper.

(2) For the purposes of subsection (1), only the description of the land and the purpose for which it is expropriated and the name of the expropriating authority need be published. *R.S., c. 156, s. 14.*

## **Offer to other owners**

15 (1) Where the owner is a person other than those described in Sections 13 and 14 and no agreement as to compensation has been made, the expropriating authority shall, within one hundred and eighty days after the deposit of the expropriation document under Section 11, make, to each person who is entitled to compensation under this Act in respect of land expropriated to which the expropriation document relates, an offer in writing of compensation in an amount estimated by the expropriating authority to be equal to the compensation to which that person is then entitled in respect of his interest therein.

(2) An offer of compensation made to a person under this Section in respect of land expropriated shall be based on a written appraisal of the value of such interest, and a copy of the appraisal shall be sent to such person at the time of the making of the offer.

(3) Failure to comply with subsection (1) does not invalidate the expropriation but interest upon the unpaid portion of any compensation payable to the owner shall be calculated from the date of the deposit in the registry of deeds of the expropriation document. *R.S., c. 156, s. 15.*

## **Payment**

16 (1) Where an offer of full compensation has been made to a person under this Act and that person accepts the offer, the full amount thereof shall forthwith upon acceptance of the offer be paid to that person.

(2) If the registered owner under Section 13 or the owner under Section 15 does not accept the offer of the amount of full compensation made, then the statutory authority shall immediately pay to him seventy-five per cent thereof without prejudice to the right of that person to claim additional compensation in respect of the expropriation.

(3) If the amount paid pursuant to subsection (2) exceeds the amount of compensation as determined by the Board, the Board shall order the registered owner to pay the excess to the expropriating authority and, upon such order being made, the registered owner shall pay the excess to the expropriating authority. *R.S., c. 156, s. 16; 1995-96, c. 19, s. 3.*

## **If state of title in doubt**

17 (1) Where the expropriating authority, at any time after the registration of the expropriation document at the appropriate office of the registrar of deeds, is in doubt as to the persons who had any right, estate or interest in the land to which the expropriation document relates, or as to the nature or extent thereof, it may apply to the Court to make a determination respecting the state of the title to the land or any part thereof and to order who had a right, estate or interest in the land at that time and the nature and extent thereof.

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

(a) the persons who are to be served, the notice of the hearing, the contents of the notice and the manner of service thereof;

(b) the material and information to be submitted by the expropriating authority or any other person; and

(c) such other matters as the Court considers necessary.

(3) After the hearing the Court shall either judge for the purposes of this Act what persons had any right, estate or interest in the land expropriated and the nature and extent thereof or direct an issue or issues to be tried for the purpose of enabling the Court to make such an adjudication.

(4) An adjudication made by the Court for the purposes of this Act shall be deemed to be a final judgment of the Court and, subject to variation on appeal, if any, shall finally determine for all purposes of this Act what persons had any right, estate or interest in the land expropriated and the nature and extent thereof.

(5) An application for appeal under this Section shall be made to the Appeal Division of the Supreme Court, within thirty days after the filing of the decision. *R.S., c. 156, s. 17.*

### **Possession of land after offer served**

18 (1) Where land that has been expropriated is vested in an expropriating authority and the expropriating authority has served the registered owner with an offer in accordance with Section 13, the expropriating authority, subject to any agreement to the contrary and if no application is made under subsection (4) of Section 13, shall take possession of the land on the date specified in the notice.

(2) Subject to subsection (4) of Section 13, the date for possession shall be at least three months after the date of the serving of the offer required by Section 13. *R.S., c. 156, s. 18.*

### **Possession resisted**

19 (1) Where resistance or opposition is made to the expropriating authority or any person authorized by it in entering upon, using or taking possession of land when it is entitled so to do, it may apply ex parte to the Court for an order directing the sheriff to put the expropriating authority into possession of the land expropriated.

(2) On proof of the resistance or opposition, the Court may grant the order ex parte or it may appoint a time and place for the hearing of the application and in the appointment may direct that it shall be served upon such person as it may prescribe and, after a hearing upon proof of the resistance or opposition, may grant the order.

(3) The sheriff shall forthwith execute the order and make a return to the Court of the execution thereof.

*R.S., c. 156, s. 19.*

### **Abandonment of expropriated land**

20 (1) Where, at any time before the compensation has been paid in full in satisfaction of proceedings taken under this Act, land expropriated under the provisions of this Act, or any part of such land, is found to be unnecessary for the purpose for which the same was expropriated, or if it is found that a more limited estate or interest therein only is required, the expropriating authority may, by writing under proper execution by its duly authorized officers, registered in the proper registry office, declare that the land or such part thereof is not required and is abandoned by the expropriating authority, or that it is intended to retain only such limited estate or interest as is mentioned in such writing, and thereupon

(a) the land declared to be abandoned shall revert in the person from whom it was taken or in those entitled to claim under him; or

(b) in the event of a limited estate or interest therein being retained by the expropriating authority, the land shall so revert subject to the estate or interest so retained.

(2) Where part only of the land or all of it but a limited estate or interest therein is abandoned, the fact of such abandonment and the damage, if any, sustained in consequence of that which is abandoned having been taken, and all the other circumstances of the case, shall be taken into account in determining the amount to be paid to any person claiming compensation.

