

NATIONAL ASSEMBLY

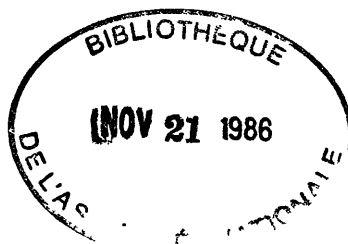
FIRST SESSION

THIRTY-THIRD LEGISLATURE

Bill 102

An Act respecting the lands in the public domain

Introduction



**Introduced by
Mr John Ciacchia
Minister of Energy and Resources**

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EXPLANATORY NOTES

This bill introduces a thoroughgoing revision of the provisions of the Lands and Forests Act (R.S.Q., chapter T-9) relating to the management of lands in the public domain and introduces distinction between the management of the lands and the management of the various resources based on them, so as to favour the use of the lands for a variety of purposes in a rational manner.

Chapter II sets out the land management powers. In particular, it requires him the compilation of a catalogue of lands in the public domain, the preparation of a land use plan in cooperation with the other departments concerned, which is subject to approval by the Government, and the keeping of a register of the resource development rights that have been granted.

Chapter III deals with the granting of rights in land.

Chapter IV establishes the principle that lands in the public domain are open to the public, empowers every minister having authority over any land to control the presence of persons or the erection of buildings on it; it also empowers the minister responsible for the administration of the Act to authorize the construction of roads other than forest or mining roads.

Chapter V provides for the cancellation of rights in land.

Chapter VI creates offences and fixes the related penalties.

Chapter VII contains the regulation-making powers of the Government.

Lastly, Chapter VIII contains miscellaneous and transitional provisions.

Bill 102

An Act respecting the lands in the public domain

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

APPLICATION

1. This Act applies to all lands that form part of the public domain of Québec, including the beds of watercourses and lakes and the parts of the bed of the St.Lawrence river and the Gulf of St.Lawrence belonging to Québec by right of sovereignty.

CHAPTER II

LAND MANAGEMENT

DIVISION I

AUTHORITY AND TRANSFERS

2. The Minister has in respect of all lands in the public domain all the rights and powers inherent in the right of ownership, unless otherwise provided in an Act, a decree or an order.

3. The Minister of Energy and Resources has authority over all lands not expressly placed under the authority of another minister or of a public body by a provision of an Act, a decree or an order under section 6.

4. For the purposes of this Act, “public body” means a body to which the Government or a minister appoints the majority of the members, whose personnel, by law, is appointed or remunerated in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1) or whose capital stock forms part of the public domain.

5. The Minister may acquire any immovable right for the benefit of the public domain.

With the authorization of the Government, he may also expropriate any immovable right for the benefit of the public domain where he considers the acquisition to be in the public interest.

6. The Minister may, by order, transfer authority over any land to another government minister, whereupon the latter minister shall have the duties and powers of the Minister under the law in respect of that land.

7. Any minister who has authority over land pursuant to an Act, a decree or an order under section 6 may, by order, transfer his authority over the land to the Minister where he deems it no longer suitable for the performance of his duties and the exercise of his powers under the law.

8. The Minister may, by order, entrust the management of land under his authority to another minister, for the purposes and on the conditions set out in the order.

9. Where any land is no longer required for the purposes set out in an order under section 8, the minister to whom its management has been entrusted shall immediately return it by order to the Minister.

10. The Government may, on the conditions it determines, entrust the management of any land to a public body.

11. Any transfer of rights in any land in favour of the Government of Canada or any of its departments or agencies is deemed to be an intergovernmental agreement within the meaning of section 3.7 of the Act respecting the Ministère du Conseil exécutif (R.S.Q., chapter M-30).

DIVISION II

IDENTIFICATION OF LANDS

12. The Minister shall prepare and update a catalogue in which all lands shall be identified and localized.

13. For the purposes of the preparation and updating of the catalogue, every minister and public body designated by the Minister shall inform the Minister, in the form determined by him, of the identification and localization of all lands under their authority that are not the subject of an order under section 6.

