



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

EXPROPRIATION ACT

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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EXPROPRIATION ACT

CHAPTER E-13

1. Definitions

In this Act

- (a) “**conveyance**” includes a surrender to the Crown; and any conveyance to Her Majesty or to the Minister, in trust, for or to the use of Her Majesty shall be held to be a surrender;
- (b) “**judge**” means a judge of the Supreme Court;
- (c) “**land**” includes any estate, term, easement, right or interest to, over, or affecting land whether or not within a municipality;
- (d) “**lease**” includes an agreement for a lease;
- (e) “**Minister**” means the Minister presiding over a department of the Government of Prince Edward Island and charged with or having the supervision, management or control of the construction, maintenance or repair of the public work;
- (f) “**public work**” includes highways, roads and bridges, public buildings, and all other works and property for the acquisition, construction, repair, extending, enlarging, or improving of which any public money is or has been appropriated by the Legislature, and every work required for those purposes, but not any work for which money is appropriated as a subsidy only;
- (g) “**owner**” includes a 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. *R.S.P.E.I. 1974, Cap. E-11, s.1.*

2. Access to premises, Minister etc.

The Minister, his engineers, superintendents, agents, workmen or servants, all of whom shall carry the Minister’s written authorization for any purpose relative to the use, construction, maintenance or repair of a public work or for obtaining better access thereto, after written notice to the owner, but without his consent, may

- (a) enter into and upon any land and survey and take levels of the same, and make borings, or sink trial pits;
- (b) enter upon, take and use any land, stream, water or water course;
- (c) enter with workmen, carts, carriages, horses, trucks, tractors or other motor drawn machinery, upon any land and deposit thereon soil, earth, gravel, trees, bushes, logs, poles, brushwood, and other material and dig up, quarry and carry away earth, stone, gravel and other material, and cut down and carry away trees, bushes, logs, poles and brushwood therefrom;
- (d) make and use all such temporary roads to and from such timber, stone, clay, gravel, sand or gravel pits as are required for the convenient passing to and from the work during the construction or repair;

- (e) divert or alter as well temporarily as permanently the course of any river, brook, stream, watercourse, highway, road, street or way, or raise or sink, as well temporarily as permanently, the level of the same;
- (f) divert or alter the position of any waterpipe, gaspipe, sewer, drain, or any telegraph, telephone or electric light wire or pole. *R.S.P.E.I. 1974, Cap. E-11, s.2.*

3. Expropriation permitted, where

The Minister may for and in the name of Her Majesty, purchase or acquire and, subject to this Act may, without the consent of the owner thereof, enter upon and take and expropriate any land for any purpose relative to the use, construction, maintenance, or repair of a public work or for obtaining better access thereto. *R.S.P.E.I. 1974, Cap. E-11, s.3.*

4. Property adjoining public work, powers *re*

Where it is considered necessary, in the building, maintaining or repairing of a public work, to take down or remove any wall or fence of any owner of land adjoining the public work or to construct any ditch or drain for carrying off water, the wall or fence shall be replaced as soon as the necessity which caused its taking down or removal has ceased, and after the same has been so replaced, or when the ditch or drain is completed, the owner shall maintain the wall or fence, ditch or drain, to the same extent as he might be by law required to do if the wall or fence had not been taken down or removed, or the ditch or drain had always existed. *R.S.P.E.I. 1974, Cap. E-11, s.4.*

5. *Idem*

- (1) Where any gravel, stone, earth, sand or water is taken at a distance from the public work, the Minister, his engineers, superintendents, agents, workmen or servants, may lay down all necessary sidings, water pipes or conduits or tracts in, over or upon any land intervening between the public work and the land on which the material or water is found, whatever the distance may be; and all the provisions of this Act, except those that relate to the filing of the plans and descriptions, apply to obtaining the right of way from the public work to the land on which the materials are situated; and the right may be acquired for a term of years, or permanently, in the discretion of the Minister.

Application of section

- (2) The powers conferred by this section may be exercised after the public work is constructed, for the purpose of repairing and maintaining the same. *R.S.P.E.I. 1974, Cap. E-11, s.5.*

6. Licensed land surveyor, employment of

- (1) The Minister may employ a licensed land surveyor 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.

Boundaries, how marked

- (2) The boundaries of the properties may be permanently established by means of proper stone or iron monuments planted by the surveyor. *R.S.P.E.I. 1974, Cap. E-11, s.6.*

7. Plan of expropriated land, filing

- (1) Where it is desired to expropriate land under this Act, there shall be deposited in the office of the Registrar of Deeds for the county in which the land is situated, a plan and description of



the land signed by the Minister, and such land shall thereupon become and be vested in the Crown.