(3) Where the whole of the land taken is abandoned, the person from whom it was taken shall be entitled to all damages sustained and all costs incurred by him in consequence of the taking and abandonment, and the amount of the damages shall be determined in the manner provided by this Act, and if a reference as to compensation is pending, shall be determined on such reference. *R.S., c. 156, s. 20.*

### **Duty of registrar of deeds**

21 Notwithstanding the provisions of the Registry Act, every registrar of deeds shall receive and permanently preserve in his office such expropriation documents as the expropriating authority causes to be deposited under this Act, and shall endorse thereon the day, hour and minute when the same were received by him as the time of registration and make such entries in his records as will make their registration a public record. *R.S., c. 156, s. 21.*

### **Filing procedure deemed followed**

22 In all cases, when expropriation documents purporting to be signed by the expropriating authority are deposited in the office of the registrar of deeds, the same shall be deemed to have been so deposited by the direction and authority of the expropriating authority and the formality and procedure relating to the filing of the documents to have been followed. *R.S., c. 156, s. 22.*

### **Certified document as evidence**

23 A document purporting to be certified by a registrar of deeds to be a true copy of an expropriation document registered under this Act at a time stated in the certificate is, without proof of the official character or signature of the registrar, evidence of the facts stated therein and of the registration of the expropriation document at the time so stated. *R.S., c. 156, s. 23.*

## **PART III**

## COMPENSATION

### **Duty to pay compensation**

24 Where land is expropriated, the statutory authority shall pay the owner compensation as is determined in accordance with this Act. *R.S., c. 156, s. 24.*

### **Rules to determine land value**

25 (1) The rules set forth in this Part shall be applied in determining the value of land expropriated.

(2) The value of land expropriated shall be the value of that land at the time the expropriation documents are deposited at the office of the registrar of deeds. *R.S., c. 156, s. 25.*

### **Aggregate of items to be compensated**

26 The due compensation payable to the owner for lands expropriated shall be the aggregate of

(a) the market value of the land or a family home for a family home determined as hereinafter set forth;

(b) the reasonable costs, expenses and losses arising out of or incidental to the owner's disturbance determined as hereinafter set forth;

(c) damages for injurious affection as hereinafter set forth; and

(d) the value to the owner of any special economic advantage to him arising out of or incidental to his actual occupation of the land, to the extent that no other provision is made therefor in due compensation. *R.S., c. 156, s. 26.*

### **Value**

27 (1) In this Section and Section 28, "bonus" means the amount by which the amount secured under a mortgage exceeds the amount actually advanced and does not include accrued interest outstanding and unpaid.

(2) Subject to this Section, the value of land expropriated is the market value thereof, that is to say, the amount that would have been paid for the land if, at the time of its taking, it had been sold in the open market by a willing seller to a willing buyer.

(3) Where the owner of land expropriated was in occupation of the land at the time the expropriation document was deposited in the registry of deeds and, as a result of the expropriation, it has been necessary for him to give up occupation of the land, the value of the land expropriated is the greater of

(a) the market value thereof determined as set forth in subsection (2); and

(b) the aggregate of

(i) the market value thereof determined on the basis that the use to which the land expropriated was being put at the time of its taking was its highest and best use, and

(ii) the costs, expenses and losses arising out of or incidental to the owner's disturbance including moving to other premises but if such cannot practically be estimated or determined, there may be allowed in lieu thereof a percentage, not exceeding fifteen, of the market value determined as set forth in subclause (i),

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

(4) Where the land expropriated is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, and the owner intends in good faith to relocate for that purpose, the market value shall be deemed to be the reasonable cost of equivalent reinstatement.

(5) Where only part of the land of an owner is taken and such part is of a size, shape or nature for which there is no general demand or market, the market value and the injurious affection caused by the taking may be determined by determining the market value of the whole of the owner's land and deducting therefrom the market value of the owner's land after the taking.

(6) Notwithstanding subsection (3), where any land expropriated is, at the time the expropriation document was deposited in the registry of deeds, used as a family home by the owner the value of the land expropriated shall be such value as will at current costs and prices put the owner in a position to acquire by purchase or construction a home reasonably equivalent to that which was expropriated.

(7) Persons negotiating or determining a case under subsection (6) shall consider the question whether the reasonably equivalent home can be acquired by purchase, or whether it is certainly or probably impracticable in the state of the market so to acquire it, in which latter case it may be necessary for them to award sufficient compensation for its construction in lieu of current market value.

(8) For the purposes of subclause (ii) of clause (b) of subsection (3) consideration shall be given to the time and circumstances in which an owner was allowed to continue in occupation of the land after the expropriating authority became entitled to take physical possession or make use thereof, and to any assistance given by the expropriating authority to enable such owner to seek and obtain alternative premises.

(9) The expropriating authority shall pay to a tenant occupying land expropriated in respect of disturbance so much of the cost referred to in subclause (ii) of clause (b) of subsection (3) as is appropriate having regard to

(a) the length of the term of the lease and the portion of the term remaining at the time at which the determination is relevant;

(b) any right or reasonable prospect of renewal of the term that the tenant had; and

(c) any investment in the land by the tenant and the nature of any business carried on by him thereon.

(10) Security holders shall be paid the amount of principal and interest outstanding against the security out of the market value of the land and any damages for injurious affection payable in respect of the land subject to the security in accordance with their priorities, whether or not such principal and interest is due, and subject to subsections (11) and (12).

