

NATIONAL ASSEMBLY

SECOND SESSION

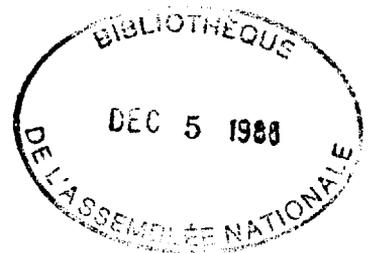
THIRTY-THIRD LEGISLATURE

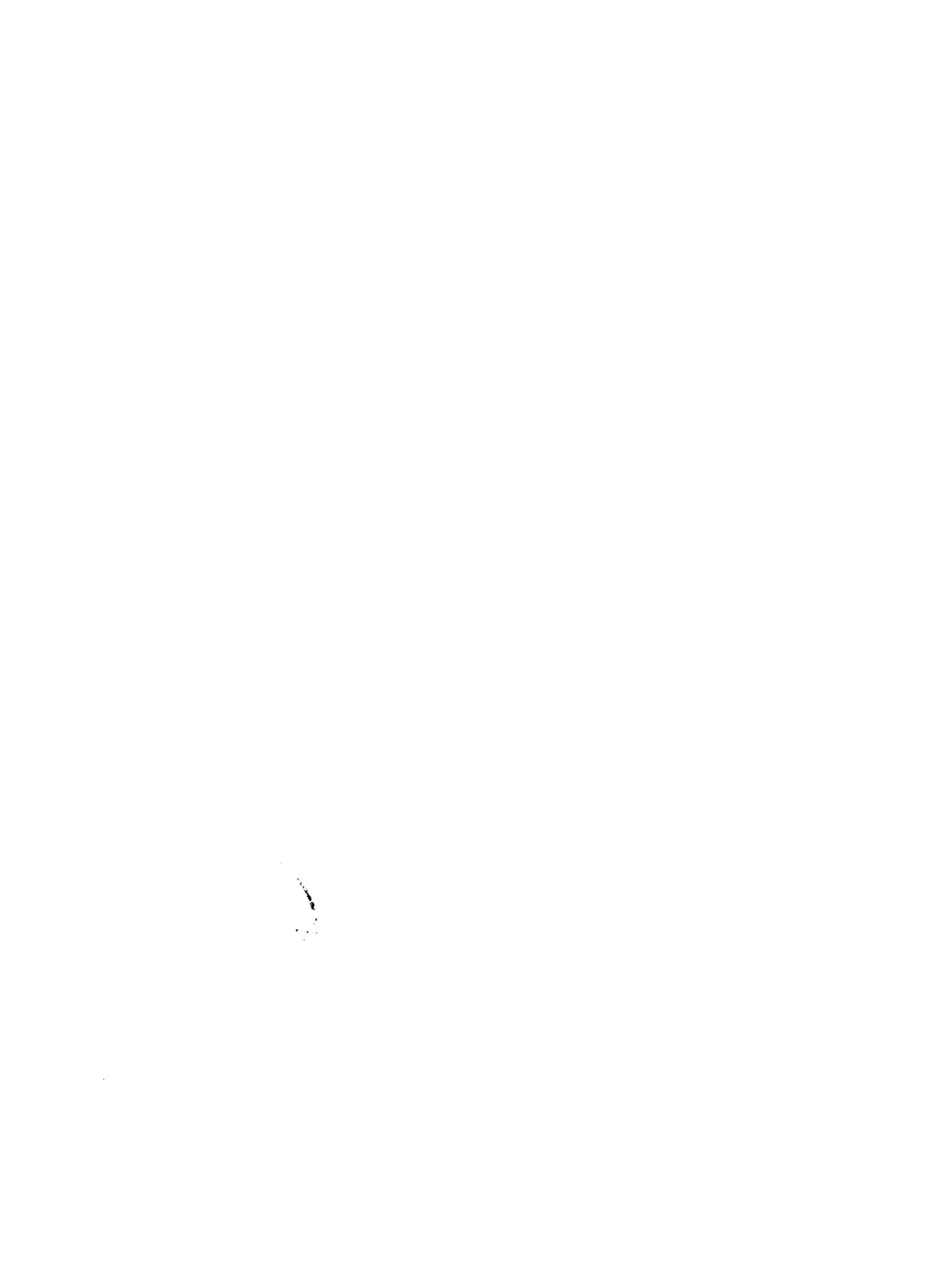
Bill 250
(Private)

**An Act respecting certain
immovables of the cadastre of the
city of Montréal (Sainte-Anne ward)**

Introduction

**Introduced by
Mr Maximilien Polak
Member for Sainte-Anne**





Bill 250

(Private)