A minister or a public body shall inform the Minister in the same manner not later than thirty days after acquiring land for the benefit of the public domain or disposing of land.

14. Every land survey and every survey affecting the limits of any land must, on pain of nullity, be carried out in accordance with the instructions of the Minister.

Except where it is made by another minister, the survey must also have the prior authorization of the Minister.

15. The Minister having authority over any land may, in conformity with the provisions of article 2168 of the Civil Code, register a declaration in its respect stating that it forms part of the public domain.

Registration of the declaration is effected free of charge by deposit in the registry office of the registration division in which the immovable is situated.

16. After registration of a declaration under section 15, the Minister may effect any cadastral operation he deems expedient in respect of the land concerned.

If it is discovered that any land contemplated in the declaration is charged with a privilege or a hypothec, the Minister shall give each creditor not less than thirty days' notice in writing of his intention to carry out a cadastral operation, in order to allow him to make representations.

The Minister shall give the notice provided for in the second paragraph to the last person registered as owner. The notice is given by certified mail at the last address appearing in the register of addresses.

DIVISION III

LAND USE PLAN

17. The Minister, in cooperation with the government departments concerned, shall prepare a land use plan pertaining to the lands in the public domain.

The plan shall determine the destination of the lands in accordance with the aims and orientations, in the areas of resource conservation and development and land use, that the Government and the departments concerned are pursuing or following or intend to pursue or follow in respect of those lands.

18. The plan must be approved by the Government.

19. Where the land use plan pertains to land included in the territory of a regional county municipality, the Minister of Municipal Affairs shall transmit the proposed plan to the council of the municipality as part of the process of preparation or review of the development plan provided for in the Act respecting land use planning and development (R.S.Q., chapter A-19.1).

The plan shall be submitted to the Government for approval ninety days after adoption of the development plan if no application to amend it has been made to the municipality or if no application for amendment regards the use of lands in the public domain.

If an application for amendment regards the use of lands in the public domain, the plan shall be submitted for approval to the Government after the coming into force of the amended development plan or 90 days after it is transmitted, if the municipality does not follow up the application.

20. A land use plan may be amended in the same manner as it is prepared. In the case of a plan pertaining to lands comprised in the territory of a regional county municipality, the amendment shall be approved by the Government following receipt by the Minister of Municipal Affairs of a resolution of the council of the municipality transmitted within ninety days of receipt by the regional county municipality of a request for amendment transmitted by the Minister of Municipal Affairs. If no resolution is transmitted within the prescribed time, the Government shall approve the amendment.

DIVISION IV

REGISTRATION OF RIGHTS

§ 1.—*The Terrier*

21. The Minister shall institute and keep up to date a public land register, called the “Terrier” in the form he determines, in which shall be entered for registration purposes in the case of non-cadastered lands and for administrative purposes in the case of cadastered lands every alienation, acquisition, servitude, location or occupation right as well as every transfer, renewal and revocation of rights, leases or occupation licences granted on the lands. In the case of non-cadastered lands, the registration shall have the same effect as registration under Title XVIII of Book III of the Civil Code.

In addition, the Minister shall register any transfers of land made under sections 6 to 11.

22. Every minister or public body designated by the Minister shall, within ninety days transmit a notice to the Minister informing him of any deed of purchase or sale, letters patent, lease, occupation licence or other occupation right granted on the lands under his authority. The notice shall indicate the rights granted or acquired and identify the land to which they relate.

23. Any interested person may register any real right granted by the holder of rights in land of the public domain or any discharge in respect of a real right so granted.

To be registered, a deed establishing real rights or effecting a discharge thereof must be in authentic form *en minute*.

24. Registration is effected by depositing a copy of the deed upon payment of the duties and fees prescribed by regulation of the Government.

25. Notwithstanding article 2082 of the Civil Code, a real right affecting a non-cadastered land has effect from its registration against such a right which has not been registered or which has been registered subsequently.