(11) Where land is subject to a mortgage and the amount payable to the mortgagee under subsection (10)

is insufficient to satisfy the mortgage in full,

(a) where the mortgage is a purchase-money mortgage the mortgage shall, to the extent that the mortgage affects title to the land, be deemed to be fully paid, satisfied and discharged for all purposes upon payment of the amount payable to the mortgagee under subsection (10); and

(b) where the mortgage is not a purchase-money mortgage and includes a bonus,

(i) the amount by which the amount payable to the mortgagee under subsection (10) is insufficient to pay the amount remaining unpaid under the mortgage, or

(ii) the amount of the bonus,

whichever is the lesser, shall, to the extent that the mortgage affects title to the land, be deemed to be fully paid and satisfied for all purposes upon payment of the amount payable to the mortgagee under subsection (10).

(12) No amount shall be paid in respect of a bonus until all security holders have been paid all amounts payable other than any bonus.

(13) Where land held as security is expropriated in part or is injuriously affected, a security holder is entitled to be paid to the extent possible in accordance with his priority, out of the market value portion of the compensation and any damages for injurious affection therefor, as the case may be, a sum that is in the same ratio to such portion of the compensation and damages as the balance outstanding on the security at the date of the expropriation or injurious affection is to the market value of the entire land, provided however that the sum so determined shall be reduced by the amount of any payments made to the security holder by the owner after the date of expropriation or injurious affection. *R.S., c. 156, s. 27; 1995-96, c. 19, s. 4.*

### **If mortgage prepaid by statutory authority**

28 Where a statutory authority prepays a mortgage in whole or in part, the statutory authority

(a) shall pay to the mortgagee an amount in respect of the prepayment amounting to

(i) three months interest on the amount of principal prepaid at the rate of six per cent a year or at such other rate as is prescribed by the Governor in Council by regulation, or

(ii) the value of any notice or bonus for prepayment provided for in the mortgage,

whichever is the lesser;

(b) shall pay to the mortgagee where

(i) the prevailing interest rate for an equivalent investment is lower than the rate under the mortgage, and

(ii) there is no provision in the mortgage permitting prepayment at the date of the expropriation,

an amount to compensate for the difference in the interest rates for the period for which the amount of principal prepaid has been advanced, not to exceed five years; and



(c) shall pay to the mortgagor, whose interest is expropriated, an amount to compensate for any loss incurred by reason of a difference in the interest rates during the period for which the payment of principal provided for in the mortgage has been advanced, but such difference shall not be calculated on a new interest rate any greater than the prevailing interest rate for an equivalent mortgage. *R.S., c. 156, s. 28.*

### **Business loss from relocating and loss of goodwill**

29 (1) Where a business is located on the land expropriated, the statutory authority shall pay compensation for business loss resulting from the relocation of the business made necessary by the expropriation and, unless the owner and the statutory authority otherwise agree, the business losses shall not be determined until the business has moved and been in operation for twelve months or until a three-year period has elapsed from the date of the expropriation, whichever occurs first.

(2) Where it is not feasible for the owner of a business to relocate, there shall be included in the compensation payable an amount for the loss of the business where the compensation for the land taken is based on the existing value of the land.

(3) For the purpose of determining the compensation for loss of goodwill, the value of the goodwill shall be determined in accordance with generally accepted accounting principles. *R.S., c. 156, s. 29; 1995-96, c. 19, s. 5.*

### **Injurious affection and loss of access**

30 (1) A statutory authority shall compensate the owner of land for loss or damage caused by injurious affection.

(2) No compensation is payable for the loss of access to land or egress from land, or both, where the loss is the result of a designation pursuant to the Public Highways Act of a highway or land as a controlled access highway, if other access to the land or egress from the land, as the case may be, is available as a result of a service or land access road being provided. *R.S., c. 156, s. 30; 1995-96, c. 19, s. 6.*

### **Procedure for claim for injurious affection**

31 (1) Subject to subsection (2), a claim for compensation for injurious affection shall be made by the person suffering the damage or loss in writing with particulars of the claim within one year after the damage was sustained or after it became known to him, and, if not so made, the right to compensation is forever barred.

(2) Where the person who is injuriously affected is an infant, an incompetent or a person incapable of managing his affairs, his claim for compensation, if not made on his behalf within the time period stipulated in subsection (1), shall be made within one year after he ceased to be under the disability or, in the case of his death while under the disability, within one year after his death and, if not so made, the right to compensation is forever barred. *R.S., c. 156, s. 31.*

### **Set-off**

32 The value of any advantage to the land or remaining land of an owner derived from any work for which land was expropriated or by which land was injuriously affected shall be set-off only against the amount of the damages for injurious affection to the owner's land or remaining land. *R.S., c. 156, s. 32.*

### **Not to be considered in land valuation**

33 In determining the value of land expropriated, no account shall be taken of

- (a) any anticipated or actual use by the expropriating authority of the land at any time after the depositing of the expropriation document in the registry of deeds;
- (b) any value established or claimed to be established by or by reference to any transaction or agreement involving the sale, lease or other disposition of the interest or any part thereof, where such transaction or agreement was entered into after the deposit of the expropriation document in the registry of deeds;
- (c) any increase or decrease in the value of the land 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; or
- (d) any increase in the value of the land resulting from its having been put to a use that was contrary to law. *R.S., c. 156, s. 33.*

### **Factors in amount of compensation payable**

34 The fact of

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

shall be taken into account, in connection with all other circumstances of the case, in determining the amount to be paid to any person claiming compensation for land expropriated. *R.S., c. 156, s. 34.*

35 repealed 1995-96, c. 19, s. 7.