An Act respecting certain immovables of the cadastre of the city of Montréal (Sainte-Anne ward)

WHEREAS on 22 August 1987, by a deed of sale registered in the registry office of the registration division of Montréal under number 3921578, Société en commandite Tristan acquired from 138013 Canada Inc. and from Stella Venditi *et al* an immovable comprising lots 1915 and 1916 of the cadastre of the city of Montréal (Sainte-Anne ward), the parts of lots 1057 and 1058 of the same cadastre described in the said deed, and an immovable with no cadastral designation bounded by some of the above-mentioned lots or parts of lots;

Whereas upon the coming into force of the cadastre of the city of Montréal (Sainte-Anne ward) on 3 January 1870, the said immovables and a contiguous immovable not contemplated by this Act were designated as lots 1056, 1057, 1058 and 1059, a tailrace with no cadastral designation separating lots 1057 and 1058 from lots 1056 and 1059, and a lane, with no cadastral designation, perpendicular to the tailrace and situated on both sides of it, separating lot 1057 from lot 1058 on the one hand, and lot 1056 from lot 1059, on the other hand;

Whereas the immovable known as lot 1057 upon the coming into force of the cadastre was the subject of a lease registered on 13 December 1853 in the registry office of the registration division of Montréal-Ouest under number 12 624, whereas the lease was, after the expiry of its 21-year term, to be renewed for every subsequent period of 21 years thereafter in consideration for a rent negotiated between the parties and, whereas under the lease, the lessee was required to see to the maintenance of the tailrace and of its banks;

Whereas on 31 December 1921, lots 1056, 1058 and 1059 were the subject of a deed of sale registered in the registry office of the registration division of Montréal-Ouest under number 168874 and whereas the purchaser is required, under the deed, to see to the maintenance of the tailrace and of its banks;

Whereas it appears that the tailrace was only 10 feet wide and built mainly for the purpose of conveying to the factories situated in the vicinity the water which was used to operate various machines;

Whereas the tailrace and the part of the lane situated southwest of the tailrace were the subject of a judgment recognizing the right of ownership acquired by virtue of prescription by thirty years, rendered on 15 December 1961 (number 7727 *ex parte* in the records of the Superior Court of the district of Montréal) and registered on 20 December in the same year in the registry office of the registration division of Montréal under number 1 574 714;

Whereas the part of the lane situated northeast of the tailrace was the subject of a judgment recognizing the right of ownership acquired by virtue of prescription by thirty years, rendered on 21 December 1962 (number 8450 *ex parte* in the records of the Superior Court of the district of Montréal) and registered on 24 May 1963 under number 1 673 376;

Whereas after the aforementioned judgments were rendered, a cadastral designation was assigned to immovables which, until then, had been shown on the subdivision plan as the tailrace and the lane, and whereas those immovables became part of lot 1915 in the case of the tailrace and of the southwest part of the lane, and lot 1916 in the case of the northeast part of the lane, and whereas they are no longer considered to be a lane and tailrace;

Whereas notwithstanding the foregoing, the judgment registered under number 1 673 376 does not apply to a part, described in Schedule A, of the northeast part of the lane which is not included in lot 1916, which is bound by some of the lots and parts of lots acquired by Société en commandite Tristan and which, at the time the judgment was rendered, had been possessed for several years by any one of the persons who owned the tailrace, the remainder of the northeast part of the lane or the contiguous part of lot 1057;

Whereas on 19 May 1967, part of lot 1057 was the subject of an order (number 8626 in the records of the Public Service Board) based on the Constitut or Tenure System Act (R.S.Q., 1964, chapter 322), issued by the Public Service Board which, at that time, had

jurisdiction over the matter and whereas the order was registered to be equivalent to a valid title to the immovable on 21 June 1967 under number 1 995 207;

Whereas the immovable acquired by Société en commandite Tristan includes part of lot 1057 to which the order registered under number 1 995 207 does not apply but which has been possessed for almost 30 years by the successive owners of the part of lot 1057 which is contemplated by the order;

Whereas, in the petition for judicial recognition of the right of ownership acquired by virtue of prescription by thirty years in respect of the tailrace and the southwest part of the lane, the petitioner did not apply for the cancellation of the obligation to maintain the tailrace and its banks as stipulated in the deed registered under number 168 874, and whereas the Superior Court did not express its opinion on the matter;

