



CHAPTER 44

An Act to amend the Act to establish the Société
nationale de l'amiante

[Assented to 22 June 1979]

HER MAJESTY, with the advice and consent of the Assemblée
nationale du Québec, enacts as follows:

1978, c. 42,
ss. 20-55,
added.

1. The Act to establish the Société nationale de l'amiante (1978, chapter 42) is amended by inserting after section 19 the following:

"DIVISION V

"ACQUISITION BY WAY OF EXPROPRIATION

"§ 1.—*Expropriation*

Expropria-
tion.

"20. The Government, in accordance with the rules provided under this division, may expropriate for the account of the Société property of any kind that is suitable for the attainment of the objects of the Société and that is owned by Asbestos Corporation Limited or one of its subsidiaries on 15 December 1978 or became its property between 15 December 1978 and the date of expropriation.

Effect.

This section is without effect as to property alienated in the ordinary course of the commercial operations of Asbestos Corporation Limited or one of its subsidiaries.

Notice.

"21. Expropriation is effected by serving on the owner a notice informing it that its property is expropriated.

Content.

Where the property of the owner is expropriated in part only, the notice of expropriation shall contain either a summary description of the property not being expropriated or the description of the property being expropriated.

Publication.

The notice of expropriation is published in the *Gazette officielle du Québec*.

- Presumption.** “**22.** Property owned by a corporation that is a subsidiary controlled corporation of Asbestos Corporation Limited within the meaning given to that expression by section 1 of the Taxation Act (1972, chapter 23) is deemed to be owned by Asbestos Corporation Limited for the purposes of sections 23 and 29 to 54.
- Statement of the amount of the indemnity.** “**23.** Within thirty days of service of the notice of expropriation, the Société shall send a statement indicating the amount of the indemnity to the former owner.
- Right of ownership.** “**24.** The Société becomes the owner of such property from the service of the notice of expropriation.
- Registration.** The registrar of the registration division where the expropriated property is situated must make an entry of the expropriation of the property designated by the Société in the index of immoveables.
- Registration.** The chief registrar of claims under the Mining Act (1965, 1st session, chapter 34) is bound to register such right contemplated in section 3 of that act as may be designated by the Société.
- Copy of the titles.** “**25.** The former owner shall furnish to the Société copy of the titles relating to the expropriated property and of the books and documents required for the operation of such property.
- Operation of property.** “**26.** From the service of the notice of expropriation, the Société shall operate and administer the expropriated property. It is entitled to the revenues from the operation of such property and is responsible for the current operating expenditures.
- Payment of debts.** “**27.** If the former owner furnishes to the Société, within sixty days from the service of the notice of expropriation, an affidavit containing the names and addresses of all its creditors and the amount and the nature of each debt pertaining to the expropriated property, the Société shall assume, up to the amount of the indemnity, payment of the debts mentioned therein which pertain to the expropriated property.
- Creditor not at arm's length.** However, where a debt was contracted within three hundred and sixty-five days preceding the service of the notice of expropriation, toward a person who, under the Taxation Act, was not dealing at arm's length with the former owner, the Société is liable for such debt only if it was contracted in the normal course of operation of the property expropriated.
- Employees.** “**28.** In accordance with sections 36 to 38 of the Labour Code (Revised Statutes, 1964, chapter 141), the employees of the former owner whose services relate to the operation of the expropriated property, including marketing, become employees of the Société upon the service of the notice of expropriation.

Judicial
proceed-
ings.

"29. The Société may take up the defence of the former owner in any judicial proceeding pertaining to the expropriated property.

Indemnity
to be
paid.

"30. The indemnity that the Société is to pay shall be that which the Société and the former owner agree upon. Failing an agreement, the indemnity shall be determined by a board of arbitration.

Effect.

The indemnity shall be in lieu of any right or recourse of the former owner arising out of the acquisition of the expropriated property.

"§ 2.—Board of arbitration

Board of
arbitration.

"31. Upon the expiry of sixty days following the service of the notice of expropriation, either of the parties may require the formation of a board of arbitration, unless they have agreed to do so at an earlier date.

Appoint-
ment of
members.

"32. The board shall be composed of three members, one of whom is appointed by the Société, another is appointed by the former owner and the third, who is the chairman of the board, is appointed by the Government on the joint recommendation of the two members already appointed; the chairman shall be chosen from among the judges of the Provincial Court or the Court of the Sessions of the Peace sitting on the Expropriation Tribunal.

Appoint-
ment
ex officio.

Within ninety days of the decision of either party to require the creation of the board, if there is no agreement between the members of such board as to the selection of a chairman or if one of the parties fails to appoint its arbitrator, the chief judge of the Provincial Court shall, *ex officio*, appoint the chairman or the arbitrator.

Salary.

"33. Each party shall pay the salary of the arbitrator representing it. The chairman of the board of arbitration shall receive no other salary than his salary as judge.

Clerk.

"34. The Government shall appoint a clerk, who remains in office at least until the delay for appeal from the award of the board has expired. The Government may also appoint assistant clerks.

Salary.