If such land is subsequently cadastered, the holder of such real right shall comply with the prescriptions of the Civil Code respecting registration.

§ 2.—*Register of resource development rights*

26. The Minister shall prepare and keep up to date a public register containing a summary entry of all resource development rights granted on lands of the public domain, except rights granted under the Mining Act (R.S.Q., chapter M-13) that are exempt from registration in the registry office of the registration division concerned.

Every minister authorized to grant such development rights shall, within 30 days of the issuance of any such rights, transmit a notice to the Minister indicating what rights were granted and identifying the land to which they relate.

CHAPTER III

GRANTING OF LAND RIGHTS

DIVISION I

ALIENATION OF LANDS

§ 1.—*Sale*

27. The Minister may sell lands under his authority and buildings and improvements thereon which form part of the public domain, on the conditions and at the prices he determines, in accordance with the regulations of the Government to that effect.

The Minister may grant rights in such lands in the same manner.

28. The Minister may sell surface rights in land in which a right has been granted under the Mining Act, unless they are included in a mining concession.

Surface rights in land that is under a mining lease may be sold to a third person only if they are not required for mining by the holder of the lease.

29. Land may be sold by the issue of letters patent or by notarial deed *en minute*.

The grant of any other real right in any land shall be effected by notarial deed *en minute*.

§ 2.—*Gratuitous transfer*

30. The Minister may transfer gratuitously land under his authority by the issue of letters patent, for purposes of public utility prescribed by regulation of the Government, provided they are specified in the letters patent.

31. Every gratuitous transfer becomes irrevocable thirty years from the date of the letters patent.

Notwithstanding the first paragraph, every gratuitous transfer of land to a municipality for the construction or improvement of a public road is irrevocable from the date of the letters patent.

This section also applies to all gratuitous transfers effected by the issue of letters patent before (*insert here the date of coming into force of this Act*), as if it had been in force on the date of their issue.

32. Where the transferred land is used otherwise than as specified in the letters patent, the holder shall so inform the Minister.

Where the transferred land is used otherwise than for a purpose of public utility prescribed by regulation under paragraph 2 of section 63, the holder shall retrocede it to the Minister.

33. At the request of the holder, the Minister may amend letters patent to substitute other purposes of public utility prescribed by regulation of the Government under paragraph 2 of section 63 for those specified in the letters patent.

§ 3.—*Effect of letters patent*

34. Letters patent issued over the signature of the Minister have the same force as if they had been issued and signed by the Lieutenant-Governor and the Attorney General under the Great Seal.

The Minister of Justice, in his capacity as registrar of Québec, shall register the letters patent.

35. The Minister, unless a third party vested with rights in the land contemplated objects, may cancel letters patent and issue rectified letters patent bearing the date of those cancelled, if they were issued to a person not entitled to them or contain an error concerning the area or description of the land contemplated, an error in the holder's name or any other clerical error.

36. If a required rectification can be made in the letters patent without cancelling them, the Minister may make it and give notice of it to the registrar of Québec so that he may enter it in their registration.

37. Letters patent are validly issued upon the application of a petitioner unable to furnish sufficient proof of his titles, with the use of the terms “to the legal representatives of (*name of the original purchaser*)”.

In this section, the words “legal representatives” mean all persons who may have rights in the property.

§ 4.—*Reserves*

38. From and after 1 June 1884, sales and transfers of lands are subject to a reserve, in full ownership in favour of Québec, of sixty metres and three hundred and fifty thousandths in depth of the lands bordering on the non-navigable rivers and lakes of Québec.

From 1 January 1970, sales and transfers of lands are subject to a reserve, in full ownership in favour of Québec, of sixty metres and three hundred and fifty thousandths in depth of the lands bordering on all the rivers and all the lakes of Québec.

From 22 December 1977, sales and transfers of lands are subject to a reserve, in full ownership in favour of Québec, of sixty metres in depth of the lands bordering on all the rivers and all the lakes of Québec.