Land required for limited time, statement on plan

- (2) Where the land is required for a limited time only, or only a limited estate, right or interest therein is required, the plan and description so deposited shall indicate, by appropriate words written thereon that the land is taken for the limited time only, or that only the limited estate, right or interest therein is taken, and by the deposit in that case the right of possession for the limited time, or the limited estate, right or interest, shall become and be vested in the Crown.

Omission or misdescription on plan

- (3) In case of any omission, misstatement or erroneous description in any plan or description, a correct plan and description may be deposited with similar effect.

Land in possession of Crown used for public work, filing plans

- (4) A plan and description of any land at any time in the occupation or possession of the Crown, and used for the purpose of any public work, may be deposited at any time in a similar manner and with a similar effect, saving always the lawful claims to compensation of any person interested therein.

Filing indication of necessity for public work

- (5) In all cases when the plan and description are so deposited, they are deemed to have been so deposited by the direction and authority of the Minister, and as indicating that in his judgment the land therein described is necessary for the purposes of the public work. *R.S.P.E.I. 1974, Cap. E-11, s.7.*

8. Crown land used for public work, plan

Where land appropriated for a public work is Crown land under the control of the Government of Prince Edward Island, a plan of the land shall be deposited with the Registrar of Deeds for the county in which the lands are situated. *R.S.P.E.I. 1974, Cap. E-11, s.8.*

9. Persons having capacity to negotiate compensation

- (1) Any tenant for life, guardian, 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 infants, issue unborn, mentally incompetent persons, or other persons, seised, possessed, or interested in any land or other property, may contract and agree with the 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 the 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.

Appointment of guardian

- (2) Where there is no guardian or other person to represent a person under disability, a 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.P.E.I. 1974, Cap. E-11, s.9.*

10. Warrant for possession, where obstruction

- (1) If any resistance or opposition is made by any person to the Minister, or to any person acting for him, entering upon and taking possession of the land or exercising any power in respect thereof, a judge may, on proof of the execution of a conveyance of the land to Her Majesty, or agreement therefor, or of the depositing in the proper registry office of a plan and description thereof as aforesaid, and after due notice to show cause given in such manner as he prescribes, issue his warrant to the sheriff of the county within which such land is situated to put the Minister or some person acting for him, in possession thereof, or take such steps as may be necessary to enable him to exercise such power.

Sheriff, duties re warrant

- (2) The sheriff shall take with him sufficient assistance for such purpose and shall put the Minister, or such person acting for him, in possession thereof, and shall forthwith make return to the court of the warrant, and of the manner in which he executed the same. *R.S.P.E.I. 1974, Cap. E-11, s.10.*

11. Compensation, payable by Minister

The Minister shall make to the owner of land entered upon, taken or used by him, or injuriously affected by the exercise of any of the powers conferred by this Act, due compensation for any damages necessarily resulting from the exercise of such powers, beyond any advantage which the owner may derive from the contemplated work, and any claim for the compensation not mutually agreed upon shall be determined as hereinafter provided. *R.S.P.E.I. 1974, Cap. E-11, s.11.*

12. Land compulsorily taken, procedure after filing plan

- (1) Where land has been entered upon, taken or used by the Minister under the compulsory powers conferred by this Act, the Minister shall, within sixty days after the registration of the plan and description of the land in the registry office, give notice to the owner
- (a) if the owner is known and is a resident of Prince Edward Island, by serving upon him or by mailing by registered post addressed to him at his last known place of abode, a notice describing the land taken or the right or easement exercised or intended to be exercised in, upon or over the land, and the nature of the work to be done and the date of the registration of the plan and description, and stating that every person having any claim to compensation must file the same in the office of the Minister within six months after the registration, or, in the case of land injuriously affected, within six months after the injury complained of, or in the case of a continuing injury, within one year from the time when the injury began or became known to him; and
 - (b) by the publication of a similar notice once a week for at least three weeks in some newspaper having a general circulation in the county in which the land affected is situated.

Owner unknown or cannot be found

- (2) If the owner of the land is unknown or cannot be found, or if there is no person competent to contract with the Minister for the sale to him of the land and to convey it to the Minister, a judge may, on application of the Minister, appoint a person to act for the owner, and all acts done, contracts made and conveyances executed by that person are as valid and effectual as if the same were done, made or executed by the owner and he were of full age and competent to do the act, make the contract or execute the conveyance.