Whereas, in the case of the part of lot 1057 which was the subject of an order of the Public Service Board issued under the Constitut or Tenure System Act, it is doubtful that the Public Service Board was empowered under the said Act to cancel the obligation to maintain the tailrace and its banks as stipulated in the deed registered under number 12 624, whereas the petitioner did not apply for such cancellation, and whereas the Public Service Board did not express its opinion on the matter;

Whereas the two judgments recognizing the right of ownership acquired by virtue of prescription included an exemption from serving the petition and whereas the only measure taken by the petitioner to inform the lessors or their assigns of the petition filed with the Public Service Board and the order issued by the Board appears to have been the publication of notices in newspapers;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The title of Société en commandite Tristan to that part of lot 1915 of the cadastre of the city of Montréal (Sainte-Anne ward) which corresponds to the former tailrace and to the part of a former lane situated southwest of the tailrace which are contemplated by the judgment recognizing the right of ownership acquired by virtue of prescription by thirty years, rendered on 15 December 1961 (number 7727 *ex parte* in the records of the Superior Court of the district of Montréal) and registered on 20 December in the same year in the

registry office of the registration division of Montréal under number 1 574 714, is confirmed to the extent that it could have been contested on the grounds that an exemption was granted from serving the petition for judicial recognition of the right of ownership acquired by virtue of prescription and that, consequently, the persons who might have had arguments against the petition did not have an opportunity to present them.

The same applies to the title of Société en commandite Tristan to that part of part of the former lane situated northeast of the tailrace, which is contemplated by a judgment recognizing the right of ownership acquired by virtue of prescription by thirty years, rendered on 21 December 1962 (number 8450 *ex parte* in the records of the Superior Court of the district of Montréal) and registered on 24 May 1963 in the registry office of the registration division of the district of Montréal under number 1 673 376 and now known as lot 1916 of the cadastre of the city of Montréal (Sainte-Anne ward).

2. The title of Société en commandite Tristan to the part of lot 1057 of the cadastre of the city of Montréal (Sainte-Anne ward) which is contemplated by an order of the Public Service Board, based on the Constitut or Tenure System Act (R.S.Q., 1964, chapter 322), issued on 19 May 1967 (number 8626 in the records of the Public Service Board) and registered in the registry office of the registration division of Montréal under number 1 995 207, is confirmed to the extent that it could have been contested on the grounds that the only measure taken by the petitioner to inform the lessors of the petition and the order appears to have been the publication of a notice in newspapers and that, consequently, the persons who might have had arguments against the petition or the order did not have an opportunity to present them.

3. Any obligation to see to the maintenance of a tailrace or of the banks of a tailrace on all or part of the immovables designated in the deed registered in the registry office of the registration division of Montréal under number 3 921 578, including the immovables designated in Schedule A or B, which might derive from the lease registered in the registry office of the registration division of Montréal-Ouest under number 12 624 or from the deed of sale registered in the registry office of the same registration division under number 168 874, is cancelled.

4. In no case may the title of Société en commandite Tristan to the immovables described in Schedules A and B derived from the deed

executed on 22 August 1987 and registered in the registry office of the registration division of Montréal under number 3 921 578 be contested on the grounds that the vendors in the said deed, 138013 Canada Inc. and Stella Venditi *et al* did not have a registered title to those immovables.

5. The real rights cancelled by this Act shall be replaced by personal rights exercisable against Société en commandite Tristan. The value of such personal rights is equal to the value that the real rights they are replacing had immediately before (*insert here the date of coming into force of this Act*) and they are prescribed on the date on which the real rights would have been prescribed were it not for this Act, where such is the case.

6. This Act affects the immovable designated in the deed of sale registered in the registry office of the registration division of Montréal under number 3 921 578, including the immovables described in Schedules A and B.

7. Registration of this Act shall be effected by deposit.

8. This Act comes into force on (*insert here the date of assent to this Act*).

SCHEDULE A

(Sections 3, 4 and 6)

An immovable with no cadastral designation, rectangular in shape, measuring 17.7 feet along its northeast and southwest lines, 9 feet along its other two lines, situated in the extension of lot 1916, bounded by lot 1916 of the cadastre of the city of Montréal (Sainte-Anne ward) along one line, by part of lot 1057 of the same cadastre described in Schedule B and by the remainder of lot 1057, along another line, and by lot 1915 along the other two lines. English measure.

SCHEDULE B

(Sections 3, 4 and 6)

Part of lot 1057 of the cadastre of the city of Montréal (Sainte-Anne ward), rectangular in shape, bounded on the northeast and the northwest by the remainder of lot 1057, on the southwest by lot 1915 and on the southeast by the immovable with no cadastral designation described in Schedule A, measuring 4.8 feet along two of its lines and 8.6 feet along the other two lines. English measure.