## **PART IV**

### **NEGOTIATION**

#### **If compensation not agreed upon**

36 (1) Where the statutory authority and the owner have not agreed upon the compensation payable under this Act and, in the case of injurious affection, Section 31 has been complied with or, in the case of expropriation, Section 13 has been complied with, or the time for complying therewith has expired,

- (a) the statutory authority or the owner may serve notice of negotiation upon the other of them stating that it or he, as the case may be, requires the compensation to be negotiated; or
- (b) where the statutory authority and the owner have agreed to dispense with negotiation proceedings or are unable to agree to a negotiator within thirty days of service of the notice referred to in clause (a), the statutory authority or the owner may serve notice upon the other of them or upon the Board, to have the compensation determined by the Board.

(2) In any case in which a notice of negotiation is served, the negotiator shall, upon reasonable notice to the statutory authority and the owner, meet with them and, without prejudice to any subsequent proceedings, proceed in a summary and informal manner to negotiate a settlement of the compensation.

(3) Before or during the negotiation proceedings, the negotiator shall inspect the land that has been expropriated or injuriously affected.

(4) If the negotiation proceedings do not result in a settlement of the compensation, the statutory authority or the owner may serve notice upon the other of them and upon the Board stating that it or he, as the case may be, requires the compensation to be determined by the Board as though the negotiation proceedings had not taken place. *R.S., c. 156, s. 36.*

## PART V

### NOVA SCOTIA UTILITY AND REVIEW BOARD

37 to 46 repealed 1992, c. 11, s. 36.

#### **Duty of Board**

47 (1) The Board shall determine any compensation where the parties have not agreed on the amount of compensation, and in the absence of agreement, determine any other matter required by this or any other Act to be determined by the Board.

(2) to (4) repealed 1992, c. 11, s. 36.

*R.S., c. 156, s. 47; 1992, c. 11, s. 36; 1995-96, c. 19, s. 8.*

48 and 49 repealed 1992, c. 11, s. 36.

#### **Expert evidence**

50 (1) A party is not entitled to adduce the evidence of an expert witness at the hearing unless the party has filed with the Board and served upon the other party or parties at least sixty days before the hearing begins a copy of the expert's report.

(1A) Where a report has been filed with the Board and served on the other party pursuant to subsection (1), the other party may file an expert's report in response at least thirty days before the hearing and is entitled to adduce the evidence in that report.

(2) Subject to subsections (1) and (1A), each party shall be entitled to call two expert witnesses, however the Board may grant leave for additional experts to be called.

(3) The Board may appoint experts to assist it in interpreting evidence of a special or technical nature. *R.S., c. 156, s. 50; 1995-96, c. 19, s. 9.*

#### **Notice of hearing**

51 The Board shall give notice of its hearings to those parties known to the Board who claim any interest or who, in the opinion of the Board, may have an interest in the land which was expropriated and shall accord to those parties a reasonable opportunity to offer evidence at the hearings. *R.S., c. 156, s. 51.*

## Costs

52 (1) In this Section, "offer to settle" means a written offer of an amount in full compensation for land expropriated or for injurious affection caused to an owner, or for both, made by an expropriating authority to the owner at least fourteen days prior to the date of a hearing by the Board that is held to determine the amount of the compensation.

(2) Subject to subsection (5), an owner whose interest in land is expropriated or injuriously affected is entitled to be paid the reasonable costs necessarily incurred by the owner for the purpose of asserting a claim for compensation.

(3) Subject to subsection (5), where an expropriating authority and an owner agree on the amount of compensation, but do not agree on the amount of costs to be paid, the costs to be paid to the owner shall be determined by the Board.

(4) Where the compensation awarded to an owner by the Board is greater than the amount offered in the offer to settle, the expropriating authority shall pay to the owner costs as determined by the Board.

(5) Where the compensation awarded to an owner by the Board is equal to or less than the amount offered in the offer to settle, the owner is entitled to costs, as determined by the Board, to the date of service of the offer to settle but the owner shall bear the owner's own costs that are incurred after that date.

(6) An offer to settle shall not be disclosed to the Board before its determination of the compensation payable to the owner.

(7) The costs payable to the owner are

(a) those costs referred to in subsection (2), (3), (4) or (5); or

(b) where the Governor in Council prescribes a schedule of costs, the amounts prescribed in the schedule and not the costs referred to in clause (a).

(8) In a determination of costs pursuant to subsection (2), (3), (4) or (5), the following shall be taken into account:

(a) the number and complexity of the issues;

(b) the conduct of any party that tended to shorten or unnecessarily lengthen the duration of the proceeding;

(c) any step in the proceeding that was improper, vexatious, prolix or unnecessary;

(d) the reasonableness and relevance of appraisal and other expert reports, including the cost of the reports;

(e) the skill, labour and responsibility involved;

(f) the amount of the award or settlement;

(g) any other matter relevant to the question of costs.

(9) The expropriating authority shall pay interest on an unpaid account for costs payable pursuant to this Section at the rate of six per cent per year or such rate as determined by the Governor in Council, from the date the account is served on the expropriating authority by the owner.