Payment into Supreme Court, where

- (3) In the cases provided for by subsection (2) the amount of compensation agreed upon or awarded shall be paid into the Supreme Court subject to further order. *R.S.P.E.I. 1974, Cap. E-11, s.12.*

13. Compulsory powers, exercise of by Minister, notices

When the Minister has exercised any of the compulsory powers conferred by this Act other than the power to expropriate land, he shall, within sixty days after the exercise of the power, give and publish a notice similar to and in like manner as is provided for in section 12, and section 16, as to claims to and for the determination of the compensation, shall apply. *R.S.P.E.I. 1974, Cap. E-11, s.13.*

14. Claims for compensation, limitation periods for filing

Where the notice provided for by sections 12 and 13 has been given, no claim of any kind for compensation in respect to land taken, used or injuriously affected in the exercise of the powers conferred by this Act shall be referred for determination under this Act, unless the claim and the particulars thereof have been filed with the Minister in the case of land taken within six months after the registration of the plans, or in the case of land injuriously affected within six months after the injury complained of, or in the case of a continuing injury, within one year from the time when the injury began or became known to the claimant. *R.S.P.E.I. 1974, Cap. E-11, s.14.*

15. Expropriation of land additional to requirements, where

If the Minister is of the opinion that he can obtain the whole of any lot or parcel of land of which any part may be expropriated by him at a more reasonable price or to greater advantage than by acquiring that part only, he may expropriate the whole of the lot or parcel, and also a right of way thereto if the same is separated from the public highway, and may afterwards sell and convey the same or any part thereof as he considers expedient. *R.S.P.E.I. 1974, Cap. E-11, s.15.*

16. Agreement on compensation, arbitration

The Minister and the owner may agree upon the amount of compensation, or either party may give notice in writing to the other that he requires the amount of such compensation to be determined by arbitration under this Act. *R.S.P.E.I. 1974, Cap. E-11, s.16.*

17. Determination of compensation by judge

Subject to section 14, a judge, upon application of the Minister or of the owner, may appoint in writing a time and place at which he will determine the amount of the compensation and may give such directions for the service of the appointment and as to the persons to be served as he shall consider proper. *R.S.P.E.I. 1974, Cap. E-11, s.17.*

18. Application

Except as otherwise provided by this Act, the *Arbitration Act* R.S.P.E.I. 1988, Cap. A-16 applies to the proceedings taken under this Act before the judge. *R.S.P.E.I. 1974, Cap. E-11, s.18.*

19. Appeals, over \$500

- (1) Where the amount of the claim exceeds \$500, the Minister or the claimant may appeal to the Court of Appeal from any determination or order of a judge under this Act as to compensation.

Practice & procedure

- (2) The practice and procedure on such appeal and incidental thereto shall be according to the rules of the Supreme Court respecting appeals.

Decision final

- (3) The decision of the Court of Appeal shall be final. *R.S.P.E.I. 1974, Cap. E-11, s.19; 2008, c.20, s.72(30).*

20. Payment of compensation, clears title

The compensation agreed upon or adjudged for any land or property acquired, taken or used in or injuriously affected by the exercise of any of the powers conferred by this Act stand in the stead of the land or property, and any claim to or encumbrance thereon shall, as respects the Crown, be converted into a claim to or upon the compensation, and no longer affects the land or property so acquired, taken or used. *R.S.P.E.I. 1974, Cap. E-11, s.20.*

21. Abandonment of expropriation proceedings

- (1) Where at any time before the compensation has been actually ascertained or determined, land taken or expropriated under this Act or any part of the land, is found to be unnecessary for the purpose for which the same was taken or expropriated or if it is found that a more limited estate or interest therein only is required, the Minister may by writing under his hand, registered in the proper registry office, declare that the land or such part thereof is not required, and is abandoned by the Crown, 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 Crown the land shall so revert subject to the estate or interest so retained.

Limited abandonment, compensation

- (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.

Total abandonment, compensation

- (3) Where the whole of the land taken is abandoned, the person from whom it was taken is 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.P.E.I. 1974, Cap. E-11, s.21.*

22. Compensation payable to

If the compensation agreed upon or adjudged does not exceed \$100 it may be paid to the person who under this Act may lawfully convey the land or property or agree to the



compensation, saving always the rights of any person to such compensation as against the person receiving the same. *R.S.P.E.I. 1974, Cap. E-11, s.22.*

23. Compensation paid to Prothonotary

- (1) In the cases provided for in section 9, the Minister shall, and, in all other cases if for any reason the Minister considers it advisable, he may pay the compensation into the office of the Prothonotary, with interest thereon at five per cent per year for six months.

Notice calling for claims for compensation

- (2) A notice in such form and for such time as a judge may direct, shall be published in such newspaper as the judge may order, stating that the land is purchased, acquired or taken by the Crown under this Act, and calling upon all persons entitled to the land, or to any part thereof, to file their claims to the compensation or any part thereof, and all such claims shall be adjudicated upon by the judge, and the judge shall make such order for the distribution, payment, or investment of the compensation and for securing the rights of all parties interested as to right and justice and to law appertain.