The Minister may sell, transfer by gratuitous title, lease or exchange the whole or part of the reserve resulting from the application of this section on the conditions and at the prices prescribed by regulation of the Government.

39. Every sale or grant of land adjacent to the boundary line between Canada and the United States of America or to the boundaries between Québec and a province, entered into or made after 15 February 1924, shall carry with it, as of right, in favour of Québec, a reserve in full ownership in that part of such land lying within eighteen metres and two hundred and eighty-eight thousandths of the line, and, in addition, the prohibition of erecting buildings or executing works on that piece of land.

The reserve contemplated in the first paragraph is of eighteen metres in the case of a sale or grant made after 22 December 1977.

The provisions of this section do not apply in the case of a sale or grant for the purposes of the construction of railways, water-works, bridges, canals, ditches or other works of a public character, nor to the works or the erection of the buildings necessary for their operation.

DIVISION II

PRIVATE USES

§ 1.—*Lease*

40. The Minister may lease any land under his control and any building and improvement thereon which forms part of the public domain, on the conditions and at the price he determines in accordance with the regulations of the Government to that effect.

41. The Minister may lease surface rights on land in which a right has been granted under the Mining Act, unless they are included in a mining concession.

Surface rights in land under a mining lease may be leased to a third person only if they are not required for mining by the holder of the lease.

42. The lessee of land may institute any action or suit against a person occupying the land illegally or trespassing; the lessee may also recover from the person all the damages which he may have suffered.

§ 2.—*Temporary occupation*

43. The Minister in accordance with the regulations of the Government to that effect, may authorize a person who applies therefor to occupy land under his control temporarily and issue an occupation licence to that effect to the person.

§ 3.—*Lands reserved for Indians*

44. The Government may reserve and allot, for the benefit of the various Indian bands of Québec, the usufruct of lands designated for that purpose by the Minister.

45. The usufruct of the lands designated by the Minister shall be transferred gratuitously on the conditions determined by the Government, to the Government of Canada to be administered by it in trust for the said Indian bands.

Such usufruct shall be inalienable and the lands subject to it shall return to the Government, from and after the date when the Indians to whom they have been assigned by the Government of Canada relinquish them by a deed of assignment.

Mining rights are not included in the allotment, notwithstanding the absence of any mention to that effect.

CHAPTER IV

CONTROL OF USE OF LANDS

DIVISION I

ACCESS

46. Every person may enter on lands in the public domain, except as prescribed by law or a regulation of the Government.

47. No person may stay, nor erect or maintain a building or a work on any land except with authorization of the Minister having authority over that land. The authorization is not required for the exercise of a right, the performance of a duty under the law or so far as prescribed by regulation of the Government.

48. No person may construct a road other than a forest or mining road on any land without prior authorization in writing from the Minister, and, in the case of forest land, the authorization prescribed in section 30 of the Forests Act (1986, chapter (*insert here the chapter number of Bill 150*)).

49. The holder of the authorization from the Minister shall comply with the regulations of the Government concerning the location, construction, maintenance and use of the road.

The Government may also, by regulation, cause the provisions of the Highway Safety Code (R.S.Q., chapter C-24.1) respecting highway traffic or safety applicable to them.

50. Every road constructed in the public domain forms part of it.

51. Any person may use a road constructed under section 48, subject to the regulations under paragraphs 6 and 7 of section 63.

Access to a road may be restricted or prohibited by the Minister for reasons of public order.

52. No claim for damages may be made by any person using a road on account of damage resulting from a defect in the construction, improvement or maintenance of the road.

DIVISION II

UNLAWFUL OCCUPATION OR USE

53. The minister having authority over any land may, by a motion served on any person who unlawfully occupies the land, apply to a judge of the Superior Court for an order in the form of a possessory writ.

The motion, accompanied with at least six clear days' notice of the date of its presentation, shall be heard by summary proceeding in the district in which the land is situated.

54. The judge, upon proof to his satisfaction, shall order the person to leave the land and to deliver up possession of it to the minister. The judge shall also order the person to restore the land to its former condition and, if the person fails to do so, the judge shall authorize the minister to cause the required work to be carried out at the respondent's expense.