(10) Costs awarded pursuant to this Section are payable upon settlement or final adjudication of compensation to the owner. *1995-96, c. 19, s. 10.*

### **Interest on outstanding compensation**

53 (1) Subject to Sections 13 and 15, the owner of lands expropriated is entitled to be paid interest on the portion of the market value of his interest in the land and on the portion of any allowance for injurious affection to which he is entitled, outstanding from time to time, at the rate of six per cent a year calculated from the date the owner ceases to reside on or make productive use of the lands.

(2) Subject to subsection (3), where the Board is of the opinion that any delay in determining the compensation is attributable in whole or in part to the owner, it may refuse to allow him interest for the whole or any part of the time for which he might otherwise be entitled to interest, or may allow interest at such rate less than six per cent a year as appears reasonable.

(3) The interest to which an owner is entitled under subsection (1) shall not be reduced for the reason only that the owner did not accept the offer made by the expropriating authority, notwithstanding that the compensation as finally determined is less than the offer.

(4) Where the Board is of the opinion that any delay in determining compensation is attributable in whole or in part to the expropriating authority, the Board may order the expropriating authority to pay to the owner interest under subsection (1) at a rate exceeding six per cent a year but not exceeding twelve per cent a year. *R.S., c. 156, s. 53.*

### **Abatement of rent**

54 (1) Subject to subsection (2), where only part of the interest of a lessee is expropriated, the lessee's obligation to pay rent under the lease shall be abated pro tanto, as determined by the Board.

(2) Where all the interest of a lessee in land is expropriated or where part of the lessee's interest is expropriated and the expropriation renders the remaining part of the lessee's interest unfit for the purposes of the lease, as determined by the Board, the lease shall be deemed to be frustrated from the date of the expropriation. *R.S., c. 156, s. 54.*

55 to 62 repealed 1992, c. 11, s. 36.

### **Payment of compensation under one thousand dollars**

63 Where the owner who is entitled to convey the land that has been expropriated or injuriously affected and the statutory authority agree as to the compensation or the compensation has been determined and in either case it does not exceed one thousand dollars, the statutory authority may pay the compensation to the owner who is entitled to convey the land, saving always the rights of any other person to the compensation as against the person receiving it, and such payment discharges the statutory authority from all liability in respect of the compensation. *R.S., c. 156, s. 63.*

### **Appointment of guardian ad litem**

64 (1) The Court may, where a trustee, guardian or other person representing any person under a disability or any other persons including issue unborn is unable or unwilling to act on his or their behalf or where any such person or persons including issue unborn are not so represented or where the person or persons entitled to compensation are unknown or missing, after such notice as the Court may direct, appoint a trustee, guardian or other person ad litem to act on his or their behalf for the purposes of this Act.

(2) The Court in making any appointment under subsection (1) may give such directions as to the disposal, application or investment of any compensation payable under this Act as it deems necessary to secure the interests of all persons having a claim thereto.

(3) Any contract, agreement, release or receipt made or given by any person appointed under subsection (1) and any conveyance or other instrument made or given in pursuance of such contract or agreement is binding for all purposes upon the person by whom, and any person or persons including issue unborn on behalf of whom, such contract, agreement, release or receipt is made or given.

(4) For the purposes of this Section, the Public Trustee is a person eligible for appointment by the Court and may, in his discretion, of his own initiative, make application for such appointment. *R.S., c. 156, s. 64.*

### **Undertaking by statutory authority**

65 Where land is expropriated or is injuriously affected by a statutory authority, the statutory authority may, before the compensation is agreed upon or determined, undertake to make alterations or additions or to construct additional work or make a grant of other lands, in which case, the compensation shall be determined having regard to such undertaking, and, if the undertaking has not already been carried out, the Board may declare that, in addition to the compensation determined, if any, the owner is entitled to have such alteration or addition made or such additional work constructed or such grant made to him. *R.S., c. 156, s. 65.*

## **PART VI**

### **GENERAL**

#### **Regulations**

66 The Governor in Council may make regulations

- (a) prescribing rates of interest for the purposes of Section 28;
- (b) prescribing forms for the purposes of this Act and providing for their use;
- (c) prescribing a schedule of costs payable to an owner under this Act and the rate of interest on unpaid costs;
- (d) defining any word or expression used but not defined in this Act;
- (e) generally for any matter or thing necessary to effect the purposes of this Act. *R.S., c. 156, s. 66; 1992, c. 11, s. 36; 1995-96, c. 19, s. 11.*

#### **Alienation of land acquired under Act**

67 (1) Any land acquired under this Act for any purpose for which a statutory authority is authorized to acquire the same may be granted, sold, leased, transferred or otherwise disposed of by the statutory authority upon such terms and subject to such conditions as will assure, in the opinion of the statutory authority, the carrying out of the purposes for which the land was acquired and subject to any statutory provision governing the disposition of land by the statutory authority.