The Société shall pay the salary of the clerks and provide for the organization of the administrative services of the board.

Conflict of
interest.

"35. Arbitrators shall not have any interest in the dispute they are called upon to settle. A judge of the Provincial Court

may on a motion of one of the parties dismiss an arbitrator who has such an interest. The motion is heard and decided by preference.

Vacancy. **"36.** Any vacancy among the arbitrators shall be filled within thirty days in accordance with the procedure established for their appointment.

Dispute. **"37.** The board shall hear, in first instance, to the exclusion of any other tribunal, the dispute concerning the indemnity. It shall be seized of it without other formality from the day the chairman is appointed.

Burden of proof. It shall hear the matter diligently in accordance with the procedure and mode of proof it considers appropriate; the burden of proof is on the former owner.

Public sitting. **"38.** The sittings of the board are public; the board may however, of its own initiative or at the request of one of the parties, order that a sitting be held *in camera*.

Powers of the chairman. **"39.** The chairman has all the powers of a judge of the Superior Court for the conduct of the sittings of the board; he cannot, however, impose imprisonment.

Witnesses. **"40.** At the request of the parties or of the board, the witnesses are summoned by a written order signed by the chairman or by the clerk.

Refusal to appear. **"41.** A person duly summoned before the board who refuses to appear or to testify may be compelled to do so and be condemned under the Summary Convictions Act (Revised Statutes, 1964, chapter 35), as if he had been summoned under that act.

Taxation. **"42.** The witnesses are entitled to the same taxation as witnesses before the Superior Court. That taxation is payable by the party which summoned or examined them.

Order of the board. **"43.** The chairman or the clerk may communicate or otherwise serve any order, document or proceeding emanating from the board or the parties concerned.

"§ 3.—Indemnity

Computation of the indemnity. **"44.** The indemnity shall be computed by the board according to the fair market value of the property established in relation

to its continued operation at the time the Société became the owner thereof.

Prejudice. “**45.** In computing the indemnity, account shall not be taken of any prejudice that might result from the expropriation nor from the rights and privileges conferred on the Société under section 3.

Invest-
ments. Express account must be taken, however, in computing the indemnity, of the investment required to meet the standards concerning the environment and the safety or health of the persons connected with the operation of the expropriated property.

Fiscal
situation of
former
owner. “**46.** In computing the indemnity, the fiscal situation of the former owner is appraised with regard to every act imposing tax, dues, duties or royalties by taking into consideration only the provisions of that act that were in force at the time the notice of expropriation was served.

Presump-
tion. However, for the purposes of computing the tax payable in the year of the expropriation and in subsequent years under the Taxation Act and the Income Tax Act (Statutes of Canada), the former owner is deemed to have, at the time of the service of the notice of expropriation, transferred the expropriated property to another corporation that was not carrying on any business and to have made, at that time, in respect of that property, the election provided for in section 406 of the Taxation Act and in section 85 of the Income Tax Act while assuming that the amount agreed upon in respect of such property is equal, in all cases, to the cost amount, within the meaning of the said acts, immediately prior to the transfer; for the same purposes, all the revenues of the former owner are deemed attributable to an establishment situated in Québec.

Appor-
tionment
of the
indemnity. “**47.** Where section 22 applies, the corporation may ask the board to apportion the indemnity between the former owners concerned.

Debts
deducted. “**48.** The debts assumed by the Société under section 27 shall be deducted from the indemnity computed pursuant to sections 44 to 46.

Rate of
interest. The indemnity thus reduced bears interest from the taking of possession by the Société of the expropriated property, at a rate equal to the average rates payable by banks governed by the Banks Act (Statutes of Canada) on ninety day term deposits; that rate shall be readjusted every ninety days from the taking of possession to the time the indemnity is paid.

Compound
interest. Interest is compounded semi-annually.

"§ 4.—Award

Interim decision. "49. Before the award is rendered, the board may make any interim decision it considers fair and advisable.

Award substantiated and signed. "50. The award of the board must be substantiated and signed by the members who participated therein.

Dissidence. Any dissenting member may submit a separate report.

No unanimity. Failing unanimity or a majority, the report of the chairman constitutes the award of the board.

Delay. "51. The award of the board must be rendered within ninety days following the conclusion of the sittings unless, at the request of the chairman, the Government grants an additional delay.

Award transmitted. "52. The chairman or the clerk of the board shall transmit the original of the award to the clerk of the Executive Council, and a copy to each party.

Execution of the award and other decisions. "53. The award of the board, and the interim decisions the board may render before the award, may be executed under the authority of the competent court, on a motion by one of the parties.

"§ 5.—Appeal

Right to appeal. "54. One of the parties may appeal before the Court of Appeal from any interim decision of the board, as well as from the award.

Preference. "55. The appeal is heard and decided by preference.

Provisions applicable. Articles 491 to 524 of the Code of Civil Procedure apply to such appeal, *mutatis mutandis*."

Sections renumbered. 2. Division v and sections 20 to 26 of the said act are renumbered VI and 56 to 62.

Coming into force. 3. This act comes into force on the day of its sanction.