The order has the same force as a possessory writ and is executed in the same manner as a writ in an action of ejectment or in a possessory action.

On the tenth day after the date on which the judgment becomes executory, all property affected by the judgment shall devolve, without indemnity and in full ownership, to the public domain. The minister may relinquish the devolution on such conditions as he determines.

55. The minister having authority over any land may take possession without indemnity and dispose of a building unlawfully erected on the land whose owner is unknown to him.

Possession cannot be taken, however, until the expiry of six months from the day of posting of a notice to that effect on the building concerned.

In addition to stating the effect of this section, the notice must identify the representative of the Minister to whom the owner may make representations to oppose the taking of possession.

CHAPTER V

CANCELLATION OF RIGHTS

56. If a purchaser, assignee, occupant or lessee of land or his assigns have violated or neglected to comply with any condition of a sale, assignment, lease or occupation licence, the Minister may require that corrective measures be taken within the time he determines and, failing that, impose sanctions up to and including the cancellation of the sale, assignment, lease or licence.

57. The cancellation shall have the effect of a complete forfeiture of all expenses and improvements made on the land. The Minister may, nevertheless, repay the expenses or indemnify the person who has made improvements where and so far as he considers it equitable.

58. The Minister may cancel a sale, assignment, lease or occupation licence if it has been made or issued by mistake or where the public interest so requires. The Minister shall however indemnify the holder of the deed of occupation for the prejudice he has suffered owing to the cancellation if the conditions provided for in the deed have been complied with.

59. The Minister shall not cancel a right without notifying the person concerned by certified mail at the last address appearing in his file.

In the case of cancellation of letters patent, the notice shall also appear in a newspaper published in the area where the land is located and shall be posted in a public place in that area.

The notice shall state that the cancellation may be made after the expiry of 30 days from the date of its publication and that the person concerned may make representations within that time to the representative of the minister identified in the notice.

CHAPTER VI

PENALTIES

60. Every person who stays on land in contravention of section 47 is liable, in addition to costs, to a fine of \$50 to \$200.

For any subsequent offence under the same section within two years of the conviction, the offender is liable, in addition to costs, to a fine of \$100 to \$400.

61. Every person who erects or maintains a construction on land in violation of section 47 or who constructs a road without the authorization of the Minister who has the authority thereon in violation of section 48, is liable, in addition to costs, to a fine of \$100 to \$500.

For any subsequent offence under the same section within two years of the conviction, the offender is liable, in addition to costs, to a fine of \$200 to \$1 000.

Where an offence referred to in the first paragraph continues for more than one day, it is a separate offence for each day or part of a day during which it continues.

Notwithstanding paragraph 2 of section 12 of the Summary Convictions Act (R.S.Q., chapter P-15), separate offences may be set out in a single count.

62. Proceedings are instituted in accordance with the Summary Convictions Act.

CHAPTER VII

REGULATIONS

63. The Government may, by regulation,

(1) fix the fees and costs exigible for the registration of rights in the terrier;

(2) determine the general conditions and the rules for computing the prices, rentals, fees or other costs regarding sales, leases, exchanges, gratuitous assignments and occupation licences in respect of land;

(3) prescribe the public utility uses for which a gratuitous concession of land under the authority of the Minister may be made;

(4) specify the circumstances where access to lands may be prohibited and the rules and conditions under which access to them may be had;

(5) prescribe the norms, circumstances and conditions under which a person may stay on land and subject such authorization to the rules it determines;

(6) establish norms respecting the location, construction, maintenance and use of roads other than forest or mining roads;

(7) establish rules respecting the right to use roads referred to in paragraph 6 for the safety of users and the protection of the roads;

(8) establish the rules for computing the contribution that may be required, if necessary, from those using a forest road contemplated in paragraph 6 by the person assuming the payment of construction and maintenance costs.