(2) Any land referred to in subsection (1) when not required by a statutory authority may be disposed of by that statutory authority as if acquired by purchase. *R.S., c. 156, s. 67.*

## **Regulations Act**

68 Regulations made by the Governor in Council pursuant to subsection (4) of Section 7, subsection (2) of Section 9, subsection (6) of Section 11 and Section 66 and regulations made by the Board under subsection (3) of Section 48 and approved by the Governor in Council shall be regulations within the meaning of the Regulations Act. *R.S., c. 156, s. 67.*

## **PART VII**

### **PURCHASE AND DISPOSAL OF LAND BY HER MAJESTY IN RIGHT OF THE PROVINCE**

## **Application of Part**

69 This Part applies only to Her Majesty in right of the Province. *R.S., c. 156, s. 69.*

## **Interpretation of Part**

70 In this Part,

- (a) "conveyance" includes a surrender to the Crown, and any conveyance to Her Majesty or to a minister or to any officer of his department, in trust, for or to the use of Her Majesty, shall be held to be a surrender;
- (b) "land" includes any estate, term, easement, right or interest to, over, or affecting land;
- (c) "lease" includes agreement for a lease;
- (d) "minister" means the minister presiding over a department of the Government of the Province and charged with or having the supervision, management or control of the construction, maintenance or repair of the public work;
- (e) "owner" includes mortgagee, lessee, tenant, occupant, person entitled to a limited estate or interest, and a guardian, executor, administrator or a trustee in whom land or any interest therein is vested;
- (f) "public work" includes highways, roads and bridges, public buildings, and all other works and property, whether or not of the kind hereinbefore mentioned, belonging to the Province, and also all other works and property acquired, constructed, extended, enlarged, repaired, equipped or improved at the expense of the Province, or for the acquisition, construction, repair, extension, enlargement or improvement of which any public money is appropriated by the Legislature, and every work required for any such purpose, but not any work for which money is appropriated as a subsidy only. *R.S., c. 156, s. 70.*

## **Powers respecting public works**

71 A minister may himself or by his engineers, superintendents, agents, workers or servants, for any purpose relative to the use, construction, maintenance or repair of a public work, or for obtaining better access thereto, and without the consent of the owner

- (a) enter into and upon any land and survey and take levels of the same, and make such borings or sink such trial pits as he deems necessary for any purpose related to a public work;
- (b) enter upon any land and deposit thereon such material as is required for a public work or for the purpose of digging, quarrying, cutting or carrying away any material therefrom for the purpose of the construction, repair or maintenance of a public work;
- (c) make and use all such temporary roads to and from timber, stone, clay, gravel or sand or gravel pits as are required by him for the convenient passing to and from a public work during the construction, repair or maintenance thereof;
- (d) enter upon any land for the purpose of making proper drains to carry off water from a public work, or for keeping such drains in repair;
- (e) divert or alter, temporarily or permanently, the course of any river or other watercourse or any railway, road, street or other way, or raise or sink its level, in order to carry it over or under, on the level of or by the side of a public work, as he deems necessary for any purpose related to that work;
- (f) for the purposes of a public work, divert or alter the position of any water pipe, oil or gas pipe, sewer or drain, or any telegraph, telephone or electric wire, pole or tower. *R.S., c. 156, s. 71.*

## **If wall removed or ditch built**

72 Whenever it is necessary, in the construction, repair or maintenance of a public work, to take down or remove any wall or fence of any owner or occupier of land adjoining a public work, or to construct any drain or ditch for carrying off water, the wall or fence shall be replaced as soon as the necessity that caused its taking down or removal has ceased, and after it has been so replaced, or when the drain or ditch is completed, the owner or occupier of the land shall maintain the wall, fence, drain or ditch to the same extent as he might by law be required to do if the wall or fence had never been so taken down or removed, or the drain or ditch had always existed. *R.S., c. 156, s. 72.*

## **Blasting**

73 (1) Where the Province has contracted with any person for the construction or execution of any public work, or where, by direction of the Governor in Council, or of a minister within the scope of his powers, any officer, employee or agent of the Province is charged with the construction or execution of any public work, the Governor in Council may, if in his opinion it is necessary or expedient that any material be excavated or removed by blasting or the use of explosives, authorize the work to be performed in that manner, notwithstanding that the blasting or explosions may cause damage to land or other property or to the prosecution of any industry or work that is situated in the vicinity of the work or that may be thereby affected.

(2) Notice of the authorization of any work in the manner set forth in subsection (1) shall be sent at least seven days in advance to the owner of any land or other property or to any person carrying on any industry or work that may be affected by such work, and any such owner or person may, within seven



days after the sending of such notice to him, apply to the Governor in Council or to any person designated by him for a review of the authorization.

(3) If the construction or execution of a public work is contracted for, then unless the contract otherwise provides, the amount of compensation payable by the Province is chargeable to the contractor, and, if not paid by him forthwith upon demand, may be recovered from him by the Province as money paid to the contractor's use, or may be deducted from any money in the hands of the Province belonging or payable to the contractor. *R.S., c. 156, s. 73.*

### **Compensation by Province for damage**

74 Compensation shall be paid by the Province to each person by whom any actual loss or damage is sustained by reason of the exercise of any power under this Part, equal to the amount of any such loss or damage for which the Province would be liable to that person if the power had not been exercised under the authority of a statute. *R.S., c. 156, s. 74.*

### **Power of minister to acquire land**

75 A minister may, for and in the name of Her Majesty in right of the Province, purchase or acquire any land which he may deem necessary

(a) for any purpose for which a minister is authorized under a specific Act or the former Expropriation Act to purchase and acquire any land;

(b) to implement or carry out or effect an agreement entered into between the Province and the Government of Canada or a city, town or municipality or any combination thereof if the agreement is financed from public funds;

(c) for any public work;

(d) for any purpose that is a public purpose. *R.S., c. 156, s. 75.*

### **Survey or establishment of boundary**

76 (1) A minister may employ a Nova Scotia Land Surveyor or engineer to make any survey or establish any boundary and furnish the plans and descriptions of any property acquired or to be acquired by Her Majesty for any of the purposes authorized by this Act.