Interest, repaid in part to Minister, where

- (3) If an order for distribution is obtained in less than six months after the payment of the compensation into court, the judge may direct a proportionate part of the interest to be returned to the Minister, and if it is not obtained after six months have expired the judge may order the Minister to pay interest for such further period as may be considered just.

Unborn issue, unascertained person, person appointed to represent

- (4) Where unborn issue or an unascertained person or class are interested in the compensation, the judge may appoint such person as may be considered proper to represent or act for them, and any order made shall be binding on them. *R.S.P.E.I. 1974, Cap. E-11, s.23; 2008, c.20, s.72(30).*

24. Details of estate or interest

Every person who has any estate or interest in any land or property acquired, taken or used in or injuriously affected by the exercise of any of the powers conferred by this Act, or who represents those persons shall, upon demand made therefor by or on behalf of the Minister, furnish to the Minister a true statement showing the particulars of the estate and interest, and of every charge, lien, or encumbrance to which the same is subject, and of the claim made by those persons in respect of the estate or interest. *R.S.P.E.I. 1974, Cap. E-11, s.24.*

25. Award to claimant in addition to compensation

If the injury to any land or property alleged to be injuriously affected by the exercise of any of the powers conferred by this Act may be removed wholly or in part by any alteration in, or addition to, any public work, or by the construction of any additional work, or by the abandonment of any part of the land taken from the claimant, or by the grant to him of any land or easement, and if the Crown, before an award is made, undertakes to make the alteration or addition, or to construct the additional work, or to abandon the portion of the land taken or to grant the land or easement, the damages shall be determined in view of the undertaking, and the judge shall declare that, in addition to any damages awarded, the claimant is entitled to have the alteration or addition made, or the additional work constructed or the part of the land abandoned, or the grant made to him. *R.S.P.E.I. 1974, Cap. E-11, s.25.*

26. Interest payable on compensation

- (1) Interest at the rate of five per cent per year may be allowed on the compensation from the time when the land or property was taken, used or injuriously affected; but no person to whom has been tendered a sum equal to or greater than the compensation shall be allowed interest thereon for any time subsequent to the date of the tender.

Delay in determining compensation attributable to claimant, no interest

- (2) If the judge is of the opinion that the delay in determining the compensation is attributable wholly or in part to any person entitled to the compensation or any part of it, or that he has not, upon demand, furnished the Minister, within a reasonable time, a true statement of the particulars of his claim, the judge 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 the same at the rate, less than five per cent per year, as may appear just. *R.S.P.E.I. 1974, Cap. E-11, s.26.*

27. Costs of proceedings

- (1) The costs of and incidental to any proceedings taken under this Act shall be in the discretion of the judge except costs of and incidental to any appeal taken under this Act to the Court of Appeal, in which case the costs shall be in the discretion of that court.

Taxing costs

- (2) The costs shall be taxed in accordance with the practice of the Supreme Court. *R.S.P.E.I. 1974, Cap. E-11, s.27; 2008, c.20, s.72(30).*

28. Operating Fund

The Minister of Finance may pay to any person out of any unappropriated moneys, forming part of the Operating Fund, any sum to which, under this Act, he is entitled as compensation or for costs. *R.S.P.E.I. 1974, Cap. E-11, s.28; 1983, s.1, s.6; 1986, c.5, s.2; 1993, c.29, s.4; 1997, c.20, s.3; 2010, c.31, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

29. Lands vested in Crown: disposal of

All lands, streams, watercourses and property acquired for any public work or 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 Lieutenant Governor in Council. *R.S.P.E.I. 1974, Cap. E-11, s.29.*

30. Disposal of lands by Crown

Any lands acquired under this Act may be granted, sold, leased or otherwise disposed of by the Lieutenant Governor in Council, upon such terms and subject to such conditions as he may determine. *R.S.P.E.I. 1974, Cap. E-11, s.30.*

31. Ministerial restriction

Nothing in this Act restricts the rights of the Minister of Transportation, Infrastructure and Energy, his servants or agents to expropriate land for the purpose of his department in the manner provided for by the *Roads Act* R.S.P.E.I. 1988, Cap. R-15 and the *Public Works Act* R.S.P.E.I. 1988, Cap. P-34. *R.S.P.E.I. 1974, Cap. E-11, s.31; 1980, c.2, s.3; 1983, c.1, s.6; 2010, c.31, s.3; 2015, c.28, s.3.*