CHAPTER VIII

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

64. The Minister shall notify the municipalities concerned of the granting, revocation, correction or cancellation of any letters patent, lease or occupation licence affecting any land.

From the time of the notice, the land is no longer entered on the assessment roll.

The Minister shall notify the registrars of the registration divisions concerned.

65. This Act replaces sections 1 to 3 and 7 to 65 of the Lands and Forests Act (R.S.Q., chapter T-9).

66. Letters patent and licences issued, contracts entered into and all rights granted under sections 7 to 65 of the Lands and Forests Act remain in force until they are repealed, amended or renewed under this Act.

67. Unless the context indicates otherwise, the words “Crown land” or “public land” or “land of the crown domain” shall be replaced wherever they appear in any other Act, regulation, order in council order, contract or other legal instrument by the words “land in the public domain”.

68. Section 16 of the Act respecting land use planning and development (R.S.Q., chapter A-19.1) is amended by adding, at the end of paragraph 1, the following:

“in particular, the proposal for a land use plan prepared by the Minister of Energy and Resources in accordance with section 17 of the Act respecting the lands in the public domain (1986, chapter *insert here the chapter number of Bill 102*);”.

69. Section 27 of the said Act is amended by inserting, after the word “bodies” in the third line of the first paragraph, the following: “or the land-use plan prepared by the Minister of Energy and Resources in accordance with section 17 of the Act respecting the lands in the public domain,”.

70. Section 29 of the said Act is amended by inserting, after the word “aims” in the fifth line of the first paragraph, the following “, the land use plan”.

71. The said Act is amended by inserting, after section 48, the following section:

“48.1 Where the Government has approved an amendment to the land use plan for the lands in the public domain included in a regional county municipality in accordance with section 20 of the Act respecting the lands in the public domain, the Minister, if of the opinion that the development plan does not comply with the amended land use plan, may request the council of the municipality to amend the plan. Sections 27 to 30, adapted as required, apply to the request.”

72. Subparagraph 2 of section 8 of the Act respecting the conservation and development of wildlife (R.S.Q., chapter C-61.1) is replaced by the following subparagraph:

“(2) section 47 of the Act respecting the lands in the public domain (1986, chapter *insert here the chapter number of Bill 102*);”.

73. Paragraph 2 of section 12 of the Act respecting the Ministère de l'Énergie et des Ressources (R.S.Q., chapter M-15.1) is replaced by the following paragraph:

“(2) the management of the lands in the public domain in accordance with the Act respecting the lands in the public domain (1986, chapter *insert here the chapter number of Bill 102*);”.

74. Paragraph 5 of section 12 of the said Act is replaced by the following paragraph:

“(5) the construction and maintenance of roads on the lands in the public domain;”.

75. Sections 13, 14 and 17 of the said Act are repealed.

76. The said Act is amended by inserting, after section 17, the following section:

“17.1 Any employee of the department may, in the performance of his duties, enter on or pass over private land at any reasonable time.

The employee shall, on request, identify himself and show the certificate signed by the Minister attesting his capacity.”

77. Paragraph 2 of section 1 of the Act respecting public agricultural lands (R.S.Q., chapter T-9.1) is replaced by the following paragraph:

“(2) that has been put under the authority of the Minister after *[insert here the date of coming into force of the Act respecting the lands in the public domain (1986, chapter insert here the chapter number of Bill 102)]* under section 6 of the Act respecting the lands in the public domain (1986, chapter *insert here the chapter number of Bill 102*);”.

78. Section 13 of the said Act is replaced by the following section:

“13. Section 39 of the Act respecting the lands in the public domain applies to ungranted lands.”

79. Section 45 of the said Act is replaced by the following section:

“45. Section 39 of the Act respecting the lands in the public domain applies to lands granted after 15 February 1924.”

80. A reference to sections 1 to 3 and 7 to 65 of the Lands and Forests Act shall be a reference to the corresponding provisions of this Act.

81. The Minister of Energy and Resources is responsible for the administration of this Act.

82. This Act will come into force on the date fixed by the Government.

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