(2) The boundaries of such properties may be permanently established by means of proper stone or iron monuments planted by the surveyor or engineer. *R.S., c. 156, s. 76.*

### **Deposit of plan**

77 Where land appropriated for a public work is Crown land, under the control of the Government of the Province, a plan of such land shall be deposited with the Department of Lands and Forests. *R.S., c. 156, s. 77.*

### **Power of guardian or executor to contract**

78 (1) Any tenant for life, guardian, tutor, curator, executor, administrator, committee or person, not only for and on behalf of himself, his heirs and assigns, but also for and on behalf of those whom he

represents, whether married women, infants, issue unborn, lunatics, idiots, or other persons, seised, possessed, or interested in any land or other property may contract and agree with a minister for the sale of the whole or any part thereof, and may convey the same to the Crown, and may also contract and agree with the minister as to the amount of compensation to be paid for any such land or property or for damages occasioned thereto, and may also act for and on behalf of those whom he represents in any proceeding for determining the compensation to be paid under this Act.

(2) Where there is no guardian or other person to represent a person under disability, the judge may, after due notice to the persons interested, appoint a guardian or person to represent, for any of the purposes mentioned in subsection (1), the person under disability. *R.S., c. 156, s. 78.*

### **Compensation payable from Consolidated Fund**

79 The Minister of Finance may pay to any person out of any unappropriated moneys forming part of the Consolidated Fund of the Province any sum to which, under this Act, he is entitled as compensation or for costs as a result of the Province purchasing, acquiring or expropriating land. *R.S., c. 156, s. 79.*

### **Property acquired for public purpose**

80 All lands, streams, watercourses and property acquired under this Act or otherwise by the Crown for any public work and purpose shall be vested in the Crown and, when not required for the public work or purpose may be sold, leased or otherwise disposed of under the authority of the Governor in Council. *R.S., c. 156, s. 80.*

### **Alienation of land acquired by Crown**

81 Any land acquired under this Act for any of the purposes set out in Section 10 or 75 may be granted, sold, leased, transferred or otherwise disposed of by the Governor in Council upon such terms and subject to such conditions as will assure, in the opinion of the Governor in Council, the carrying out of the purposes for which the land was acquired. *R.S., c. 156, s. 81.*

## **PART VIII**

### **TRANSITIONAL**

#### **Transitional provisions**

82 (1) Notwithstanding the former Expropriation Procedure Act and the former Expropriation Act, and any other general or private Act, where subsequent to the thirty-first day of December, 1970, a plan and description of land have been filed at the office of the registrar of deeds for the registration district in which the land is located, or the procedure under that Act equivalent to such filing by an expropriating authority has been followed, and no compensation settlement has been made for the land expropriated before the twentieth day of June, 1974, the land shown in the plan and described in the description is vested in the statutory authority and the said expropriating authority shall be deemed to have complied with Section 11 of this Act as of the twentieth day of June, 1974, and Sections 12 to 68 of this Act apply *mutatis mutandis* to that expropriation except that if the expropriating authority is in possession immediately before the twentieth day of June, 1974, service of the documents and the making of offers of compensation required by this Act prior to possession shall not affect that possession.

(2) Expropriations prior to the first day of January, 1971, shall be governed by the law in effect at the time of such expropriations.

(3) Expropriations subsequent to the thirty-first day of December, 1970, shall be governed by the law in effect at the time of such expropriations except to the extent and in those cases where subsection (1) applies.

(4) This Act applies to land expropriated on or after the twentieth day of June, 1974.

(5) A reference in any Act other than this Act to the "Expropriation Act" or the Expropriation Procedure Act or the procedure under either or both of those Acts shall mean and shall be construed to mean a reference to this Act.

(6) Nothing herein contained shall mean or be construed to mean that the power of a statutory authority to expropriate land is revoked or changed except that in the case of Her Majesty in right of the Province, the execution of expropriation documents shall be under the signature of the Attorney General rather than the minister named or designated in the appropriate Act. *R.S., c. 156, s. 82.*



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# Intestate Succession Act

CHAPTER 236

OF THE

REVISED STATUTES, 1989

amended 1999 (2nd Sess.), c. 8, s. 7

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## **An Act to Make Uniform the Law Respecting the Distribution of Estates of Intestates**

### **Short title**

**1** This Act may be cited as the *Intestate Succession Act*. R.S., c. 236, s. 1.

### **Interpretation**

**2** In this Act,

(a) "estate" includes both real and personal property;

(b) "issue" includes all lawful lineal descendants of the ancestor;

(c) "net value" means the value of the estate, wherever situate, both within and without the Province, after payment of the charges thereon and the debts, funeral expenses, expenses of administration, succession duty and estate tax. R.S., c. 236, s. 2.

### **Application of Act**

**3 (1)** This Act applies only in cases of death on or after the first day of September, 1966.

(2) Chapter 69 of the Revised Statutes, 1954, the *Descent of Property Act*, does not apply to cases of death on or after the first day of September, 1966. R.S., c. 236, s. 3.

### **Surviving spouse**

4 (1) If an intestate dies leaving a surviving spouse and issue, the intestate's estate, where the net value does not exceed fifty thousand dollars, shall go to the surviving spouse.

(2) Where the net value of the estate exceeds fifty thousand dollars, the surviving spouse is entitled to fifty thousand dollars and has a charge upon the estate for that sum with accrued interest from the date of the death of the intestate.

(3) In this Section,

(a) "home" means a dwelling owned and occupied as the principal residence by the intestate at the date of death of the intestate and includes any land appurtenant thereto and all household goods and furnishings of the dwelling;

(b) the value of the home shall be the fair market value less any charges attaching thereto.

(4) Where the surviving spouse is entitled to fifty thousand dollars pursuant to subsection (2), the surviving spouse may elect to receive the home

(a) in lieu of the said fifty thousand dollars where the value of the home is in excess of fifty thousand dollars; or

(b) as part of the said fifty thousand dollars where the value of the home does not exceed fifty thousand dollars.

(5) The residue of the estate shall be divided among the surviving spouse and children in the manner following:

(a) if the intestate dies leaving a surviving spouse and one child, one half shall go to the surviving spouse;

(b) if the intestate dies leaving a surviving spouse and more than one child, one third shall go to the surviving spouse.

(6) If a child has died leaving issue and the issue is alive at the date of the intestate's death, the surviving spouse shall take the same share of the estate as if the child had been living at that date.

(7) If an intestate dies leaving issue, the intestate's estate shall be distributed, subject to the right of the surviving spouse, if any, *per stirpes* among the issue. R.S., c. 236, s. 4.

### **Surviving spouse but no issue**

5 If an intestate dies leaving a surviving spouse but no issue, the intestate's estate shall go to the surviving spouse. R.S., c. 236, s. 5.

### **Regulations respecting election by surviving spouse**

**6 (1)** The Attorney General may by regulation prescribe the requirements of an election by the surviving spouse pursuant to subsection (4) of Section 4 and determine what forms or documentation are required to evidence such election and the requirements of recording such election in any court of probate or registry of deeds.

**(2)** The exercise by the Attorney General of the power conferred by subsection (1) shall be a regulation within the meaning of the *Regulations Act*. R.S., c. 236, s. 6.

### **No surviving spouse or issue**

**7** If an intestate dies leaving no surviving spouse or issue, the intestate's estate shall go to the intestate's father and mother in equal shares if both are living, but, if either of them is dead, the estate shall go to the survivor. R.S., c. 236, s. 7.

### **No surviving spouse, issue or parent**

**8** If an intestate dies leaving no surviving spouse, issue, father or mother, the intestate's estate shall go to the intestate's brothers and sisters in equal shares, and if any brother or sister is dead, the children of the deceased brother or sister shall take the share their parent would have taken if living. R.S., c. 236, s. 8.

### **Distribution to niece and nephew**

**9** If an intestate dies leaving no surviving spouse, issue, father, mother, brother or sister, the intestate's estate shall go to the intestate's nephews and nieces in equal shares and in no case shall representation be admitted. R.S., c. 236, s. 9.

### **Distribution to next of kin**

**10** If an intestate dies leaving no surviving spouse, issue, father, mother, brother, sister, nephew or niece, the intestate's estate shall go in equal shares to the next of kin of equal degree of consanguinity to the intestate and in no case shall representation be admitted. R.S., c. 236, s. 10.

### **Computation of degrees of kindred**

**11** For the purposes of this Act, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree. R.S., c. 236, s. 11.

### **Child en ventre sa mère**

**12** Descendants and relatives of the intestate, begotten before the intestate's death but born thereafter, shall inherit as if they had been born in the lifetime of the intestate and had survived the intestate. R.S., c. 236, s. 12.

### **Advancement**

**13 (1)** If a child or grandchild of a person who has died wholly intestate has been advanced by the intestate by portion, the portion shall be reckoned, for the purposes of this Section only, as part of the estate of the intestate distributable according to law and

(a) if the advancement is equal to or greater than the share of the estate that the child or grandchild would be entitled to receive as above reckoned, the child or grandchild and their descendants shall be excluded from any share in the estate; but

(b) if the advancement is not equal to such share, the child or grandchild and their descendants are entitled to receive so much only of the estate of the intestate as is sufficient to make all the shares of the children in the estate and advancement equal as nearly as can be estimated.

(2) The value of any portion advanced shall be deemed to be that which has been expressed by the intestate or acknowledged by the child or grandchild in writing, otherwise the value is the value of the portion when advanced.

(3) The onus of proving that a child or grandchild has been maintained or educated, or has been given money, with a view to a portion, is upon the person so asserting, unless the advancement has been expressed by the intestate or acknowledged by the child or grandchild in writing. R.S., c. 236, s. 13.

### **Estate not disposed of by will and lands held in trust**

**14 (1)** All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.

(2) The interest of any person in lands held in trust for the person in fee simple shall descend and be chargeable with the person's debts in like manner as if the person had died seised thereof. R.S., c. 236, s. 14.

### **Dower and curtesy**

**15** Subject to this Act, no widow is entitled to dower in the land of her deceased husband dying intestate, and no husband is entitled to an estate by curtesy in the land of his deceased wife so dying. R.S., c. 236, s. 15.

### **Illegitimate child**

**16** For the purposes of this Act, an illegitimate child shall be treated as if the child were the legitimate child of the child's mother or father. R.S., c. 236, s. 16; 1999 (2nd Sess.), c. 8, s. 7.

### **Adultery**

**17 (1)** If a wife has left her husband and is living in adultery at the time of his death, she shall take no part of her husband's estate under this Act.

(2) If a husband has left his wife and is living in adultery at the time of her death, he shall take no part of his wife's estate under this Act. R.S., c. 236, s. 17.

